

Hearing - Day 2

**Council Review of Boardman to Hemingway
Transmission Line**

August 30, 2022



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<p style="text-align: right;">Page 203</p> <p style="text-align: center;">OREGON DEPARTMENT OF ENERGY ENERGY FACILITY SITE COUNCIL MEETING</p> <p style="text-align: center;">Council Review of the Proposed Order/Proposed Contested Case Order for the Boardman to Hemingway Transmission Line</p> <hr/> <p style="text-align: center;">August 30, 2022 Day 2 of 3 8:00 a.m.</p> <p style="text-align: center;">REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121, Oregon CCR 22-0002</p>	<p style="text-align: right;">Page 205</p> <p style="text-align: center;">A P P E A R A N C E S (Continued)</p> <p>1 FOR IDAHO POWER: 2 LISA RACKNER 3 JOCELYN PEASE 4 McDOWELL RACKNER & GIBSON 5 419 Southwest Eleventh Avenue 6 Suite 400 7 Portland, Oregon 97205 8 503.595.3925 9 lisa@mrg-law.com 10 jocelyn@mrg-law.com 11 12 FOR STOP B2H and DR. SUZANNE FOUTY: 13 KARL ANUTA 14 LAW OFFICE OF KARL G. ANUTA 15 735 SW 1st Avenue 16 Portland, Oregon 97204 17 503.827.0320 18 kga@integra.net 19 20 Also Present: 21 Irene Gilbert 22 Kevin March 23 Anne March 24 Wally Adams, DOE 25</p>
<p style="text-align: right;">Page 204</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 OREGON DEPARTMENT OF ENERGY COUNCILMEMBERS: 2 KENT HOWE, Vice Chair 3 HANLEY JENKINS II 4 PERRY CHOCKTOOT 5 JORDAN TRUITT 6 CINDY CONDON 7 ANN BEIER 8 TODD CORNETT, Secretary 9 OREGON DEPARTMENT OF ENERGY STAFF: 10 KELLEN TARDAEWETHER 11 Senior Energy Facility Siting Analyst 12 13 SARAH ESTERSON 14 Siting Analyst 15 CHRISTOPHER CLARK 16 Siting Policy Analyst and EFSC Rules Coordinator 17 550 Capitol Street Northeast 18 1st Floor 19 Salem, Oregon 97301 20 FOR EFSC COUNCIL: 21 JESSE RATCLIFFE 22 OREGON DEPARTMENT OF JUSTICE 23 1162 Court Street Northeast 24 Salem, Oregon 97301 25 503.947.4549 jesse.d.ratcliffe@doj.state.or.us. FOR DEPARTMENT OF ENERGY: PATRICK ROWE OREGON DEPARTMENT OF JUSTICE 1162 Court Street Northeast Salem, Oregon 97301 503.947.4520 patrick.g.rowe@doj.state.or.us</p>	<p style="text-align: right;">Page 206</p> <p style="text-align: center;">LA GRANDE, OREGON; AUGUST 30, 2022 8:00 A.M. -o0o-</p> <p>VICE CHAIR HOWE: The time now is eight o'clock a.m., and I would like to call the August 29th, 30th, 31st, 2022 meeting of the Energy Facility Siting Council to order. Mr. Secretary, please call the roll. SECRETARY CORNETT: Kent Howe. VICE CHAIR HOWE: Here. SECRETARY CORNETT: Hanley Jenkins. COUNCILMEMBER JENKINS: Here. SECRETARY CORNETT: Jordan Truitt. COUNCILMEMBER TRUITT: Here. SECRETARY CORNETT: Cindy Condon. COUNCILMEMBER CONDON: Here. SECRETARY CORNETT: Perry Chocktoot. COUNCILMEMBER CHOCKTOOT: Here. SECRETARY CORNETT: Ann Beier. COUNCILMEMBER BEIER: Here. SECRETARY CORNETT: Mr. Vice Chair, you have a quorum. VICE CHAIR HOWE: Thank you.</p>

<p style="text-align: right;">Page 207</p> <p>1 Are there any agenda modifications, 2 Mr. Secretary? 3 SECRETARY CORNETT: Mr. Vice Chair, just to 4 reiterate from yesterday, the Council did not review the 5 draft meeting minutes, so that is put off until 6 tomorrow, Wednesday, to evaluate and potentially adopt 7 that. 8 And then I would say just -- we'll figure it 9 out along the way today in case there are any changes 10 that need to be made such as, you know, the one -- the 11 one item that got kicked to Wednesday for review related 12 to the notification on blasting. So there may be 13 elements like that that get pulled from, you know, the 14 regular, sort of, schedule and then put off to the end. 15 So just kind of a reminder that we'll just 16 go along and see how it kind of plays out. 17 VICE CHAIR HOWE: Okay. Thank you. 18 Well, I have the following announcement. 19 Please silence your cell phones. Those participating 20 via phone or webinar, please mute your phone. And if 21 you receive a phone call, please hang up from this call 22 and dial back in after finishing your other call. 23 For those signed on to the webinar, please 24 do not broadcast your webcam. 25 Reminder to Council and to anyone addressing</p>	<p style="text-align: right;">Page 209</p> <p>1 person who engages in unacceptable conduct which 2 disrupts the meeting may be expelled. 3 So we're in the review of the Proposed Order 4 and Proposed Contested Case Order and exception hearing 5 on the Boardman to Hemingway Transmission Line. 6 We have Kellen Tardaewether with the Oregon 7 Department of Energy Siting Analyst -- Senior Siting 8 Analyst. And we have Jesse Ratcliffe, Senior Assistant 9 Attorney General in the Natural Resources Section of the 10 Oregon Department of Justice providing us the review of, 11 again, the Proposed Order and the Proposed Contested 12 Case Order. 13 So with that, we left off last night with 14 the noise and that's where we're going to start today. 15 So, Ms. Tardaewether, it's yours. 16 MS. TARDAEWETHER: Good morning. Good 17 morning. Testing. 18 For the record, Kellen Tardaewether, Siting 19 Analyst, Oregon Department -- can you hear me okay? 20 Thank you, Vice Chair. Good morning, 21 Councilmembers. We left off -- we finished up with the 22 soil protection standard last night and we're picking up 23 on the need standard this morning. 24 My esteemed colleague is taking care of some 25 errands and then she'll be back next by my side. I'm</p>
<p style="text-align: right;">Page 208</p> <p>1 the Council to please remember to state your full name 2 clearly and not use the speaker phone feature as it will 3 create feedback. 4 For those attending in person, comment 5 registration cards for Agenda Item C are available on 6 the table. 7 For those testifying on the B2H agenda item 8 or those who wish to provide comment during Agenda Item 9 C, please use the "raise your hand" feature in Webex to 10 speak during the public comment period or press "star 11 three" to raise your hand if you are participating by 12 telephone. 13 You may sign up for email notices by 14 clicking the link on the agenda or the Council web page. 15 You are also welcome to access the online mapping tool 16 and any documents by visiting our website. 17 Energy Facility Council meetings shall be 18 conducted in a respectfully and courteous manner where 19 everyone is allowed to state their positions at the 20 appropriate times consistent with Council rules and 21 procedures. 22 Willful accusatory, offensive, insulting, 23 threatening, insolent, or slanderous comments which 24 disrupt the council meeting are not acceptable. 25 Pursuant to Oregon Administrative Rule 345-011-0080, any</p>	<p style="text-align: right;">Page 210</p> <p>1 kind of pivoting today and I'm going to be running the 2 PowerPoint, but then I'm also going to try to toggle in 3 between the documents and pulling up rule language. So 4 I just kind of want this to be as informative and 5 helpful for Council. That said, just bear with me as I 6 kind of present but also find information that is -- 7 that is helpful for Council. 8 So I think that if I -- okay. I'm going to 9 have to go -- I'm going to have to close out of this. 10 Bear with me. Because we had the need standard to be 11 slated. 12 The need standard -- it should pull up 13 there -- applies to energy facilities for nongenerating 14 energy facilities. 15 Nongenerating facility, for example, is a 16 transmission line or a pipeline. There are provisions 17 of the needs standard that apply to pipelines. We're 18 just going to skip over those. 19 So I'm going to just kind of walk through 20 mostly just what the standard says and then some facts 21 and findings that are in the proposed order. 22 So there's -- basically, there's three 23 pathways to meet the needs standard. An applicant can 24 meet the needs standard by the Least-Cost Plan Rule or 25 by the System Reliability Rule, or on this third</p>

<p style="text-align: right;">Page 211</p> <p>1 provision here, which I'm not going to spend time on 2 because it doesn't apply to this project. 3 So the applicant, Idaho Power, in the 4 application, requested Council consider and provided 5 information in support of both the Least-Cost Plan Rule 6 and the System Reliability Rule. 7 Now, as this, sub (1), underneath standard, 8 these are an "or"; it's not an "and." 9 So if we meet either one of the System 10 Reliability Rule or Least-Cost Plan Rule, they've 11 demonstrated that the need standard is met. In the 12 proposed order, we are recommending that both have been 13 met. 14 So I'm going start with the Least-Cost Plan 15 Rule and -- maybe. I've lost my page. Bear with me. 16 Thank you. Sorry, guys. 17 In my PowerPoint I have snippets of my rule 18 language, but I want to pull up all the rule language 19 here. 20 Okay. So we're under need for facility. 21 Under this sub (1) -- there's a little bit of a delay, 22 so it will pull up here -- is what I just read from the 23 PowerPoint, which says Least-Cost Plan Rule, System 24 Reliability Rule. 25 And then we go down to the Least-Cost Plan</p>	<p style="text-align: right;">Page 213</p> <p>1 regulated utility in Oregon, must comply with the public 2 utility commissions. There are other rules as a utility 3 which means that every other year on a two-year cycle 4 they submit an Integrated Resource Plan or an IRP for 5 review and acknowledgement to the PUC. So they do this 6 on an ongoing basis. 7 And as part of the application Idaho Power 8 submitted -- well, we have several years of their IRP. 9 But really we're just looking for the most recent one. 10 And in 2017, the Oregon Public Utility 11 Commission did acknowledge their IRP. As we discussed 12 in the proposed order, several years back -- and I don't 13 have the date, but it is footnoted in the -- the 14 document -- doc ID. The record document is -- is talked 15 about in there. 16 But the Department took the position -- 17 because there's several different things that the Public 18 Utility Commission can acknowledge in an IRP. And in 19 years prior, like 2013 and 2015, the PUC had 20 acknowledged the ongoing permitting for the Boardman to 21 Hemingway Transmission Line. And the Department took 22 the position that to meet this -- what the Department 23 wanted to see in that -- in that acknowledgement from 24 the PUC is not only the ongoing permitting but also that 25 the PUC is going to acknowledge the construction of the</p>
<p style="text-align: right;">Page 212</p> <p>1 Rule. And the sub (1) under that has direction for 2 Council on what they shall find. That the applicant has 3 demonstrated need for the facility, et cetera, 4 et cetera. 5 And then there's -- basically, it says these 6 are the items that -- that the applicant must represent, 7 and if they have any of these plans or combination of 8 plans adopted or approved by a municipal utility, 9 people's utility district, that these can be used and 10 submitted to demonstrate the Least-Cost Plan Rule. 11 And then it goes through items that says 12 these are the things that need to be included in a plan: 13 range of forecast, evaluates range of practical demand 14 of supply resources. 15 I'm just going to slowly scroll down. The 16 delay, it will kind of -- but it goes through several 17 items of what needs to appear in those plans. And that 18 is for sub (1). 19 And I'm going to go down to sub (2), which 20 says the Council shall find that the least-cost plan 21 meets the criteria of an energy resource plan 22 described -- described in sub (1) -- what we just kind 23 of scrolled through, if the Public Utility Commission of 24 Oregon has acknowledged the Least-Cost Plan Rule. 25 So this is where we went. Idaho Power, as a</p>	<p style="text-align: right;">Page 214</p> <p>1 Boardman to Hemingway Transmission Line. 2 So in that 2017 acknowledgement of the 2017 3 IRP, the PUC did acknowledge the ongoing permitting but 4 also the construction activities for the Boardman to 5 Hemingway Transmission Line. 6 So in the proposed order, I -- I believe -- 7 and I can pull it up. But this is a Council "shall," so 8 this isn't a -- really recommended. This is kind of a 9 directive. This has already -- this has been done. 10 So let me gather my notes here. 11 So that is what I really wanted to say for 12 the Least-Cost Plan Rule. I can stop there. And then 13 I'm going to go on to the System Reliability Rule, and 14 I'm going to dance around aspects of it. 15 So I'll just -- I'm going to pull up the 16 rule now. So I'm going to pass off aspects that are 17 kind of related to what Jesse is going to talk about in 18 the contested case issues. But there is one portion of 19 it, maybe it's not the most interesting portion. But 20 that -- that really isn't very related to the contested 21 case issue. 22 So then this is the System Reliability Rule, 23 which is more of an in-depth analysis of the data 24 provided, which we can pull from and use. Which, in the 25 proposed order, we did use the information that was</p>

<p style="text-align: right;">Page 215</p> <p>1 submitted in the IRPs -- in the Integrated Resource 2 Plan, because it has that technical information about 3 load, et cetera, and -- and demand. So we used that to 4 draft findings for each of these subparts under the 5 System Reliability Rule. 6 So I'm going to skip over one and two. 7 Sub (1) is -- is that the facility -- I'll 8 just -- we'll just read this rule here. 9 So to demonstrate that the facility is 10 needed to enable the transmission system of which it's 11 to be part of to meet firm capacity demands for 12 electricity or firm annual electricity sales. And then 13 this is, you know, on weather conditions that have five 14 percent chance of occurring in the area served by the 15 facility. So there's findings in the proposed order for 16 that. 17 And then the second one is that the facility 18 is consistent with applicable mandatory -- so this is 19 that it complies with the NERC regulations that apply 20 either internally or externally to a utility system. 21 So I can -- so the portion that I was going 22 to talk about is the -- the NERC. So I'm really kind 23 of -- we're going to leave the one because it kind of is 24 related to capacity. And then that this second 25 portion -- and we've talked about this. We've talked</p>	<p style="text-align: right;">Page 217</p> <p>1 Okay. This one -- this one is working. 2 Okay. All right. Good morning, Mr. Vice 3 Chair, members of the Council. 4 So we have two issues under the needs 5 standard that have exceptions filed on them. Both of 6 the exceptions were filed by Stop B2H. 7 So the first issue is issue N-1. And that 8 is whether the Department erred in defining "capacity" 9 in terms of kilovolts instead of megawatts. 10 So the Proposed Contested Case Order's 11 opinion dealt with this in a ruling on motion for 12 summary determination. And the general idea with motion 13 for summary determination is that is intended to deal 14 with the situation where you don't have material facts 15 in dispute and so you're looking at a purely legal 16 issue. 17 And so Idaho Power had filed a motion for 18 summary determination on this issue, and the hearing 19 officer ruled in their favor, finding that the Council 20 rules don't define the term "capacity" for the purpose 21 of the -- the needs standard rule. 22 And she acknowledged that in one of the 23 definitions in the Council statutes capacity is 24 associated with -- 25 SECRETARY CORNETT: Jesse, can I -- we got</p>
<p style="text-align: right;">Page 216</p> <p>1 about it in July when it came up about organizational 2 expertise and operating other transmission lines and 3 really that the applicant is bound to comply with other 4 regulatory agencies and guidelines, for instance, NERC, 5 North American Electric Reliability Corporation. So 6 there are findings for that. 7 And then they also must comply with the WEC 8 reliability criteria. And in compliance. 9 And I have -- there's several -- so the 10 proposed order discusses that there are these -- find my 11 notes here -- transmission planning standards or "TPL." 12 And those prescribe acceptable system operating limits 13 for a wide range of system conditions. 14 And then the basis and under this, as we do 15 draft findings and we pull from other aspects of the 16 application to support findings of why -- of how the 17 sub (2) of the standard is met. 18 I'm just going to stop there. 19 And if we get -- want to get into any of 20 those details, we can talk about them. But I'll just 21 pass it off to Jesse. And I'm going to pull up your -- 22 your slide here. 23 MR. RATCLIFFE: Okay. Great. Make sure 24 that I can be heard on this. I'm not sure. No, it 25 doesn't seem like it.</p>	<p style="text-align: right;">Page 218</p> <p>1 sort of a little heads-up that the court reporter is 2 having a hard time hearing the information. Sort of a 3 recommendation for all of us to lean into the mics so 4 that she can clearly hear us. Especially, I think, 5 probably you and I with the masks on. 6 MR. RATCLIFFE: Yep. 7 Okay. So the -- let me find my place here. 8 Okay. So one of the definitions in the 9 Council statutes that the hearing officer looked at in 10 469.300 sub (11), the -- one of the definitions 11 provided, capacity is associated with voltage and not 12 megawatts. 13 Similarly, in Idaho Power's Integrated 14 Resource Plan, the capacity is associated with voltage 15 and not megawatts. And that that's the way that the -- 16 the PUC acknowledged that capacity and, as a result, did 17 not err in finding capacity in terms of kilovolts; that, 18 basically, you know, where there's uncertainty in the 19 rule, the hearing officer is going to look to sources of 20 information that she can. 21 And, you know, when you have a couple of 22 other sources, as was the case here, that are relying on 23 the term in the same way, that's persuasive in helping 24 to -- to figure out what capacity might be meant by -- 25 in the Council's rule since it is not explicitly</p>

<p style="text-align: right;">Page 219</p> <p>1 defined.</p> <p>2 And with that, I will go ahead and turn it</p> <p>3 over to Stop B2H for oral argument.</p> <p>4 SECRETARY CORNETT: And while they are</p> <p>5 coming up, just to let Councilmembers know, we are a</p> <p>6 little bit different today, we have two issues on the</p> <p>7 needs standard. So we'll go through oral comments on</p> <p>8 the first issue, conclude that. Then go back to the</p> <p>9 next issue where Jesse will provide the update. And</p> <p>10 then we'll go through oral comments again. Then we'll</p> <p>11 deal with the straw poll as a whole or however you want</p> <p>12 to separate it out. But we will go through the full</p> <p>13 oral comments before we get into any of the straw polls,</p> <p>14 if that works for Council.</p> <p>15 MR. ANUTA: But that's usually not an issue</p> <p>16 with my voice. So hopefully the court reporter could</p> <p>17 hear that.</p> <p>18 For what it's worth, my suggestion on these</p> <p>19 two is -- from Stop's perspective -- the issue in both</p> <p>20 this and the prior -- and the next one are the same,</p> <p>21 which is the summary determination -- what -- did the</p> <p>22 hearings officer treat the facts appropriately.</p> <p>23 So I'm happy to have Jesse present on the</p> <p>24 other issue and then argue them both at the same time,</p> <p>25 which might go faster for you folks. But it's up to the</p>	<p style="text-align: right;">Page 221</p> <p>1 though Idaho Power is the applicant here, this is a</p> <p>2 joint venture between several different entities in</p> <p>3 terms of the construction and operation of the project.</p> <p>4 So that is the hearing officer's opinion on</p> <p>5 this. And so -- and, again, this was, as with issue</p> <p>6 N-1, issue N-3 was a ruling on summary determination;</p> <p>7 basically, a conclusion that is a matter of law. The --</p> <p>8 the hearing officer could rule in favor of Idaho Power</p> <p>9 on this issue.</p> <p>10 So with that I will turn it back over to</p> <p>11 Mr. Anuta for oral argument.</p> <p>12 MR. ANUTA: Members of the Council, this</p> <p>13 particular set of issues puts you in an interesting</p> <p>14 position. You are essentially sitting as an appellate</p> <p>15 court reviewing the Administrative Law Judge's proposed</p> <p>16 summary judgment or summary determination decision. You</p> <p>17 must evaluate whether this law judge correctly reviewed</p> <p>18 the facts and that there were no facts in dispute.</p> <p>19 We've outlined in our exceptions this is fundamentally a</p> <p>20 problem. There were facts in dispute, so there should</p> <p>21 not have been summary determination granted. There</p> <p>22 should have been a hearing.</p> <p>23 And what we ask at this point, when you go</p> <p>24 back and review those matters, if you agree there were</p> <p>25 facts in dispute, you should remand these issues to the</p>
<p style="text-align: right;">Page 220</p> <p>1 Council.</p> <p>2 VICE CHAIR HOWE: Council okay with that? I</p> <p>3 think we are.</p> <p>4 (Connectivity discussion.)</p> <p>5 MR. RATCLIFFE: Okay. So where we left off</p> <p>6 was combining these two issues for the purposes of oral</p> <p>7 argument. And so the second issue is issue N-3, which</p> <p>8 is whether the applicant demonstrated need for the</p> <p>9 proposed facility when the applicant has only shown that</p> <p>10 it's need represents 21 percent of the total capacity.</p> <p>11 And so the Proposed Contested Case Order's</p> <p>12 opinion on this said -- went through the history of</p> <p>13 acknowledgement by the PUC, pointed out that the PUC</p> <p>14 acknowledged the proposed project in IPCs 2017,</p> <p>15 Integrated Resource Plan, and then affirmed that</p> <p>16 acknowledgement in the 2019 Integrated Resource Plan.</p> <p>17 The -- the hearing officer found that,</p> <p>18 importantly, the PUC had acknowledged the proposed</p> <p>19 transmission line as a whole, not simply with respect to</p> <p>20 Idaho Power's capacity or Idaho Power's part of the</p> <p>21 project. And that as a result, the project satisfies</p> <p>22 the needs standard under the Least-Cost Plan Rule,</p> <p>23 regardless of the percentage of transmission capacity</p> <p>24 needed specifically for Idaho Power's customers.</p> <p>25 And again, as a reminder, this -- even</p>	<p style="text-align: right;">Page 222</p> <p>1 hearings officer and direct her to have a hearing on</p> <p>2 these issues so that the facts can be determined.</p> <p>3 So what was in dispute here? It's pretty</p> <p>4 straightforward. There was a dispute about whether or</p> <p>5 not you use kilovolts or megawatts to determine</p> <p>6 capacity.</p> <p>7 And as Jesse acknowledged, the capacity</p> <p>8 definition is a little vague, so the hearings officer</p> <p>9 looked elsewhere. She looked at what was done</p> <p>10 previously. She looked at a variety of other things.</p> <p>11 And then she reached a conclusion, a factual conclusion</p> <p>12 about whether or not you use kilovolts or megawatts.</p> <p>13 You cannot do that on summary determination. You cannot</p> <p>14 make factual decisions after weighing the evidence. You</p> <p>15 must only conclude issues of law. Whether or not you</p> <p>16 use kilovolts which -- or megawatts was a factual</p> <p>17 dispute.</p> <p>18 We pointed out Idaho Power used megawatts in</p> <p>19 its original application. Idaho Power used megawatts in</p> <p>20 its 2017 IRP. And in addition to that, the draft</p> <p>21 proposed project order discussed the needs standard in</p> <p>22 megawatts. All of that is factually inconsistent with</p> <p>23 using kilovolts now. There should have been a hearing</p> <p>24 on that issue so the matter could be decided.</p> <p>25 One other point that we made in our</p>

<p style="text-align: right;">Page 223</p> <p>1 exceptions, which you should look at closely, in its 2 reply on summary determination briefing, Idaho Power 3 introduced an affidavit from Jared Ellsworth, an IPC 4 employee. He presented additional facts about how, in 5 his view, industry standard required the use of 6 kilovolts. That should have been a red flag to the 7 Administrative Law Judge. An affidavit introduces facts 8 not law. 9 If there was an affidavit that had to be 10 introduced, then there was going to be a weighing of the 11 facts. And, in fact, the Administrative Law Judge 12 relied on the facts that Mr. Ellsworth presented, among 13 others, for concluding that it was kilovolts versus 14 megawatts. 15 Our position is that was clear error because 16 it was a factual determination and you cannot do that on 17 summary determination. 18 Other facts that were in dispute here, you 19 heard the discussion of the fact that there was -- this 20 was a joint venture and the need standard that's before 21 you mentions that IPC only has 21 percent of this. 22 There was a factual dispute about whether the OPCs -- 23 excuse me, Oregon Public Utility Commission, OPUC, their 24 acknowledgement of the fractional share that IPC had 25 with its partners potentially there, was that enough to</p>	<p style="text-align: right;">Page 225</p> <p>1 have factual disputes at their core. And that's where 2 we should be back to now, not after a full appellate 3 process and six months to a year down the road. So we 4 ask that you reverse on these issues. Happy to answer 5 any questions if you have any. 6 VICE CHAIR HOWE: Thank you, Mr. Anuta. 7 Any questions from Council? Thank you. 8 MS. RACKNER: Good morning, Commissioners -- 9 excuse me, Councilmembers. 10 I want to start by correcting Mr. Anuta's 11 statement of the applicable law. 12 For a -- in order to grant summary 13 determination, the Council needs to find that not that 14 there's no dispute about fact anywhere in the record, 15 but there's no dispute of material fact. 16 Mr. Anuta is describing what's going on here 17 as -- you know, as some kind of a factual dispute. But 18 it's not. 19 I mean, the question is purely legal. 20 Does the OPUC's acknowledgement of a 500 21 kilovolt -- kV line or kilovolt line, satisfy the 22 Least-Cost Plan Rule. And the hearing officer correctly 23 found that it did. 24 I want to start by providing just a little 25 bit of context on the Public Utility Commission's</p>
<p style="text-align: right;">Page 224</p> <p>1 acknowledge the whole plan? That's -- and which IRP do 2 you use was another factual dispute. Those are both 3 decisions that the ALJ made on summary determination. 4 That's a mistake. You shouldn't be making factual 5 disputes -- determinations on "which IRP do we rely on?" 6 Or "is a fractional share enough?" 7 But there was evidence submitted showing 8 that one of the three partners has withdrawn. What -- 9 is this enough or not? 10 That's a factual resolution. That should 11 have been heard. Evidence should have been submitted in 12 addition to what had already been submitted and then the 13 ALJ could have made a factual determination on those 14 issues. 15 You, today, sit in a difficult spot. What 16 should happen here is really straightforward. You 17 should remand these issues to the Administrative Law 18 Judge, despite the fact that that will lengthen this 19 process because there was a legal error. We'd ask that 20 you do precisely that, because the consequences of not 21 doing that are significant for everyone involved. 22 We would have to appeal to the Supreme Court 23 and ask them to reverse. And if they reverse after that 24 whole appellant process, we are back to where we were, 25 which is in front of the ALJ on these need issues that</p>	<p style="text-align: right;">Page 226</p> <p>1 integrated resource planning process. That process 2 requires utilities to perform a comprehensive review of 3 alternative approaches to meeting the resource needs of 4 the utility. 5 The IRP uses stochastic and other modeling 6 methodologies to evaluate alternative portfolios of 7 resources under various scenarios. Full IRPs are filed 8 every two years with IRP updates filed every year. 9 The process of reviewing those IRPs involves 10 the OPUC staff, ODOE, customer groups, environmental 11 groups, and any other interested party. It has involved 12 Stop B2H for the last several years. There are numerous 13 rounds of comments. Several presentations to the OPUC. 14 And at the end of the process, the PUC will acknowledge 15 the short-term action plan -- those are the actions that 16 will be taking place in the next four to five years -- 17 or they will decline to acknowledge them and they do it 18 on an action-by-action basis. 19 And in the last two IRPs, the Commission 20 acknowledged B2H in the short-term action plan 21 describing it as the construction of a 500 kV line. 22 Now, by adopting the Least-Cost Plan Rule, 23 the Council clearly intended to rely on the OPUC's 24 expertise to determine whether a resource under the 25 PUC's jurisdiction was need.</p>

<p style="text-align: right;">Page 227</p> <p>1 So in its exceptions, Stop B2H has argued</p> <p>2 that the Council should disregard the PUC's</p> <p>3 acknowledgement because it didn't explicitly acknowledge</p> <p>4 the need for B2H's capacity in terms of megawatts, but</p> <p>5 rather acknowledged the 500 kV line.</p> <p>6 Stop B2H seems to acknowledge the capacity</p> <p>7 for transmission line can be referred to in either kV or</p> <p>8 megawatts, but they are claiming that because it could</p> <p>9 be "and/or" somehow summary determination wasn't proper.</p> <p>10 But that argument should be rejected,</p> <p>11 because it was entirely proper for the hearing officer</p> <p>12 to rely on the PUC's acknowledgement of a 500 kV line.</p> <p>13 First, there's nothing in the Council's</p> <p>14 rules that would require the capacity of a transmission</p> <p>15 line to be evaluated in megawatts instead of kilovolts</p> <p>16 for the purpose of the Least-Cost Plan Rule.</p> <p>17 Second, the statutory definition of high</p> <p>18 voltage lines that are under your jurisdiction is</p> <p>19 expressed in terms of kilovolts and not megawatts. But</p> <p>20 perhaps most importantly, Idaho Power demonstrated in</p> <p>21 un rebutted evidence that you can't purchase a</p> <p>22 transmission line or acquire a transmission line in</p> <p>23 terms of megawatts. Megawatts is a rating that a</p> <p>24 transmission line gets once it's already in service.</p> <p>25 So in terms of the acknowledgement of Idaho</p>	<p style="text-align: right;">Page 229</p> <p>1 that should automatically fulfill the Least-Cost Plan</p> <p>2 Rule.</p> <p>3 And, finally, in their -- you know -- I</p> <p>4 think I will not respond to the very last comment, but I</p> <p>5 am available for questions.</p> <p>6 This is Lisa Rackner for Idaho Power</p> <p>7 speaking.</p> <p>8 VICE CHAIR HOWE: Thank you, Ms. Rackner.</p> <p>9 Are there any questions from Council?</p> <p>10 Councillor Condon.</p> <p>11 COUNCILMEMBER CONDON: Thank you.</p> <p>12 Councilmember Condon for the record. Quick</p> <p>13 question. And this has do with just an understanding</p> <p>14 about the least-cost rule.</p> <p>15 So the PUC makes its determination on the</p> <p>16 IRP -- according to least-cost rule. So it was -- was</p> <p>17 there an analysis that -- this is the least costly plan</p> <p>18 as -- as included in the IRP.</p> <p>19 I'm trying to figure out the least-cost</p> <p>20 aspect of it.</p> <p>21 MS. RACKNER: Yeah. And the rule is called</p> <p>22 the "Least-Cost Plan." But the integrated resource</p> <p>23 planning process at the PUC is not just an analysis of</p> <p>24 the least-cost plan, but it's the least-cost, slash,</p> <p>25 least-risk plan, which looks at the combination of</p>
<p style="text-align: right;">Page 228</p> <p>1 Power's plan to construct the transmission line, that</p> <p>2 had to be in kilovolts. And that's why the Public</p> <p>3 Utility Commission would acknowledge the -- acknowledge</p> <p>4 in terms of kilovolts.</p> <p>5 I see I'm running out of time on that issue.</p> <p>6 I want to quickly get to Stop B2H's comments about the</p> <p>7 fact that this is a transmission line that is being</p> <p>8 acquired by partners.</p> <p>9 And so throughout the PUC process and</p> <p>10 throughout this Council's process, Stop B2H was</p> <p>11 concerned that somehow the Commission's acknowledgement</p> <p>12 of a 500 kV line that they weren't really acknowledging</p> <p>13 a 500 kV line because Idaho Power is going to be sharing</p> <p>14 the capacity of that line.</p> <p>15 And at a public meeting on the 2019 IRP,</p> <p>16 Stop B2H representatives specifically asked the OPUC's</p> <p>17 members, "Are you acknowledging the full line or are you</p> <p>18 acknowledging a fractional piece of that line?"</p> <p>19 Both Chair Decker and Commissioner Tawney</p> <p>20 were very clear in responding: "We are acknowledging</p> <p>21 B2H as a 500 kV line."</p> <p>22 Finally, Stop B2H -- well, let me back up</p> <p>23 just a minute. You know, given the fact that in their</p> <p>24 IRP, they were very clear they were acknowledging the</p> <p>25 full capacity of the line. That should be -- you know,</p>	<p style="text-align: right;">Page 230</p> <p>1 resources, the full portfolio of resources that a</p> <p>2 utility needs to acquire in order to fulfill their</p> <p>3 obligation to provide fair and reasonable service and</p> <p>4 reliable service to their customers.</p> <p>5 So what's complicated is there's a whole</p> <p>6 list of resources that the utility will rely on over the</p> <p>7 20-year period.</p> <p>8 But then there's something called the</p> <p>9 "short-term action plan," which is what's referred to in</p> <p>10 your Least-Cost Plan Rule, which says -- this is the</p> <p>11 thing that we're going to do for 20 years.</p> <p>12 But short term, for the next four to five</p> <p>13 years, these are the very specific actions that the</p> <p>14 utility is going to take in order to fulfill their</p> <p>15 obligations.</p> <p>16 So in the last several IRPs, B2H -- the</p> <p>17 actual construction of B2H has been on that short-term</p> <p>18 plan. And each time the Public Utility Commission --</p> <p>19 and they dedicated a full section of their order to B2H</p> <p>20 looking at B2H and saying, yes, we acknowledge the</p> <p>21 construction of B2H.</p> <p>22 COUNCILMEMBER CONDON: Okay. Thank you and</p> <p>23 I have a follow-up -- another question.</p> <p>24 Just related to your preliminary application</p> <p>25 and the application and the use of megawatts.</p>

<p style="text-align: right;">Page 231</p> <p>1 And I apologize, I haven't gone completely 2 through those documents. But I'm just curious. And I 3 think I understood you to say that transmission line can 4 only be measured in megawatts after construction. 5 And so I'm curious about if you use 6 megawatts in your application and preliminary 7 application why that would be instead of the kilovolt? 8 MS. RACKNER: So it's not quite correct to 9 say we only relied on megawatts. 10 So there's two measures. A transmission 11 line can only be acquired in kilovolts. Like, you can 12 buy a 500 kV line. You can buy a 235 kV line. 13 There's another question about how much 14 capacity of that -- of the line is that line actually 15 going provide. And you only know that once you've put 16 it into service. Because the capacity of a line, while 17 it's partially informed and quite significantly informed 18 by the -- the rating of the line, it's also influenced 19 by load on either side -- load on either side of the 20 line. A lot of other little technical things that I 21 probably am not well-equipped to explain. 22 So when -- in the IRP, one of the things the 23 company looks at is "What are our load requirements in 24 megawatts?" 25 And those are all described in megawatts.</p>	<p style="text-align: right;">Page 233</p> <p>1 reliability is a very different analysis that we never 2 really got deeply into in this case because -- because 3 the hearing officer early on in the case granted summary 4 judgment on -- on the Least-Cost Plan Rule. 5 So that's a very different analysis that we 6 never really got into. Least-Cost Plan Rule in terms 7 of: What did we tell the Public Utility Commission that 8 we were going to acquire; what did we put in our 9 short-term action plan; and what did they acknowledge? 10 Always kilovolts, a 500 kV line. Never 11 megawatts. 12 COUNCILMEMBER CONDON: Thank you. 13 VICE CHAIR HOWE: Any other questions from 14 Council of Ms. Rackner? 15 MR. RATCLIFFE: Do we have anything from the 16 Department? 17 VICE CHAIR HOWE: Thank you. 18 MR. ROWE: Patrick Rowe, Department of 19 Justice on behalf of the Department of Energy. 20 These are both issues that Idaho Power 21 brought motions for summary determination on; the 22 Department did not. However, the Department supports or 23 believes the ALJ did correctly rule on them. I will 24 take them issue by issue. 25 N-1, whether the Department erred in</p>
<p style="text-align: right;">Page 232</p> <p>1 But in terms of resource acquisition, what -- what are 2 we going to buy or construct in order to fulfill that? 3 We need a capacity -- our capacity is 4 described then in a 500 kV line. If that makes sense. 5 COUNCILMEMBER CONDON: It makes perfect 6 sense to me. But what I don't understand is if in the 7 application you used kilowatts instead of kilovolts to 8 describe what you were constructing. 9 MS. RACKNER: I'm sorry. We used -- I may 10 have misspoken. We used kilovolts in order to describe 11 what we were constructing. We would not ever describe 12 what we were constructing in terms of megawatts. 13 What Mr. Anuta was referring to is that 14 there is also an analysis in an IRP and also a 15 discussion with respect to the System Reliability 16 Rule which -- and by the way, the System Reliability 17 Rule really isn't at issue here because the hearing 18 officer granted summary judgment on the least-cost rule. 19 But when you look at what Stop B2H pointed 20 out -- and they were correct on this point -- that in 21 analyzing the System Reliability Rule, we were looking 22 at load resource tables that described -- that described 23 load and the resource in terms of megawatts. That is 24 correct. That's the System Reliability Rule. 25 Least-Cost Plan Rule -- so system</p>	<p style="text-align: right;">Page 234</p> <p>1 defining "capacity" in terms of kilovolts instead of 2 megawatts. 3 On that issue, the Department agrees that 4 with the ALJ's dismissal of the issue in her order 5 dismissing the issue on summary determination, the ALJ 6 describes kilovolts and megawatts. Both measures are 7 used -- as we've heard discussed, are used to describe 8 transmission lines. 9 And as the ALJ stated in her ruling and 10 order dismissing their issue, there is no genuine 11 factual dispute that both terms are used to describe 12 transmission lines. 13 We believe that she was correct in 14 describing the issue as a purely legal question and that 15 the Department appropriately considered the operating 16 voltage of the proposed line in concluding that Idaho 17 Power demonstrated need under the Least-Cost Plan Rule. 18 On issue N-3, whether the applicant 19 demonstrated need for the proposed facility when it's 20 shown that it is -- its need is -- represents 21 percent 21 of total capacity. 22 Again, this is an issue that was essentially 23 disputed between Idaho Power and -- and Stop. But the 24 Department doesn't believe that the ALJ correctly ruled 25 on that issue.</p>

<p style="text-align: right;">Page 235</p> <p>1 Under the Council's Least-Cost Plan Rule, 2 the Council shall find the applicant has demonstrated 3 need for a line if the PUC has acknowledged a least-cost 4 plan. That is the Integrated Resource Plan which 5 Ms. Rackner was discussing. 6 The ALJ granted summary determination on 7 this issue based on a finding that when the PUC 8 acknowledged the IRP -- the Integrated Resource Plan, it 9 acknowledged a 500 kV line with co-participants, meaning 10 the other participants in construction and operation of 11 the line. 12 As the ALJ noted, PUC did not acknowledge 13 only Idaho Power's 21 percent of the entire line. It 14 acknowledged the line itself. 15 So we believe that the ALJ correctly found 16 that PUC acknowledged the B2H project as a whole. And 17 as such, Idaho Power, as Kellen described, has satisfied 18 the Least-Cost Plan Rule and demonstrated need for the 19 proposed facility. 20 COUNCILMEMBER JENKINS: Chair, I have a 21 question, I think, for Jesse. So Idaho Power -- I'm 22 sorry. This is Hanley Jenkins. 23 Idaho Power submitted their position that 24 they met both the least-cost rule and the other second 25 requirement for addressing this standard.</p>	<p style="text-align: right;">Page 237</p> <p>1 to the -- between the proposed and the final order, 2 there will be both discussion and findings on the System 3 Reliability Rule and the Least-Cost Plan Rule. 4 COUNCILMEMBER JENKINS: So this is Hanley 5 again. So I guess the Council needs to address the 6 proposed order and both methods where the exception only 7 addressed the least-cost rule. 8 MR. RATCLIFFE: Yes. 9 COUNCILMEMBER BEIER: For the record, 10 Councillor Beier. 11 Does it make sense to acknowledge in the 12 proposed order that the Council considered evidence on 13 the system reliability standard but made findings only 14 on the least-cost method just to clean it up? 15 Since we only have to come up with one of 16 the "and/or" or the "or" standards, should we only 17 make -- have the order include the least-cost and -- 18 just a question. 19 MR. RATCLIFFE: Sure. So the Council is 20 charged with issuing an order on the application as it's 21 presented to you. 22 And we've had some discussion about that. 23 Of, you know, what -- the limits on the Council's 24 authority to look at alternatives. 25 And so when the staff goes through and</p>
<p style="text-align: right;">Page 236</p> <p>1 Do we have to -- and the hearings officer 2 has found in the summary determination that they've met 3 the least cost rule. 4 Do we have to address the other way to 5 approve this? The -- sorry. 6 MR. RATCLIFFE: This is Jesse Ratcliffe, for 7 the record. 8 And so what we need to do here, you have -- 9 this comes back to the two pieces that we're looking at. 10 So we have the proposed order and the proposed contested 11 case order. 12 The proposed contested case order issues 13 deal with the Least-Cost Plan Rule. The Council does 14 need to make decisions on whether or not the hearing 15 officer's determinations were correct on those two 16 issues. 17 Separately, the proposed order discusses 18 both -- both, to my understanding, the System 19 Reliability Rule and the Least-Cost Plan Rule. 20 When you adopt the -- when you issue a final 21 order on this, if you adopt the proposed order as is, 22 that will include the proposed order's discussion and 23 conclusions with respect to the System Reliability Rule 24 as well. 25 So there will be -- unless there are changes</p>	<p style="text-align: right;">Page 238</p> <p>1 prepares the proposed order, they are looking at what 2 the applicant has asked for. 3 And in this case, that included an "ask" 4 both respect to the System Reliability Rule and the 5 Least-Cost Plan Rule. 6 So the -- the -- you know, my recommendation 7 is that the Council should make a finding as to both. 8 The statutes and rules only require a 9 positive finding that, you know, for one. But yes, I 10 would recommend that both are addressed. 11 COUNCILMEMBER BEIER: One more question. 12 This is for Kellen. 13 You had a slide early on that was a "shall" 14 statement for the Council -- that the Council shall if 15 the PUC acknowledges, I think is the term of art. 16 Could you just pull that up again? 17 MS. TARDAEWETHER: For the record, Kellen 18 Tardaewether. 19 Yes. On the screen here, I have the 20 proposed order. Make it a little bit bigger here. 21 VICE CHAIR HOWE: Any other questions from 22 Council? 23 COUNCILMEMBER JENKINS: Yeah. This is 24 Hanley. Kellen, so this talks about the 2017 IRP. And 25 in the evidence that we've received, it looks like the</p>

<p style="text-align: right;">Page 239</p> <p>1 PUC recognized the 2017 and the 2019.</p> <p>2 Is there a reason why this doesn't include</p> <p>3 the 2019 IRP?</p> <p>4 MS. TARDAEWETHER: Correct. Because --</p> <p>5 because the proposed order we're looking at, as it</p> <p>6 stands here in this PDF with the redline, this is what</p> <p>7 we issued in 2020 that was in the contested case. And</p> <p>8 then the contested case opens up the record again and</p> <p>9 then -- so evidence can be submitted to -- to support</p> <p>10 the application or in response to the issues raised.</p> <p>11 So -- and then once the contested case</p> <p>12 closes, the record closes again. So we're actually at a</p> <p>13 point where we do have, for several standards and</p> <p>14 issues, additional facts that could be reflected in the</p> <p>15 later document in the draft final order and functionally</p> <p>16 the final order.</p> <p>17 COUNCILMEMBER JENKINS: So could that be --</p> <p>18 I guess this is a question for Jesse.</p> <p>19 Could that be included?</p> <p>20 This is Hanley again.</p> <p>21 MR. RATCLIFFE: The 2019 RRP. Yeah. So it</p> <p>22 was made a part of the record. And so it is something</p> <p>23 that is available to be considered by the Council.</p> <p>24 The -- the issue here for the Council is the</p> <p>25 fact that the -- or whether or not the PUC has</p>	<p style="text-align: right;">Page 241</p> <p>1 by the -- by the PUC. And that is a -- a conclusion</p> <p>2 that the Council needs to make.</p> <p>3 And so that's why our -- our issues here</p> <p>4 have focused on that -- that definition of capacity.</p> <p>5 So -- sorry for the long-winded answer. But</p> <p>6 this issue is -- the complexity of this issue has mostly</p> <p>7 to do with the fact that there's a significant chunk of</p> <p>8 the Least-Cost Plan Rule that is dependent upon another</p> <p>9 body's action, on the PUC's action. So.</p> <p>10 COUNCILMEMBER JENKINS: So this is Hanley</p> <p>11 again. That's why I thought it was beneficial to</p> <p>12 include both 2017 and 2019 from the PUC. And the</p> <p>13 language is company's second amended 2019 IRP.</p> <p>14 So I don't know if the rest of the Council</p> <p>15 is interested in including that in the -- in the order.</p> <p>16 The proposed order.</p> <p>17 VICE CHAIR HOWE: I think that makes sense.</p> <p>18 This is Kent Howe.</p> <p>19 MS. TARDAEWETHER: For the record, Kellen</p> <p>20 Tardaewether.</p> <p>21 What I'm pulling up here is this is in the</p> <p>22 hearing officer's proposed contested case order. This</p> <p>23 is Appendix 2. This is the evidence entered in the</p> <p>24 record during the motion for summary determination</p> <p>25 phase. So this over here lists. And I believe</p>
<p style="text-align: right;">Page 240</p> <p>1 acknowledged the project in an IRP.</p> <p>2 Starting with a 2017 IRP, there was an</p> <p>3 acknowledgement of the construction of the facility.</p> <p>4 And Kellen talked briefly about the</p> <p>5 Department of Energy's staff position starting, you</p> <p>6 know, somewhat before then that that's what needed to</p> <p>7 happen that. It wasn't just an acknowledgement of the</p> <p>8 fact that, you know, there was a permitting process</p> <p>9 going on but there was an acknowledgement that the --</p> <p>10 that the -- that included the actual construction of the</p> <p>11 line.</p> <p>12 So, you know, the existence of the 2019 IRP</p> <p>13 is helpful in the sense that it reflects a similar</p> <p>14 understanding. It's more recent, but, you know, as a</p> <p>15 technical matter, once the 2017 IRP came out and did</p> <p>16 what it needed to do, that was the, you know -- the</p> <p>17 piece that needed to be in place in order for the</p> <p>18 Least-Cost Plan Rule to be fulfilled.</p> <p>19 With the exception of the issue that we're</p> <p>20 talking about here that Stop B2H has raised, which is</p> <p>21 the one thing that is really still within the Council's</p> <p>22 purview here. You know, a significant amount of this</p> <p>23 has been -- you're relying on the PUC's action.</p> <p>24 But the Council still is responsible for</p> <p>25 determining whether the capacity has been acknowledged</p>	<p style="text-align: right;">Page 242</p> <p>1 Ms. Rackner referenced the comments from PUC. So this</p> <p>2 is the information that is added into the record.</p> <p>3 And so what Council can do is -- you know,</p> <p>4 update your facts.</p> <p>5 Now, I would have to go and pull up those --</p> <p>6 I'm not sure if these are the -- the comments in which</p> <p>7 the Commissioners are -- discussing acknowledgement of</p> <p>8 the 2019 IRP or is it the actual order. I'd have to go</p> <p>9 into the record and really find that.</p> <p>10 But Council could give direction to do that.</p> <p>11 MR. RATCLIFFE: If I may, because of the way</p> <p>12 in which this was introduced as part of a motion for</p> <p>13 summary determination which, again, gets a little</p> <p>14 technical, but the evidence is being introduced for a</p> <p>15 very limited purpose, and that is to, you know,</p> <p>16 essentially provide enough information for the hearing</p> <p>17 officer to decide whether or not this is -- whether</p> <p>18 there are material facts in dispute or not.</p> <p>19 I think it's appropriate for the Council to</p> <p>20 recognize that what was offered and admitted for that</p> <p>21 limited purpose to say simply that is part of the motion</p> <p>22 for summary determination briefing. There were</p> <p>23 references made to the 2019 IRP, whatever those</p> <p>24 references are, and we can leave it to staff to sort</p> <p>25 that out.</p>

<p style="text-align: right;">Page 243</p> <p>1 But to make clear that the -- the Council 2 is -- the document that it's relying on, principally, is 3 the 2017 IRP, because that's -- that's the initial 4 decision. 5 So if -- you know, the IRPs happen every two 6 years but if for some reason, you know, it didn't 7 happen, you know, we have the 2017 IRP. That is the 8 initial decision that triggers compliance with the 9 Least-Cost Plan Rule. Again, provided that the Council 10 finds that the capacity of the facility is what was 11 acknowledged. 12 COUNCILMEMBER CONDON: Councilmember Condon. 13 Just a question for you, Jesse. So we have 14 the 2017 IRP acknowledged here. 15 If -- if in 2019 the PUC had not 16 acknowledged it -- the reason I ask is, if there's a 17 chance of that, I think it is important that we state 18 that it was acknowledged in 2019 too. Most recent. 19 MR. RATCLIFFE: So you -- I guess what my 20 recommendation is, is that when discussing the 2019 IRP, 21 that there's a discussion of how that came to be in the 22 record. That it was a part of the motion for summary 23 determination briefing. And that the Council can 24 acknowledge that that was -- is a part of the larger 25 record as a result of that.</p>	<p style="text-align: right;">Page 245</p> <p>1 matter. Because the -- the summary determination, 2 again, it gets into some kind of wonky legal stuff and I 3 want to -- 4 COUNCILMEMBER JENKINS: I don't have any 5 arguments with the summary determination and the 6 hearings officer order. I think it needs to be in the 7 proposed order, the Department's proposed order that we 8 explain that there is continuity. 9 MR. RATCLIFFE: Yeah. And so that would be 10 my suggestion that staff and I can take a look at that. 11 And we can come back with a draft final order that 12 handles that. 13 VICE CHAIR HOWE: Councillor Condon, 14 Jenkins, and I have all stated that we're supportive. 15 So I'm going to ask Councillor Truitt and 16 Beier and Chocktoot, are you on board with the same 17 recommendation? 18 COUNCILMEMBER CHOCKTOOT: For the record, my 19 name is Perry Chocktoot, and I'm on board. 20 VICE CHAIR HOWE: Toot? 21 COUNCILMEMBER CHOCKTOOT: Toot as in -- 22 VICE CHAIR HOWE: Got it. Thank you. 23 Sorry. 24 COUNCILMEMBER TRUITT: This is Jordan 25 Truitt, and I am in agreement as well.</p>
<p style="text-align: right;">Page 244</p> <p>1 But the -- and -- and to -- I guess to 2 answer the, you know, kind of underlying hypothetical 3 that's in your question, what would have happened if in 4 2019 the, you know, PUC reverses course? We would have 5 had a contested case issue about that. This would have 6 been a very different discussion. 7 So, you know, the -- again, I think it's 8 fine to acknowledge what came into the record as part of 9 the -- you know, the motion for summary determination 10 briefing. But I think it's also important to note that 11 that is the reason, that was how that was introduced, 12 and that the -- you know, in terms of the initial 13 application that was filed, the reliance was on the 2017 14 application. 15 So, really, all that is happening by 16 reference to that 2019 is just the fact that they didn't 17 change their mind, so. 18 COUNCILMEMBER JENKINS: So this is Hanley. 19 How do we do that? 20 MR. RATCLIFFE: So we can help with that. 21 My suggestion is that if -- if -- if you -- 22 if the Council's wish is to have a -- the -- the record, 23 the final order reflect that the 2019 IRP is in the 24 record, then that's something that I would suggest that 25 I work with staff on to properly address as a technical</p>	<p style="text-align: right;">Page 246</p> <p>1 COUNCILMEMBER BEIER: This is Councillor 2 Beier, I'm in agreement. 3 SECRETARY CORNETT: And I have -- again, 4 some not actual language -- so for the record, Todd 5 Cornett. 6 So I can read this and then, again, I can 7 look for head nods and then do roll call. 8 So okay. So what I have is "Agree with the 9 findings of fact, conclusions of law, and conditions of 10 approval in the needs standard not pertaining to issues 11 in the contested case and in the proposed contested case 12 order pertaining to issues N-1 and N-3 with the 13 following modifications: Recognize the 2019 IRP 14 acknowledgement was brought into the contested case 15 record in the draft final order, findings of fact and 16 conclusions of law." 17 So that works? 18 MS. TARDAEWETHER: For the record, Kellen 19 Tardaewether. Sorry to interrupt. 20 We're looking at what was actually submitted 21 and we need to look a little bit further, because some 22 information is embedded in footnotes. But the 2019 IRP 23 itself, the whole document, doesn't appear to be 24 submitted or the actual as a link. 25 So what we're trying to provide Council</p>

<p style="text-align: right;">Page 247</p> <p>1 the -- the information -- so in 2017, not only did we 2 have the IRP, but we had the PUC order acknowledging it. 3 And so now -- and I think it may very well 4 be because of the timing of the IRP process. And when 5 we got into the contested case, we're trying to verify 6 what was actually submitted. 7 Do we have the IRP? 8 Do we have an order? 9 What we do know we have is kind of a summary 10 of the Commission's comments, which Ms. Rackner noted. 11 But I think that is kind of important to what Todd is 12 summarizing and what you would like to footnote update. 13 So I don't know if we want to pause or 14 not -- 15 SECRETARY CORNETT: Yeah. I kind of 16 purposely tried to keep it generalized so it would allow 17 us to fine-tune it later on. 18 That being said, is if Council wants to have 19 very clear language, we can wait to figure that out now 20 or you can go with the sort of generalized. We 21 recognize that it is in the record. We don't have the 22 actual, sort of, reference or specific language for it, 23 but we will get that. 24 And as Jesse said we will work with Jesse to 25 make sure that the findings and conclusions are written</p>	<p style="text-align: right;">Page 249</p> <p>1 procedural check-in. 2 We were actually quite on time right now. 3 So we have, at least, a placeholder for our break from 4 9:20 to 9:30. 5 Councilmembers want to take a break, you 6 can. The next item is the public comment time period. 7 So we will recess the agenda item B, move to agenda item 8 C, and then return. 9 VICE CHAIR HOWE: Sounds good. We're on 10 break then until -- what shall we do? 9:30? 11 SECRETARY CORNETT: Whatever your choice is. 12 VICE CHAIR HOWE: Let's do 9:20. 9:25 is 13 what I meant to say. Sorry. 14 (A break was taken.) 15 VICE CHAIR HOWE: Okay. We're back in 16 order. 17 And we're continuing on with the next agenda 18 item, which is public comment. 19 Do we have anyone in the room that wishes to 20 provide public comment to the Council? 21 Yeah. Come on forward if there's anyone in 22 the room that wishes to provide public comment. 23 MR. CIMON: My name is Norm Cimon. I live 24 here in La Grande, Oregon. Thanks. I would like to 25 thank the Council for coming here for their -- their</p>
<p style="text-align: right;">Page 248</p> <p>1 appropriately. 2 COUNCILMEMBER JENKINS: This is Hanley. 3 That works for me. 4 VICE CHAIR HOWE: I'm seeing enough head 5 nods that Council supports that. 6 SECRETARY CORNETT: So I will call the roll 7 on this. 8 Jordan Truitt. 9 COUNCILMEMBER TRUITT: Yes. 10 SECRETARY CORNETT: Hanley Jenkins. 11 COUNCILMEMBER JENKINS: Yes. 12 SECRETARY CORNETT: Kent Howe. 13 VICE CHAIR HOWE: Yes. 14 SECRETARY CORNETT: Cindy Condon. 15 COUNCILMEMBER CONDON: Yes. 16 SECRETARY CORNETT: Perry Chocktoot. 17 COUNCILMEMBER CHOCKTOOT: Yes. 18 SECRETARY CORNETT: I think I got everybody. 19 Did I get everybody? 20 COUNCILMEMBER BEIER: Ann Beier, yes. 21 SECRETARY CORNETT: It dropped over on a 22 page. 23 Ann Beier. Sorry, Councilmember Beier. 24 Thank you. 25 Again, for the record, Todd Cornett. Just a</p>	<p style="text-align: right;">Page 250</p> <p>1 meeting. Thank you very much. Hi, Hanley. 2 So I understand that the Council are 3 regulators working within the framework established. I 4 would ask you now to start thinking seriously about that 5 framework in the future. It's going to change 6 dramatically. We should have started on this 20 years 7 ago. I think that's become abundantly clear to 8 everyone. What we're now seeing with the kind of 9 destructive changes in the climate regime across the 10 planet. 11 The way this is now rolling is with the 12 development finally of serious talk about a changing 13 infrastructure and now with the past issue of the 14 Inflation Reduction Act, what we have is an entire suite 15 of possibilities that will literally turn the grid 16 upside down and that is what I'm here to address. 17 Specifically, one of my questions for quite 18 a while has been -- and it is something that I did bring 19 related to the -- before the Commission. One of my 20 questions for quite a while. I've been -- what happens 21 when you start -- is it too loud? 22 So what happens when you start essentially 23 dividing distributed generation in hundreds and 24 thousands and tens of thousands locations. 25 It's a difficult question. It's also one</p>

<p style="text-align: right;">Page 251</p> <p>1 that's now been tackled by some professional modelers. 2 And what we have is a situation where essentially power 3 and ancillary services can be delivered in a way that 4 can save upwards of a half a trillion dollars in about 5 25 years. 6 The work has been -- and I will pass this on 7 to the Council. The work has been done finally to 8 figure out what the grid starts to look like when you 9 turn it upside down. 10 And what it looks like is something vastly 11 different than what we have right now. 12 And because of that, the business models 13 that have been used over the years to ensure that rural 14 electrification would take hold have rapidly become 15 quite obsolete. What we're looking at is a situation 16 where there will be digital controls, digital control 17 surfs, smart meters, smart inverters essentially 18 providing the services and the power necessary on an 19 as-needed basis, literally with software running in the 20 background that will essentially provide market at the 21 realtime production of those services and the energy 22 itself. 23 That has the effect of essentially turning 24 the grid completely upside down and reworking both local 25 demand and long-distance demand.</p>	<p style="text-align: right;">Page 253</p> <p>1 Instead, what we can do is start using what we've got, 2 which is people's rooftops. That's, of course, exactly 3 what is now being incentivized in the bill that was just 4 passed. It's revolutionary. The details are just 5 amazing in that bill. It's going to change everything. 6 And so from the point of view of the kind of 7 regulatory framework that the Council now works under, 8 that's probably going to be completely turned upside 9 down. 10 In any case, I did want to bring that so you 11 can at least start to take a look at what I think is one 12 of the most important analyses that's been done. One 13 that finally starts to model the delivery of services 14 and power from what will be, as I said, literally tens 15 of thousands of locations. 16 Thank you for your time. 17 VICE CHAIR HOWE: Thank you, Norm. 18 I didn't get your last name. Norm, can you 19 give us your last name, please? 20 MR. CIMON: C-I-M-O-N. 21 Thank you. 22 MR. CIMON: I live 1208 First Street. I was 23 a systems analyst for the U.S. Forest Service. Thank 24 you. 25 MS. MARCH: Hi. My name is Anne March. I</p>
<p style="text-align: right;">Page 252</p> <p>1 Finally, we have a way to start to approach 2 this. But, of course, what we're looking at is the 3 economic inertia that's built into the existing models. 4 Very difficult situation. We need to turn the grid 5 around and essentially the decisions that are going to 6 have to be made about the grid will look a lot more 7 regional and local than they will, say, over long 8 distance. 9 The -- that particular analysis, which 10 Hanley is looking through right now, is just 11 revolutionary. It's a completely new way of thinking 12 about how we're going to get our power. 13 One of the problems we have -- and it's a 14 huge one -- is that the utilities have never thought 15 about how they might essentially price and buy services 16 from their customers. 17 And by that, I mean, their residential and 18 commercial customers, because that's where this is going 19 to go. 20 What this shows quite clearly is that 21 essentially putting in rooftop solar, not just the very 22 large ones, but rooftop solar, which is the best place 23 we could possibly put this stuff in. Because we already 24 have those surfaces. We don't have to cover ground. We 25 don't have to, essentially, impact the ecology.</p>	<p style="text-align: right;">Page 254</p> <p>1 live at 206 Main Avenue here in La Grande. 2 And thank you for being here. For making 3 this trip out here. Many of you probably came from the 4 Portland area and drove on I-84 and that's what I'm 5 going to talk about today for a few minutes. I happened 6 to go that way last Thursday. I hadn't done that in a 7 long time. I got to Boardman. Guess what I saw? A lot 8 of new construction of power lines. Maybe you saw it 9 too. There's always been a lot there. There is a lot 10 more. 11 There are tall power lines, short power 12 lines, power lines of all shapes/sizes going every 13 direction. It's horrific. It's ugly. And if Boardman 14 ever wants to promote tourism, good luck. 15 So I sat there thinking how did this happen? 16 How could this happen? 17 Well, it's probably the Morrow County lack 18 of planning department. It also may involve EFSC. I 19 don't know. It may involve Oregon Department of Energy. 20 I don't know. But it is not visionary. 21 Now, when you contrast this to our beautiful 22 state -- and, for example, we have open beaches that 23 can't be developed. That was because of visionary 24 leadership. We have land-use planning that's 25 restrictive; not always popular. But due to visionary</p>

<p style="text-align: right;">Page 255</p> <p>1 leadership has preserved our state in a way that the 2 state I come from doesn't have that. And it's developed 3 all over. 4 So we have some great things in place in 5 Oregon. This -- this cannot be a failure of ours to be 6 looking at developing in such a way that creates the 7 kind of blight that you see as you drive around. 8 So there's a general comment. 9 So my feeling is, please think about being 10 visionary leaders. Please think about burying power 11 lines. Please think about promoting projects that 12 promote rooftop solar. 13 As I drove past Boardman and the acres and 14 acres of warehouses, there were no solar panels on those 15 roofs in sight. That makes me sick. 16 We obviously need -- we need lines. We all 17 use power. But we need to be looking at upgrading 18 existing lines and not increasing our human footprint 19 all over this beautiful state of ours. So those are my 20 comments. Thank you very much for listening. 21 VICE CHAIR HOWE: Thank you, Ms. March. 22 Are there others in the audience that would 23 like to testify? Provide public comment. Come on 24 forward. 25 MR. HORST: Hello. My name is Joe Horst. I</p>	<p style="text-align: right;">Page 257</p> <p>1 here. And I'm really glad you have come to this side of 2 the state. My name is Sandy Ryman. I live at 604 M 3 Avenue. And Ryman is spelled R-y-m-a-n, if you need 4 that. 5 I really want to pick up on a comment which 6 Anne March had made about potentially burying the lines. 7 And if you folks decide that this project is 8 really needed, really something you need to go through 9 with, then I think that buried lines becomes important. 10 Ever since this project started, I've really 11 relied on the University of Pittsburgh website because 12 they have a school of electrical engineering at the 13 University of Pittsburgh and they have a center for 14 energy and the grid institute at the Swanson School of 15 Engineering. 16 But both they and the US Department of 17 Energy have noted that severe weather and climate change 18 is the leading cause of grid disturbance, particularly 19 at the distribution level. But it causes very -- by 20 region and weather vegetation, vegetation management and 21 other management practices can really impact what occurs 22 with electrical lines. 23 And there's certain regions of the country 24 which are typically affected by weather events. 25 And the regions of the country which are</p>
<p style="text-align: right;">Page 256</p> <p>1 live right up here on 86 Hawthorn Drive. I just wanted 2 to make -- I'm kind of making an observation between -- 3 and I'm not -- I'm not real up on how a lot of this 4 works, but I've noticed that when it comes -- I 5 understand that, you know, the Oregon Department of 6 Energy and Council, they need funding and that's 7 important to them and I totally get that. 8 But sometimes it's just -- I kind of get the 9 impression that maybe the funding takes a front seat to 10 the citizens of Oregon as opposed -- you know, and I 11 think that sometimes it's -- you know, the citizens of 12 Oregon seem to get a backseat, you know, to the funding. 13 And I think it's -- sometimes some of these 14 things are pretty important to us, and I just think 15 that -- that the Council and the -- and the Department 16 should maybe just take -- you know, give us a little 17 more consideration and realize the funding is very 18 important, but maybe not as important as we are 19 sometimes. 20 So that's all I've got to say. 21 VICE CHAIR HOWE: Thank you for your 22 comment. 23 Others interested in testifying or providing 24 public comment? 25 MS. RYMAN: Hi. Thank you all for being</p>	<p style="text-align: right;">Page 258</p> <p>1 severely affected are the Pacific Northwest, California, 2 and Texas. And I think if you guys just think back over 3 the last few years, you would agree that the Department 4 of Energy has that accurate. 5 And over -- you know, the West has really 6 seen many outages due to lightening and wildfires and 7 overall, extreme wind and temperature, can make a 8 difference. 9 So there's five factors to be considered. 10 The lightening, wildfires, extreme cold, extreme winds, 11 and vegetation growth. And those are all factors that 12 would contribute to long-term maintenance of these lines 13 for Idaho Power. US -- 14 SECRETARY CORNETT: Ms. Ryman, just as a 15 clarification for you and everybody else, you can 16 certainly speak generally. But the public comment time 17 period for the proposed order and the proposed contested 18 case order on this project are closed. So please do not 19 speak specifically about this project. 20 MS. RYMAN: I will not speak specifically 21 about this project then. I will talk about that, you 22 know, this is a relative weakness for building 23 long-distance high-voltage electrical transmission lines 24 due to those factors that I have just noted. 25 And that's the main thing that I wanted to</p>

<p style="text-align: right;">Page 259</p> <p>1 say, is I would like to look at consideration -- strong</p> <p>2 consideration that if this project were to go ahead that</p> <p>3 there would be a look at using the public right-of-way</p> <p>4 access along the interstate system to bury these lines</p> <p>5 rather than having them be submitted -- subjected to the</p> <p>6 changes that occur weather-wise in this region. Okay.</p> <p>7 That's what I wanted to note. Thank you.</p> <p>8 VICE CHAIR HOWE: Thank you for your</p> <p>9 comments, Ms. Ryman.</p> <p>10 Are there others that would like to comment?</p> <p>11 MS. MEAD: Good morning and thank you.</p> <p>12 My name is Margaret L. Mead. I live at</p> <p>13 57744 Foothill Road, La Grande.</p> <p>14 We often hear that a picture is worth a</p> <p>15 thousand words. Most of us have taken photos of an</p> <p>16 awesome scene and then become disappointed when the</p> <p>17 image isn't what we saw because there's no way to</p> <p>18 capture the enormity, the reality in a photo. Or we've</p> <p>19 taken a photo and then it's ruined because we have some</p> <p>20 power lines running through it. And that's not the</p> <p>21 scenery we want to be showing others.</p> <p>22 And sometimes we've seen photos like through</p> <p>23 all different media, and -- and then when we've seen the</p> <p>24 place in reality, Grand Canyon, for an example, or</p> <p>25 Yellowstone Park, we see those in real life and we have</p>	<p style="text-align: right;">Page 261</p> <p>1 What is the process?</p> <p>2 And once I started looking into that, I had</p> <p>3 a lot of concerns. I just thought, oh, man.</p> <p>4 My understanding is that this Council</p> <p>5 receives its information for making decisions primarily</p> <p>6 from two sources; one would be Idaho Power itself, the</p> <p>7 other would be Oregon Department of Energy.</p> <p>8 My understanding is that the statutes</p> <p>9 require developers to compensate the Oregon Department</p> <p>10 of Energy for the cost and the salaries and expenses</p> <p>11 that go into developing a project and that Idaho Power</p> <p>12 at this point has paid -- or the Department of Energy --</p> <p>13 more than \$4 million towards the work that has been done</p> <p>14 on this project.</p> <p>15 VICE CHAIR HOWE: Ms. Mead, you need to</p> <p>16 be -- or I'm sorry, Ms. Morrison, you need to be</p> <p>17 speaking in generalities as opposed to this project.</p> <p>18 MS. MORRISON: Okay. I am speaking -- I am</p> <p>19 speaking in generalities.</p> <p>20 My question is when this Council is</p> <p>21 receiving information primarily from the utility</p> <p>22 involved who has an interest in building --</p> <p>23 building/constructing this -- a development and from the</p> <p>24 Department of Energy, which is receiving funding from</p> <p>25 the developer in question, how is the Department of</p>
<p style="text-align: right;">Page 260</p> <p>1 a totally different reaction. Therefore, we often make</p> <p>2 a real effort to see for ourselves what the lay of the</p> <p>3 land is. The actual scene is often very different from</p> <p>4 what a flat, one-dimension image depicts.</p> <p>5 Juries often go to the scene of the crime to</p> <p>6 get a real feel and sense of the place. So I would like</p> <p>7 to invite you -- that when you're in our beautiful</p> <p>8 valley, you take an hour or so from your very full</p> <p>9 schedule and check out -- look at what we have here.</p> <p>10 See why people are so, you know, enamored of living in</p> <p>11 this very special place. Thank you.</p> <p>12 VICE CHAIR HOWE: Thank you for your</p> <p>13 comments, Ms. Mead.</p> <p>14 Are there others that wish to provide public</p> <p>15 comment?</p> <p>16 MS. MORRISON: Hi. My name is Anne</p> <p>17 Morrison. I'm a retired attorney. I live here in</p> <p>18 La Grande.</p> <p>19 I am really a latecomer to these issues. I</p> <p>20 know that most of you and many of the people who object</p> <p>21 to B2H have been working on these issues for years and</p> <p>22 years. It is only in recent months that I have started</p> <p>23 looking at these issues.</p> <p>24 And as an attorney, my interest has been:</p> <p>25 How are these decisions even made?</p>	<p style="text-align: right;">Page 262</p> <p>1 Energy acting as an independent party?</p> <p>2 I've worked in state government. I know</p> <p>3 that one of the balls that every state agency constantly</p> <p>4 has in the air is the issue of finance, funding, and</p> <p>5 where their money is coming from.</p> <p>6 So my concern is that the information that</p> <p>7 comes to this Council comes from two people -- two</p> <p>8 parties that are interested in the development of this</p> <p>9 property.</p> <p>10 Oregon Department of Energy receives</p> <p>11 significant money from Idaho Power to work on this</p> <p>12 project -- to work on any project. And when holding a</p> <p>13 utility to account and requiring a utility to comply</p> <p>14 with regulations would cut off a significant stream of</p> <p>15 funding to that agency, how is this Council receiving</p> <p>16 objective information?</p> <p>17 How -- how -- when both of the parties that</p> <p>18 are informing this Council have an investment in seeing</p> <p>19 a project go forward, who is representing the public</p> <p>20 interest in a situation like this?</p> <p>21 A second concern that I had when I started</p> <p>22 looking into these issue is I started to look at the</p> <p>23 make of this Council. And we have seven members on this</p> <p>24 Council. From the profiles that are presented by the</p> <p>25 Department of Energy, most of the people on this Council</p>

<p style="text-align: right;">Page 263</p> <p>1 work full-time or have significant other volunteer 2 interests or members of other boards. 3 This Council is making billion-dollar 4 decisions on the -- on behalf of the State of Oregon. 5 This Council has people with expertise in two of the 16 6 areas in which this Council must make decisions. There 7 are -- there are issues of scenic value, of cultural and 8 historic value, Wildlife protection. Of -- well, the 9 Council will know, but there is 16 issues. Each of them 10 is very technical, each of them requires a great deal of 11 expertise. 12 But on this Council, there are people who 13 are familiar who have background expertise in only two 14 of those areas, which would be cultural resources and 15 land use planning. 16 The remainder of councilmembers that I as -- 17 based on their profiles, do not have background in the 18 areas of siting, requiring developers to post adequate 19 bonds, waste management, weed management, or many other 20 issues that this Council must address. And that is a 21 significant concern for me. 22 Because if we have a Council here that does 23 not have the kind of background that is needed to 24 address these issues, the Council is entirely dependent 25 on the information coming from the two vested parties;</p>	<p style="text-align: right;">Page 265</p> <p>1 division and that kind of hostility and that kind of 2 sense out of Eastern Oregon that our interests are not 3 being considered, our values are not being taken into 4 account, that it is important for this Council to be 5 aware that making decisions to impose energy facilities 6 over the objections, the strenuous objections of the 7 people who will be affected is one more manifestation of 8 Western Oregoners ignoring the feelings, the sentiments, 9 the values of people who actually live here. And I 10 guess that's my entire comment. So thank you. 11 VICE CHAIR HOWE: Thank you, Ms. Morrison. 12 Are there others that wish to comment? 13 Please come forward. 14 MR. LEVENTHAL: Hi. I'm Tim Leventhal. I'm 15 a resident of La Grande and the former speaker has 16 pretty much stolen my thunder, so I just have a few 17 brief notes to support what she said. 18 And I find it interesting that the budget 19 for the Oregon Department of Energy is paid for by 20 developers, which run into millions of dollars. 21 Then after the developers are given the 22 go-ahead to proceed, the Department of Energy continues 23 to get paid by the -- by the energy entity. 24 So it appears the Oregon Department of 25 Energy has a vested interest in the utility succeeding</p>
<p style="text-align: right;">Page 264</p> <p>1 the utility and the Department of Energy. 2 I am acquainted with Mr. Jenkins, because 3 it's a small community. But my understanding is that 4 Mr. Jenkins was originally appointed to this Council 5 over the objections -- over significant objections from 6 this community from people who were aware of his 7 background and ethical issues in this community. 8 By statute, councillors are required or 9 allowed to serve only two consecutive terms of four 10 years. Mr. Jenkins, as I understand it, is now serving 11 his tenth year on this Council. 12 All of these things cause me to question the 13 legitimacy of this entire process. 14 I guess the last thing that I would say is 15 most of you are not from Eastern Oregon. You may or may 16 not be aware that there is significant -- significant 17 anger, significant hostility, significant resentment in 18 this part of the state based on the fact that decisions 19 are made for this part of this state by people in 20 Western Oregon who do not live here, who may have 21 different values, who may have different attitudes on 22 things. It has caused -- it's a significant rift. You 23 may be aware that there's actually an organization that 24 is trying to take the Eastern Oregon counties and break 25 away to join Idaho. I think the context of that kind of</p>	<p style="text-align: right;">Page 266</p> <p>1 no matter the consequences of the outcome or the welfare 2 of the livability of the state or the people who live 3 here. 4 And since the former speaker articulated 5 much better than I can, I'll end with that. Thank you. 6 VICE CHAIR HOWE: Thank you, Mr. Leventhal. 7 Are there others that wish to provide 8 comment to the Council? 9 MS. GILBERT: Irene Gilbert. 2310 Adam 10 Avenue. And I wanted to discuss this. 11 This is a newspaper article just within the 12 last week, I'd say. Says, "Upcoming investigation: How 13 an airborne blade exposed broader problems at PGE's 14 flagship wind farm." 15 And I'm sure most of you are familiar with 16 this. The bottom line is, I worked for Oregon OSHA for 17 a dozen years before I retired. And I did -- I trained 18 OSHA staff on safety and health issues. I also did a 19 lot of customized training for employers. 20 And when it comes to things like safety 21 inspections, what I used to train people, our staff, was 22 go in and look and see what their plans look like. 23 Check and see what their lock-out tag-out program is, 24 their confined space program, because those plans are 25 what dictates whether or not an agency or an employer is</p>

<p style="text-align: right;">Page 267</p> <p>1 going to have a successful safety program or they're 2 not.</p> <p>3 So if the plan is inadequate, the outcome is 4 going to be inadequate. So once you have a good plan, 5 really, you're just looking at are is management 6 enforcing the plan and are there consequences when 7 people don't do what they are supposed to do?</p> <p>8 So when you come to a situation like this 9 where for years this wind farm has been spewing bolts 10 and nuts and pieces of the -- of the turbines all over 11 the ground and oil leaking. That tells me that the PGE 12 did not have a good plan for maintaining and managing 13 their equipment.</p> <p>14 So I'm concerned because this development 15 was approved by this Council. And the plans were 16 developed by the Oregon Department of Energy. So now 17 you have a development here that not only I'm sure has 18 inadequate plans, but there hasn't been any monitoring 19 to show that they are actually following those plans.</p> <p>20 And I just bring this up because there's 21 been some discussion about the fact that the Council 22 tends to approve, basically, site certificates that are 23 not complete because of -- you can't approve a standard 24 without knowing what the plans are that are -- that are 25 going to be implemented in order to meet that standard.</p>	<p style="text-align: right;">Page 269</p> <p>1 In fact, if you read the plain language of 2 the rules, it says those plans are supposed to be in 3 final form before you can even issue a site certificate 4 because they are supposed to be attached and included 5 with the site certificate.</p> <p>6 So anyway, that's sort of my spiel about my 7 concern about how -- how the Council is abdicating their 8 responsibility for approving final plans that are 9 required for -- for a site certificate to be issued.</p> <p>10 A couple other things that I was going to -- 11 to mention. And it kind of goes -- I was thinking about 12 this because one of the prior commenters -- because I 13 sat in a -- in a legislative meeting where they were 14 talking about wind energy. And the discussion was how 15 many acres of land would it take in order to meet 16 Oregon's renewable energy standard if we were relying on 17 wind energy.</p> <p>18 And, of course, the figure was huge. And 19 one of the -- one of the representatives said -- was 20 asked "Where are you going to put all these wind farms?"</p> <p>21 This is -- you know, hundreds of thousands 22 of acres to put in these wind farms. And she said -- 23 and this is virtually a quote. She said, "Well, there's 24 a lot of land in Eastern Oregon." 25 So, you know, when the comment about --</p>
<p style="text-align: right;">Page 268</p> <p>1 So when Council turns over the development 2 of a draft partial plan to the Energy Facility Siting 3 Council you're basically turning over the responsibility 4 for an adequate plan to a group of people who are funded 5 by the people wanting to develop these energy 6 facilities. And I believe that that's contrary -- I 7 know it's contrary to what the statutes and the rules 8 say.</p> <p>9 Because to comply with the statutes, it 10 says, Council must review plans, determine they meet the 11 standard requirements, and be included in the site 12 certificate.</p> <p>13 Those are statutory requirements. So when 14 you turn over the final plan to another entity, you're 15 not meeting your commitment to have approved final plan. 16 And actually, while the statute does allow for 17 delegation to the Oregon Department of Energy, it does 18 not delegate -- it does not allow Council to delegate 19 the decision about eligibility to the Council. And 20 that's what is occurring when you do that.</p> <p>21 469.300, 469.370, 469.401, 469.405 -- all 22 these reference that Council is being the only entity 23 that is able to issue site certificates, approve site 24 certificates. You need to be taking responsibility for 25 that final approval of any kind of plan.</p>	<p style="text-align: right;">Page 270</p> <p>1 about conflicts between energy development and what's 2 happening in Eastern Oregon compared to what's happening 3 in the valley, there is really a lack of understanding 4 of the value of this part of the world to the people who 5 live in this part of the world.</p> <p>6 Another, just a brief comment is that when 7 developers are not supporting of energy that is 8 location -- that's being created at the location where 9 it's used and avoiding the need for high voltage 10 transmission, I don't believe they are meeting their 11 responsibility to the public.</p> <p>12 And right now, I know Idaho Power has before 13 the PUC a requirement or a request that they not have to 14 reimburse people with rooftop energy only half of what 15 they are reimbursing other people who are getting -- who 16 they are getting energy from.</p> <p>17 So the headline in the paper was that -- 18 that Idaho Power undervalues or believes that rooftop 19 energy has less value than -- than any other -- than the 20 other resources.</p> <p>21 So -- so I -- I encourage you to encourage 22 developers to be supporting these kinds of things that 23 really are important in terms of -- of minimizing the 24 need for these -- for transmission lines or for just a 25 megadevelopments of any kind as far as renewable energy.</p>

<p style="text-align: right;">Page 271</p> <p>1 Oregon right now is producing more renewable 2 energy between the dams and the wind farms and the solar 3 than we use -- than our total use of our energy a year. 4 So we are net exporters of renewable energy. And this 5 is in the Oregon Department of Energy's report to the 6 legislature that they are required to do biannually. So 7 it is not something I am just making up here. 8 When we keep creating energy in Oregon and 9 sending it to other states, we are -- we are agreeing to 10 destroy resources in this state. And so it -- I think 11 makes it even more important that the mitigation that's 12 being required of these developers who are using Oregon 13 resources be reasonable and actually address the impacts 14 that are happening. And part of that is going to show 15 up in these plans that are being shuffled off to the 16 Oregon Department of Energy to complete. So that's my 17 comment. Thank you very much. 18 VICE CHAIR HOWE: Thank you, Ms. Gilbert. 19 Is there any other public comment? Come 20 forward, please. 21 MR. KREIDER: Good morning, all. My name is 22 Jim Kreider. 60366 Marvin Road, lovely La Grande, 23 Oregon. 24 I'll be quick today. I just have a front 25 and back, double spaced.</p>	<p style="text-align: right;">Page 273</p> <p>1 justice issues in the state; and (f) upon the request of 2 a natural resource agency, provide consultation and 3 review of a natural resource agency's proposed 4 administrative rules under ORS 183.333. 5 And (2) the council may form workgroups or 6 consult with stakeholders as necessary to carry out the 7 duties of the council. 8 Additionally, the council is to develop an 9 environmental justice mapping tool that documents 10 environmental health, socioeconomic and other factors 11 that affect environmental justice communities. 12 Now, an environmental justice community 13 includes communities of color, communities experiencing 14 lower incomes, tribal communities, rural communities, 15 coastal communities, and communications with limited 16 infrastructure and other communities traditionally 17 underrepresented in the public process and adversely 18 harmed by environmental and health hazards, including 19 but not limited to seniors, youths, and persons with 20 disabilities. 21 Now, I submit to you that, in my opinion, 22 ODOE and the Energy Facility Siting Council can do a 23 better job of meeting the intent of Senate Bill 420 and 24 House Bill 4077. You do a very good job of outreach and 25 public meetings and coming to the public. But like most</p>
<p style="text-align: right;">Page 272</p> <p>1 First, I would like to welcome you to 2 La Grande. And I'm here to talk about environmental 3 justice and the public process in Oregon. 4 As I believe you know, in 2008, the Oregon 5 legislature passed Senate Bill 420 creating the 6 Environmental Justice Task Force. 7 In 2022, the legislature, again, passed 8 House Bill 4077, which renamed the task force to the 9 Environmental Justice Council and broadened the scope of 10 its work. 11 The Environmental Justice Council is to work 12 with the State's natural resource agencies to develop 13 environmental justice policies. ODOE was added to the 14 last of natural resource agencies in HB 4077 in 2022. 15 Now, the scope of the Commission's work is 16 outlined in the bill. And that, basically, is to advise 17 and provide by a biannual report to the Governor on 18 environmental justice issues; advise natural resource 19 agencies on environmental justice issues, including 20 community concerns and the public participation process; 21 (c) identify, in cooperation with natural resource 22 agencies environmental justice communities; (d) meet 23 with environment justice communities and make 24 recommendations to the Governor concerning the needs 25 raised by these communities; (e) define environmental</p>	<p style="text-align: right;">Page 274</p> <p>1 state agencies, you don't seek out the environmental 2 justice communities that will be significantly impacted 3 by your decisions. 4 The proceedings of the Department are 5 inherently skewed in favor of the developer. Simply 6 put, the developer has the money and the lawyers and the 7 Department and the public have neither. 8 However, the Department bills the developer 9 for all their work. The public cannot. 10 Now, I lost my place. 11 If the working public wishes to have a voice 12 that is truly heard, significant technical research and 13 representation at all meetings are the usual avenues to 14 be heard. This requires specialized technical skills in 15 most circumstances and that requires money to hire 16 experts, something the general public does not have a 17 lot of. 18 I'd like to suggest that the ODOE and their 19 billing to the developer include an intervener fund that 20 the public can request funds from so that they can 21 retain the proper technical experts and attorneys to 22 meet and engage the developer on equal terms. 23 Consider the public's considerable time, 24 effort, technical research, and fundraising required to 25 participate in this multi-year marathon that you're</p>

<p style="text-align: right;">Page 275</p> <p>1 considering today. And I can speak from personal 2 experience; it is life-absorbing. It is -- you have to 3 be dedicated. And the public have kids to raise. They 4 have jobs to go to. If it wasn't for us retired folks, 5 you wouldn't be here today discussing this. 6 So the public needs to have the ability and 7 the funding to express themselves to you with the 8 technical expertise and knowledge to play on a level 9 field. 10 Now, the Oregon Public Utility Commission is 11 in the process of implementing intervenor funding with 12 community organizations, and I'm involved in that 13 process. 14 As a member of the Environmental Justice 15 Council, I would be more than willing to assist ODOE in 16 developing such a program. 17 And those are my comments. Thank you. 18 VICE CHAIR HOWE: Thank you, Mr. Kreider. 19 Is there anyone else that wishes to provide 20 public comment? 21 MR. BARRY: Good morning. My name is Peter 22 Barry. My family property where we grew -- we all live 23 is nearby. And we also have property in Wallowa County 24 and Baker County. And we're happy to call this place 25 home. And thank you for coming to listen to us. And I</p>	<p style="text-align: right;">Page 277</p> <p>1 And in the B2H case -- I know I'm not 2 supposed to talk about it specifically, but this is 3 just -- shows the situation is the law, which is good, I 4 think, that says -- whoever developer -- must have a -- 5 a lead agency do a comprehensive study. 6 In this case, I think it was two years and 7 \$2 million. They don't have to follow it. In fact, in 8 this case, they didn't. But not to, you know, be 9 specific. But they don't have to follow it. So there's 10 this great idea. Have -- have an agency get tons of 11 scientists and look at all the factors should we -- you 12 know, not should we do it, but if we are going to do 13 this, where should it go? 14 The developers, by our laws, do not have to 15 follow this -- this multi-year, multi-million-dollar 16 study. So we do the study. It's just a waste of time, 17 basically. 18 And as Jim said, the only people who are 19 advocating for the people, the public and the children, 20 and the environment and the future are members of the 21 public that have no expertise and volunteer their most 22 precious resource, their time. They give up time with 23 their kids, their grandkids, their pets, reading the 24 books they want to read, travelling where they want to 25 travel because they feel obligated to do their best to</p>
<p style="text-align: right;">Page 276</p> <p>1 would totally support the comments by Mr. Kreider. 2 Being a member of the public in dealing with 3 you guys and dealing with this process is -- is 4 unbelievably frustrating, and we feel like complete 5 underdogs, completely outgunned and like this system is 6 truly -- and I don't say this lightly -- but truly 7 corrupt. 8 We know a local lawyer that was here who 9 then worked with the state legislature that helped 10 rewrite the laws in Oregon that favor the developers, as 11 Jim just elucidated. 12 And so -- and this is, of course, common 13 across the country and across the nation and other 14 nations, but the people with money, the corporations, 15 they rewrite the laws to favor themselves. That's the 16 case. I don't think there's no argument about that 17 whatsoever. 18 And the system is not only corrupt in that 19 sense, but that we somehow have abdicated our basic 20 responsibility, let for-profit corporations that want 21 maximum profit at least cost to themselves, they get to 22 make proposals and say, oh, we're going to put this 23 here. We're going to put that there. And then we all 24 have to jump through these endless hoops, a decade of 25 hoops, because they make a proposal.</p>	<p style="text-align: right;">Page 278</p> <p>1 try to do their duty as a -- as a member of a democracy. 2 And so we're -- we just feel completely 3 outgunned. And Jim's idea, it's well behind the times. 4 We should have -- how do we hire lawyers? We're 5 fundraising nonstop, 5 bucks here, 50 bucks there, 100 6 bucks there, to try to go up against legions of lawyers 7 and PR people and experts. 8 And, again, the system, I would say, is 9 corrupt, because as Jim said, it's true the -- the 10 developers, the for-profit corporations work with ODOE, 11 who should be serving the public. 12 We pay -- we pay for the agencies and the 13 government and willingly do that because we need it. 14 But the developers have this cozy relationship with 15 ODOE. We don't. How can we? How can we possibly be 16 close to all of these lawyers and experts that have 17 these tens of thousands of pages and are just checking 18 off the boxes. 19 And I guess my -- my main point to you is 20 you have absolutely no obligation to these for-profit 21 corporations who just want to make a buck. I used to 22 think as I grew up that utilities are great. We all 23 love electricity. I love electricity. But these 24 utilities that provide us water, electricity, whatever, 25 they are public service organizations; right? Well,</p>

<p style="text-align: right;">Page 279</p> <p>1 turns out they're not. They are not. They are largely 2 for-profit corporations. 3 And one proposal, since you guys are the 4 experts in the state, I would really urge you -- since 5 you know how this system works better than I do, that we 6 change the system so there's a state map that has a 7 bunch of red areas where we're not going to do anything. 8 No wind farms, no pipelines, no electrical transmission 9 lines or anything like that, because they are our 10 precious resources. We're not going to do any of that 11 next to Crater Lake, I hope, or other places like that. 12 Right? 13 And we should have energy corridors -- 14 stipulated energy corridors where things can go. Like, 15 this is probably a good place for solar farms. No one 16 wants one in their backyard. But they are a great idea. 17 And I think probably some other people testified. This 18 is 2022. Not in rural electrification land anymore in 19 1920, which was such a great idea then. 20 We're in microgrid, resiliency, and besides, 21 new technology and new ideas and we shouldn't be 22 thinking of old tech, you know, just stringing up more 23 lines that are actually unbelievably inefficient in 24 terms of waste of electricity going through the lines, 25 but we also live in a high-risk environment where</p>	<p style="text-align: right;">Page 281</p> <p>1 it's important that the Administrative Law Judge, the 2 hearings officer, there be another one so the same 3 hearings officer isn't hearing appeals to their own 4 rulings. That just seems inappropriate in a democracy 5 and I wouldn't want to go to a court case if that was -- 6 that's how it was. 7 Again, I'd just like to reiterate. We feel 8 like as the public they are representing ourselves and 9 our own personal interests and those of our communities 10 and those of our state and of the future for an 11 intelligent, energy future for everybody that comes 12 after us. We feel at the mercy of for-profit 13 corporations, like Pacific Power that's owned by one of 14 the richest men in the world, Warren Buffett. He's 15 telling us what our future is going to be? Is that how 16 this system should work? 17 So we're at their mercy. Or I would say -- 18 their lack of mercy. Because all they care about is the 19 bottom line. Their accountants invent this stuff. And 20 so it's not mercy. It's mercenary. And it's not fair 21 to Oregon. It's not fair to the public. It's not fair 22 to our great-grandkids. And I think we can do a much 23 better job. 24 So I would just urge you, feel no 25 obligation. In fact, hold corporations to the very,</p>
<p style="text-align: right;">Page 280</p> <p>1 various types of wars are sadly likely and earthquakes 2 and so on and big grid is not the way to go. 3 Local energy production -- like, I have a 4 place up in Wallowa County. And now they are taking the 5 canals for the water distribution and they are putting 6 turbines in there and they are making enough electricity 7 to run all of the pivots. Great idea. Local solutions. 8 And we have all this technology now and we're talking 9 about. You guys didn't invent it. I didn't invent. 10 Somebody said, I know. Let's build a pipeline across 11 Oregon. Let's build a transmission line across Oregon 12 because we can make money. Not to serve the people. 13 Not because it's the best idea. 14 And so my -- my point is that -- mostly, 15 that you have no obligation to check off these boxes and 16 rubber stamp these proposals. 17 And I know bureaucratically that that's how 18 it goes. There is, like, we've got to do this; got to 19 do this; jump through the hoops; sign it off; next 20 project. 21 And you guys, I know, are up to your 22 eyeballs in that. I've never seen a binder that thick 23 in my life. Oh, my. 24 I'll try to wrap up here. 25 One very specific thing, too, is I think</p>	<p style="text-align: right;">Page 282</p> <p>1 very, very highest standards, because that's what we 2 expect of you and hope from you. 3 So thank you very much for listening. 4 VICE CHAIR HOWE: Thank you, Mr. Barry. 5 Anyone else that wants to comment? 6 MS. RAY: Hi. My name is Annie Ray, and I 7 live in Portland now. But for 30 years, I did live out 8 here. My children played basketball in this gym and I 9 went to college when Mr. Gilbert was the President of 10 Eastern Oregon State College and there were public 11 hearings held then addressing concerns about Idaho 12 Power. 13 So Idaho Power has a long, long history 14 here. And they wanted to build a dam to block the Snake 15 River. There would be no Hells Canyon. There would be 16 no free-flowing river at all if the people in this 17 community hadn't stood up to Idaho Power. And Mark 18 Hatfield and Bob Packwood presided and it was right here 19 on this campus. 20 And the rules were made that you couldn't 21 wear a logo or even a basketball cap that said "SOS, 22 Save Our Snake." People were arrested for wearing a 23 baseball cap, you know, a basic First Amendment right. 24 So, in some ways, we have come a long way. 25 We can have our signs and say our piece. However, our</p>

<p style="text-align: right;">Page 283</p> <p>1 speech is still restricted by obfuscated processes and 2 procedures that say, no, you cannot speak. We won't 3 hear that. That's not allowed here. That is against 4 the rules. And don't you dare wear a baseball cap that 5 says "SOS" or we will throw you in the back of a police 6 car and rough you up. 7 So we have seen it all. And Idaho Power did 8 not keep their word about building fish ladders. I 9 don't need to go into all of the history. A lot of 10 people have very hard feelings about the -- the history 11 of Idaho Power on this landscape. 12 And if we didn't stand up and if we did not 13 have the visionary leadership of Packwood and Hatfield 14 and the others, you know, over time -- and I'm old 15 enough. I saw it with my own eyes. There's been such a 16 turnover. I mean, there always is. The nature of 17 history marches on. And people weren't here. All the 18 staff is different. All the -- you know, community 19 comes and goes. 20 But those of us who are old enough and were 21 there recognize what would have been lost had the people 22 not been courageous and willing to put themselves at 23 great discomfort to try to do the right thing. 24 And so I feel like the history of this place 25 in this room on this campus in this town within these</p>	<p style="text-align: right;">Page 285</p> <p>1 standards and, again, it's just check, check, limited, 2 limited, like you are just with blinders on. 3 And it's very, very frustrating. State 4 agencies are underfunded. There's rules are that are 5 very outdated. There's lists that don't get kept 6 up-to-date. And it's -- you know, it's really 7 unfortunate. But we need you guys. I mean, us and the 8 public, we need folks in the regulatory arena as 9 yourselves to protect us. 10 I mean, how else can we do this? 11 If State agencies are underfunded, but you 12 guys are the Council, maybe you guys can step up and 13 step out. You know, I -- I just -- it's just really a 14 difficult situation and we need your protection. 15 Because who else are we going to turn to? 16 And -- but it's even more than just needing 17 protection and asking you guys for support in that kind 18 of a lookout for us. 19 You have a huge opportunity to be champions 20 of Oregon's energy policies in the future and not just 21 bureaucrats. Check. Check. Check. Actually get out 22 in front of this and be the champions of the future. 23 Many people talked about our beautiful 24 state. We're known for being a green state. We know we 25 have to wean ourselves from fossil fuels. We have to</p>
<p style="text-align: right;">Page 284</p> <p>1 rivers within these mountains continue to be the 2 foundation of what we're all about here. 3 And that we need to continue, you know, do 4 not give up because Idaho Power has different staff. 5 They have different money. They keep on doing their 6 thing. However, the land is still here. 7 And that's what I wanted to bear witness to 8 today. Thanks for having this public hearing. 9 VICE CHAIR HOWE: Thank you, Ms. Ray. 10 Anyone else to comment? 11 MS. KREIDER: Hi. Thanks for having us. 12 This is Fuji Kreider. Living in La Grande. I wasn't 13 sure I was going to speak, but given all the 14 conversation, I think I had to. 15 I just wanted to say that from all these 16 meetings with you guys and even other meetings -- I'll 17 sit a little closer. Thanks, Hanley -- for various 18 rulemakings and other meetings we've been at and all. I 19 often feel like you're basically -- and I'm sitting 20 in -- like, it is democracy by checklist. So we had a 21 public hearing. Check. We have a public comment 22 period. Check. We have this. Check. Check. Check. 23 And I just encourage you to not -- maybe you 24 don't feel this way, but it feels this way to the 25 public, that you're hiding behind these rules and these</p>	<p style="text-align: right;">Page 286</p> <p>1 decarbonize the grid. All of this stuff. You know, 2 we're not all hicks out here. We have a vision for the 3 future. 4 Tomorrow afternoon you're going to have 5 another meeting. I don't know if I'm going to make it 6 or be able to after this marathon we've been through. 7 Maybe by Friday if I read your 13-page piece, I'll get 8 something to you by Friday. 9 But if I don't, I'll tell you this. I'm 10 giving you my input now. The federal dollars should go. 11 We have these -- huge opportunity. You guys are good -- 12 you have a huge opportunity here to look to the future. 13 Okay. We could -- yeah. You know, the stuff we've been 14 talking about since 2015, all the IRP meetings and 15 everything up -- 16 THE COURT REPORTER: We lost audio. 17 COUNCILMEMBER CHOCKTOOT: For the record, 18 this is Perry Chocktoot. I lost audio also. 19 (Recess.) 20 VICE CHAIR HOWE: Okay. I'm going to bring 21 the Council back to -- from recess and we're continuing 22 on with the public comment. And we're going to check 23 the phone lines, as well as people on the webinar, to 24 see if there's anyone that wants to provide comment. 25 MR. ADAMS: So if you would like to make a</p>

<p style="text-align: right;">Page 287</p> <p>1 comment, please raise your hand on the webinar. I don't 2 see anybody yet. 3 VICE CHAIR HOWE: Anyone on the webinar 4 wishes to make comment, please raise your hand. 5 MR. ADAMS: We have attendees, but I don't 6 see any hands raised. So it doesn't look like anyone 7 who is on the Webex wishes to make a comment. 8 VICE CHAIR HOWE: Okay. Do you have a way 9 to check the folks on -- that might be on the phone? 10 MR. ADAMS: We don't have any phone 11 attendees right now. 12 VICE CHAIR HOWE: Okay. One last time, 13 anyone in the audience wish to make comment that hasn't? 14 Going once. Going twice. 15 Okay. I think we'll close the public 16 comment. And we'll move back to our review of the 17 proposed order and proposed contested case order on the 18 need standards 1 and 3. 19 And I'll turn it over to Ms. Tardaewether 20 and Counsel Ratcliffe. 21 MS. TARDAEWETHER: For the record, Kellen 22 Tardaewether. I'm getting back. Logged in and I'll 23 pull up -- I'll get the PowerPoint up, ready. But I'm 24 going to pass this off to Jesse. Just to -- we just 25 wanted to clarify. We did the straw poll and we just</p>	<p style="text-align: right;">Page 289</p> <p>1 encompass both the reliability and the least-cost, then 2 I think we're okay. And then we would move on to the 3 public services. 4 VICE CHAIR HOWE: I'm seeing all heads nod. 5 Except I can't see Mr. Chocktoot. 6 Councillor Chocktoot. 7 COUNCILMEMBER CHOCKTOOT: I can hear you. 8 VICE CHAIR HOWE: Okay. Are you in 9 agreement with where we're at as far as the straw poll 10 that we took earlier was clear? 11 COUNCILMEMBER CHOCKTOOT: I wasn't a part of 12 your straw poll, so I have to abstain. 13 VICE CHAIR HOWE: Yeah, I think so. 14 COUNCILMEMBER CHOCKTOOT: There was a period 15 of time where I couldn't hear you. 16 SECRETARY CORNETT: Yeah. Councilmember 17 Chocktoot -- for the record, Todd Cornett. 18 So this was going back to prior to the 19 public comment period we did the need standard. And so 20 I did call your name and I thought you responded on that 21 as well. 22 COUNCILMEMBER CHOCKTOOT: Okay. I thought 23 it was a vote you just took while we were off. 24 SECRETARY CORNETT: No. Yeah. We 25 apologize. We didn't realize that we had kicked off.</p>
<p style="text-align: right;">Page 288</p> <p>1 wanted to clarify some matters. 2 MR. RATCLIFFE: This is Jesse Ratcliffe. 3 And so when we had left the need standard, we -- 4 Secretary Cornett had given you a straw poll subject. 5 And -- but after we went on break here, we realized that 6 we just wanted to make sure that it was very clear that 7 when we're talking about the proposed order. So we have 8 the two contested case issues. 9 But on the proposed order piece of it, that 10 that doesn't include both the least-cost rule and the 11 system reliable rule. And that because the proposed 12 order deals with both of those issues, when the straw 13 poll was put to you, it was intended to encompass both 14 of those things. 15 Those both have to do with need. 16 So just to -- we're -- our goal here, 17 basically, is to try to leave this meeting with any 18 direction that you all have for the staff or for me so 19 that we can come back. And so if we see an area of 20 uncertainty, we just want to make sure that we're 21 clearing it up. 22 So this is just a quick opportunity that if 23 anyone felt like that wasn't clear enough and we needed 24 to go through another straw poll round, we can do that 25 now. If everyone understood that that was intended to</p>	<p style="text-align: right;">Page 290</p> <p>1 But when the webinar shut down, we were on public 2 comment period. So there has not been a straw poll 3 since the need standard. 4 COUNCILMEMBER CHOCKTOOT: All right. Okay. 5 I support it. I support it. 6 SECRETARY CORNETT: Thank you. 7 COUNCILMEMBER CHOCKTOOT: Thank you for that 8 clarification. 9 VICE CHAIR HOWE: I think that Council is 10 clear then. 11 MR. RATCLIFFE: Thank you. 12 MS. TARDAEWETHER: For the record, Kellen 13 Tardaewether. 14 Could you pass me the ball, please? 15 No. We're working on getting the 16 PowerPoint -- okay. 17 COUNCILMEMBER JENKINS: Mr. Chair, this is 18 Hanley. 19 Kellen, can you start with the next issue? 20 MS. TARDAEWETHER: Absolutely. I'm going to 21 start the next standard. It's the public services 22 standard. And I will -- we are just -- to do a schedule 23 check from our estimated agenda, we are about 45 minutes 24 behind. So I'm just going to try to move quickly 25 through my portion and share my screen.</p>

<p style="text-align: right;">Page 291</p> <p>1 Here we go. Okay. Now we can go. 2 In July, we touched on the public services 3 standard or I referenced it because we also cut -- we 4 covered waste minimization and water rights. And 5 there's this overlap. So I did kind of talk about 6 public services in July. But -- but again, the lens 7 through those standards was a different -- from the lens 8 of public services. 9 Under the public services standard, there 10 must be a demonstration of minimizing impacts or that 11 it's not likely, taking into account mitigation, that 12 there be significant adverse impacts on the ability of 13 public and private service providers to provide their 14 service. 15 And there's the list of public and private 16 service providers at the bottom of the standard. This 17 also corresponds with the information in Division 21 18 that they are required to submit -- that the applicant 19 is required to submit in their application. 20 So there's a list of water service 21 providers. It's estimated that approximately just under 22 55 million gallons of water would be used for 23 construction of the facility, and a lot of that is for 24 the construction -- and watering of roads. Dust -- dust 25 minimization and a lot of the -- of the groundwork and</p>	<p style="text-align: right;">Page 293</p> <p>1 This is the vehicle trips, the estimated 2 vehicle trips. This includes light-duty construction 3 trucks and heavy-duty construction trucks, as well as 4 personal vehicles from construction workers. 5 And so that is just under 1300 maximum daily 6 trips associated with the construction spread. There's 7 also a very lengthy table in the proposed order that 8 breaks out the -- because we talk about a construction 9 spread and just in the -- generally, in constructing a 10 very long linear facility, it's going to happen in 11 segments. 12 And so -- so in the traffic impact table, we 13 talk about kind of north to south or south to north of 14 breaking out. And it kind of shakes out in a per County 15 and some of it. Some spreads. There's an overlap in 16 the County but it's basically per -- per county of 17 constructing where in a maximum scenario where the 18 maximum amount of workers and trucks and people are 19 on-site, what are those traffic impacts in that area. 20 So -- and that table also has and includes 21 ratios of estimating, based on existing traffic volumes 22 with the additional traffic. 23 And the -- the -- the recommendation from 24 those tables is that taking into account mitigation, 25 which are items and best management practices included</p>
<p style="text-align: right;">Page 292</p> <p>1 these are -- this is the worst-case water scenario -- 2 worst-case scenario for impacts. 3 But -- and then as we discussed under water 4 rights, but here the lens under public services is that 5 the applicant provided evidence from these water service 6 providers that they would be able to continue to provide 7 their service, providing water, and be able to supply 8 water for the construction of the facility. 9 The operational aspect of the -- of water 10 would just be at the Long Horn substation, which would 11 be supplied from the Port of Morrow. 12 Housing. Here it's a little bit hard to see 13 on my screen. But this is a summary table that was 14 generated in the proposed order. And what the applicant 15 looked at is housing availability in each county. They 16 looked at temporary housing, hotels, and RV parks, 17 places where temporary workers that would come in to 18 construct the facility would be able to use. 19 And the Department recommends that with the 20 construction of the facility there would -- it would not 21 significantly impact the ability of housing providers to 22 provide housing. 23 This table is a little bit small on the 24 screen as well. It's a derivative of a -- of the 25 proposed order table as well.</p>	<p style="text-align: right;">Page 294</p> <p>1 in the draft traffic management plan, taking into 2 account mitigation that the impacts per those spreads 3 would not significantly impact the service providers. 4 So the service providers are generally 5 public works departments. People who maintain roads. 6 We look at road conditions a lot. You can also look at 7 law enforcement personnel. Anybody that's on-site that 8 would be impacted by increased volume. 9 So we have this recommended public services 10 condition two which is a county-specific transportation 11 management plan. 12 The condition and the plan requires that the 13 applicant, prior to construction, coordinate with the 14 department and the affected county in the finalization 15 of these plans. 16 And it -- it is a draft plan. 17 So -- but there are several best management 18 practices on -- on items to reduce impacts from traffic. 19 So we have flagging pilot vehicles, hours of 20 operation. One of the most important aspects that would 21 be finalized are -- are the actual routes that would be 22 used based on the final transmission line routes 23 selected. 24 So this kind of goes on to the -- part of 25 the process of finalizing plans. As we're aware, the</p>

<p style="text-align: right;">Page 295</p> <p>1 applicant is proposing the proposed route and several 2 alternative routes. If we run the assumption or the 3 scenario that Council approves all of those or approves 4 the proposed route and then in one area, one alternative 5 route and then denies another one, it allows the 6 applicant the opportunity to select its final route out 7 of the approved routes.</p> <p>8 So, for instance, in Malheur County we have 9 one area where there is several alternatives in one 10 area. Same thing with Morrow County. Morrow County 11 along the Bombing Range Road, there's actually two 12 alternatives in the proposed route where ultimately one 13 would be selected, which means that that would be then 14 the final route which then is finalized, then you have 15 to look at which transportation routes are going to be 16 used for that. So that is some of the items that would 17 be finalized as part of that traffic management plan.</p> <p>18 Recommended public services condition three 19 also has a helicopter use plan that would be -- that 20 would be submitted. Because as we're aware, there is 21 helicopter use proposed in some areas, particularly 22 where there's limitations on site access and to 23 transport crews and stringing transmission lines.</p> <p>24 And I am going to stop there. 25 Did you have anything you wanted to add?</p>	<p style="text-align: right;">Page 297</p> <p>1 significant adverse impact to the ability of public and 2 private firefighter's ability to provide fire protection 3 services.</p> <p>4 The standard -- the hearing officer ruled, 5 though, that the standard does not require that IPC 6 prove that the proposed facility cannot or will not 7 cause a fire.</p> <p>8 She found that Mr. Cooper correctly 9 identified that it would take the La Grande Rural Fire 10 Protection District more than four to eight minutes, 11 which was the response time identified in the Exhibit U 12 of the application to respond to a fire near Morgan 13 Lake.</p> <p>14 She concluded, however, that in the context 15 of the overall analysis of the issue, that that did not 16 affect the outcome because Idaho Power, in its 17 application, had acknowledged that response times would 18 vary.</p> <p>19 There was additionally evidence about the -- 20 the likelihood of fires and the ability of the agencies 21 to respond in other ways. So the findings there were 22 that although fires are not uncommon in the project 23 area, the fire protection agencies are able to contain 24 small fires quickly. 25 Some of the evidence that was provided on</p>
<p style="text-align: right;">Page 296</p> <p>1 MR. RATCLIFFE: So this is Jesse Ratcliffe, 2 for the record, again. And what we're going to be 3 moving to in terms of the contested case issues and 4 exceptions is issue PS-4. The party is Mr. Cooper.</p> <p>5 The issue raised in the contested case was 6 related specifically -- (audio disruption) -- the risk 7 of wildfire arising out of operation of the proposed 8 facility. The ability of local fire fight --</p> <p>9 THE COURT REPORTER: We don't have a very 10 good connection you keep breaking and cutting in and 11 out.</p> <p>12 (Discussion on webinar connectivity.)</p> <p>13 MR. RATCLIFFE: So since you probably didn't 14 catch the initial part of that. I was just reading out 15 the -- the issue that had been raised by Mr. Cooper 16 pertaining to fire protection. Whether the applicant 17 adequately analyzed the risk of wildfire arising out of 18 operation of the proposed facility and the ability of 19 local firefighting service providers to respond to 20 fires.</p> <p>21 So the hearing officer addressed this in her 22 opinion and first set out what the standard -- the 23 broader public services standard requires in this 24 particular case, requires that the Council find that the 25 proposed facility would not be likely to result in a</p>	<p style="text-align: right;">Page 298</p> <p>1 this point, so Idaho Power had provided 27 years of data 2 from the wild land fire decision support system for 3 fires within 50 miles of the proposed facility.</p> <p>4 The data included fire size and cause, as 5 particularly relevant here. It showed that roughly 1.35 6 percent of fires were caused by power lines.</p> <p>7 Idaho Power evaluated the probability of 8 fire to be contained in -- in an initial response based 9 on size and intensity.</p> <p>10 And the hearing officer concluded that it 11 can be shown that fires within the project area are -- 12 are capable of being contained when they are still 13 small.</p> <p>14 There are a number of conditions that the 15 hearing officer noted that bear on the responsiveness of 16 the fire protection agencies. Those include the fire 17 suppression plan, which is a component of public 18 services condition six; the right-of-way clearing 19 assessment, which is a component of land use condition 20 16; and the vegetation management plan, which is a 21 component of fish and wildlife condition two.</p> <p>22 She found that all of these will work 23 together to reduce the risk of project-related fires.</p> <p>24 Hearing officer noted that the La Grande 25 fire protection district has mutual aid agreements with</p>

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<p>1 both the City of La Grande and the Department of 2 Forestry. Both of these entities are closer to Morgan 3 Lake Park and primarily responsible for Morgan Lake 4 Park. And just really briefly for the Councilmembers 5 who may not be familiar with what a "mutual aid 6 agreement" is. 7 It's pretty much what it sounds like. It's 8 a fire protection or other public safety entities that 9 are agreeing to help each other out when help is needed. 10 And there are parameters put on that and an 11 understanding of who's supposed to do what when if there 12 is an emergency that needs responding to. 13 The hearing officer also concluded that 14 aerial firefighting dispatch center located at the 15 La Grande airport would be capable of supporting the 16 fire response. 17 And, finally, the hearing officer had 18 recommended amendments to the public service condition 19 six. This is the one, again, that -- that deals with 20 the fire suppression plan. 21 She recommended that additional fire 22 suppression plan requirements include an evaluation of 23 seasonal work restrictions, on-site firefighting 24 equipment, and necessary fire protection resources based 25 on an evaluation of sensitive seasonal conditions and</p>	<p>1 "Some neighbors are now being denied 2 insurance on their homes. It is ironic 3 that Idaho Power proposes to build a 4 power line through this same area. I 5 request the Council deny the site 6 certificate or remand the proposed 7 contested case order. Alternatively, 8 underground the route through the Morgan 9 Lake region, which is cited in a 2005 10 planning document as the number one WUI 11 in the county. I raise one exception. 12 The ALJ erred in not including the 13 Department's recommended amendment to 14 recommended public services condition 15 six regarding accuracy of response times 16 presented in the ASC Exhibit U, Table 17 U-10. The Department was correct in its 18 recommended provisions especially 19 recommendation number 2, identify 20 updated information from the La Grande 21 rural fire protection district on the 22 number of full-time and volunteer 23 employees, number and type of equipment 24 and vehicles, and response times to the 25 facility. Though only raising one</p>
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<p>1 current information regarding response times from the -- 2 La Grande Rural Fire Protection District. 3 So that's the summary of the hearing 4 officer's findings there. 5 And we can go to Mr. Cooper's oral argument 6 which, I believe, is recorded testimony. 7 (Played recorded testimony of Mr. Cooper.) 8 "I am Petitioner Matt Cooper addressing 9 issue PS-4, fire protection. I live at 10 the base of Mill Creek Canyon, less than 11 two miles below Morgan Lake Park. I 12 have lived and recreated in La Grande 13 for 31 years. Our home was recently 14 identified as being in a wildland-urban 15 interface or WUI, and being high risk 16 for wildfire by the Oregon Department of 17 Forestry. 18 MR. ADAMS: You can hear it up there? 19 Crystal, were you able to hear the recorded 20 testimony? 21 THE COURT REPORTER: The last thing I heard 22 was "Oregon Department of Forestry." 23 MR. ADAMS: Yeah. Okay. Then you're 24 hearing it. I'll restart it. 25 (Played recorded testimony of Mr. Cooper.)</p>	<p>1 exception, I strongly disagree with 2 Judge Webster's decision, which took 3 Idaho Power's statements at face value 4 and barely acknowledged my closing 5 arguments. IPCs closing brief relies 6 heavily on expert witnesses, especially 7 Berkeley resident, Chris Lautenberger, 8 who admitted under cross-examination 9 that he has never visited this area. 10 IPC statements are simplistic, blithe, 11 and overly broad. For example, they say 12 the transmission fire would not spread 13 into La Grande because winds travel from 14 the north during fire season. And fire 15 always travels uphill. My evidence 16 shows that as early as the 1860 fires 17 swept down the Mill Creek Canyon, both 18 northward and downhill. IPC states that 19 500 kilovolt lines and steel 20 transmission towers rarely cause fires, 21 yet their witnesses admit that there are 22 five documented fires caused by these 23 lines, one apparently caused by a Mylar 24 balloon. My evidence demonstrates that 25 IPC's originally stated response times</p>

<p style="text-align: right;">Page 303</p> <p>1 fire in this region, four to eight 2 minutes, were grossly understated. A 3 more accurate estimate would be 17 to 23 4 minutes. With the dry and windy 5 conditions that prevail here in summer, 6 even a few minutes could be crucial. 7 IPC claims that it does not matter that 8 the La Grande rural would take so long 9 to respond as they have mutual aid 10 agreements with the Department of 11 Forestry and the City of La Grande. But 12 they have produced no evidence on the 13 response times of these other agencies. 14 Morgan Lake Road is a single-lane, 17 15 percent grade gravel road and is the 16 only viable route in or out of the 17 region. How long would a city fire 18 truck take and would they be blocked by 19 residents trying to flee the fire? 20 There is no emergency evacuation plan 21 for this area. Bottom line is that the 22 risk analysis provided by IPC is 23 inadequate. And when requests are made 24 to upgrade their analysis, they are 25 still not complying. Even if the OPUC</p>	<p style="text-align: right;">Page 305</p> <p>1 not really an issue. It's moot because the -- the 2 recommended public services condition six was ultimately 3 updated to require Idaho Power to update the response 4 times that were included in a table in the proposed 5 order, PS-9. 6 I would also just comment more generally in 7 response to Mr. Cooper's arguments that Idaho Power 8 provided evidence in connection with the -- both the ASC 9 and through the contested case process that a 500 kV 10 transmission line, like the project, is not likely to 11 cause a fire and, therefore, will not result in any 12 significant adverse impact to the availability of fire 13 protection agencies to provide fire protection services; 14 and, moreover, in the unlikely event of a fire at or 15 near the project site, the evidence in the record 16 demonstrates that the fire response organizations are 17 capable of controlling that fire. 18 In connection with Mr. Cooper's assertion 19 regarding the Wildfire Mitigation Plan, I would note 20 that there's evidence in the record from the contested 21 case hearing from Idaho Power's witnesses explaining 22 that the Wildfire Mitigation Plan is a living and 23 breathing document that will be updated in accordance 24 with the PUC's regulations periodically, as is the 25 public safety power shutoff plan that's included with</p>
<p style="text-align: right;">Page 304</p> <p>1 just two months ago, the agency told IPC 2 to go back and fix their plans. IPC 3 seems to have little interest in the 4 real risk of wildland fire in Eastern 5 Oregon. I request that the Council 6 remand this issue or deny the site 7 certificate." 8 (End of recorded argument.) 9 MS. PEASE: Okay. Thank you. 10 Good morning. For the record, this is 11 Jocelyn Pease for Idaho Power Company. 12 Mr. Cooper, in his oral argument, it was 13 much more expansive than what we he'd filed in his 14 exception document. I would like to first focus on his 15 arguments and his exceptions. This is the exceptions 16 hearing. 17 So I would first note that he commented that 18 the hearing officer had erred by not including a 19 proposed language in the recommended public services 20 condition. In fact, that language that he was objecting 21 to was adopted and incorporated into the hearing 22 officer's proposed contested case order. So that issue 23 has been resolved. 24 Mr. Cooper had also raised arguments about 25 the response time being four to eight minutes. That is</p>	<p style="text-align: right;">Page 306</p> <p>1 that Wildfire Mitigation Plan. 2 Idaho Power is responsible to the Public 3 Utility Commission for providing plans that are in 4 compliance with the Public Utility Commission's 5 regulations and will continue to do so. 6 And those plans will apply to the project 7 when the project is constructed. Thank you. 8 VICE CHAIR HOWE: Thank you, Ms. Pease. 9 Are there any questions from Council? 10 Okay. 11 MR. ROWE: Patrick Rowe, Department of 12 Justice on behalf of the Department of Energy. 13 Largely, similar comments as provided by 14 Ms. Pease, this is an exceptions hearing. And 15 Mr. Cooper's exception was pretty narrow. It was that 16 the hearing officer did not include the Department's 17 proposed amendments to public services condition six 18 related to the La Grande rural fire protection district 19 response times. That's not accurate. 20 As Mr. Ratcliffe pointed out and Ms. Pease 21 pointed out, the hearing officer did include the 22 Department's recommended amendment. It's on page 227 of 23 the contested case order. I don't know if Mr. Cooper 24 just overlooked that but on page 227 of the proposed 25 contested case order in second amended recommended</p>

<p style="text-align: right;">Page 307</p> <p>1 public services condition six, that includes the 2 Department's recommendations and it specifically 3 includes the language about updating the table to 4 include the response times from the La Grande Rural Fire 5 Protection District. 6 That -- that condition largely talks about a 7 construction plan, so the fire suppression plan is 8 related to risks of fire during construction. 9 So one other thing I would like to point out 10 with regard to Mr. Cooper's concerns about wildfire -- 11 which really go beyond the scope of his exception but 12 I'll address it -- is recommended public services 13 condition seven. 14 Ms. Pease referenced Idaho Power's Wildfire 15 Mitigation Plan. That plan addresses the risks that 16 wildfire may pose during operations. 17 So that's the plan -- that's the condition 18 that would, again, address risk during operations. It 19 requires a Wildfire Mitigation Plan and it addresses the 20 underlying issue of whether the applicant adequately 21 analyzed the risk of wildfire arising out of operations. 22 So you've got second amended recommended 23 public services condition six addresses the exception 24 Mr. Cooper made, includes -- requires updated response 25 times from the La Grande Rural Fire Protection District,</p>	<p style="text-align: right;">Page 309</p> <p>1 own condition. 2 COUNCILMEMBER CONDON: Okay. 3 MR. ROWE: You will be relying on PUC for 4 other projects to which the new wildfire rule applies. 5 COUNCILMEMBER CONDON: Okay. Thank you very 6 much and I have another question. 7 And it's related to the second amended -- 8 recommended public services six, the first paragraph. 9 And the additional language, "The plan 10 finalization process shall consider (a)(i)(a)(ii) unless 11 otherwise identified by a land management agency or 12 other participating review agency." 13 And does the plan finalization process 14 include approval? I mean, are we approving -- is there 15 an approval of the plan? 16 I don't see approval here. I'm sure it's 17 there somewhere, but does the Department approve this 18 plan, this final plan? 19 Does that make sense? 20 MR. ROWE: I'm following -- Sarah, maybe we 21 can tag team on this one. I -- 22 MS. TARDAEWETHER: For the record, Kellen 23 Tardaewether. Let me pull this up here real quick. 24 MS. ESTERSON: I think it's intended, but 25 you are correct. It doesn't specifically say "approve,"</p>
<p style="text-align: right;">Page 308</p> <p>1 and you have recommended public services condition seven 2 requires a Wildfire Mitigation Plan which will address 3 the risk of wildfire to the facility during operations. 4 VICE CHAIR HOWE: Thank you, Mr. Rowe. 5 Any questions from Council? 6 Councillor Condon. 7 COUNCILMEMBER CONDON: Councilmember Condon, 8 here. Just -- I just want to make sure I'm clear on 9 this. 10 The Wildfire Mitigation Plan that you talked 11 to, I understand it's outside the exception. But that's 12 really regulated by the PUC. As I understood it from -- 13 MR. ROWE: PUC is requiring it. And -- you 14 know, we just passed the wildfire rules. Wildfire rules 15 essentially say if PUC approves somebody's Wildfire 16 Mitigation Plan that's good for our purposes. 17 But those rules don't apply to this project. 18 But they do have a Wildfire Mitigation Plan that is 19 required -- or would be required if you adopt 20 recommended public services condition seven. 21 COUNCILMEMBER CONDON: Right. I'm trying to 22 clarify just our reliance on the PUC with respect to 23 the -- 24 MR. ROWE: In this instance, you are relying 25 on the recommended public services condition seven, your</p>	<p style="text-align: right;">Page 310</p> <p>1 where in other conditions we would include that. I 2 think the omission is not intentional. So if you wanted 3 to add "approval." 4 COUNCILMEMBER CONDON: I'd recommend adding 5 "approval." 6 VICE CHAIR HOWE: Yes, Councillor Beier. 7 COUNCILMEMBER BEIER: So condition six 8 relates to construction activities, yes. 9 So the plan language is pretty general about 10 risk and evaluation. So often we're seeing red flag 11 warnings that say, you know, don't -- don't operate in 12 the forest. I'm wondering if the plan requirements are 13 that specific. 14 Many of the national forests have, you know, 15 you can't cut wood during these conditions. 16 Are there conditions during construction 17 that would be that specific to avoid wildfire, as 18 opposed to condition seven during operation? 19 I just -- we never see the guts of these 20 plans, so it's hard to know what they include and what 21 they don't include. 22 It's -- it's general enough that I think it 23 would fall under that condition, but I just want to make 24 sure if the federal government is saying thou shalt not 25 operate on forest land, that these certificates would</p>

<p style="text-align: right;">Page 311</p> <p>1 kind of align with that.</p> <p>2 And again, just during construction, because</p> <p>3 we know vehicles coming and going and parking on dry</p> <p>4 grass, not a good thing.</p> <p>5 MS. ESTERSON: So we will be covering an</p> <p>6 issue tomorrow that's -- it's called LU-9 that's</p> <p>7 specific to the question of red flag warning.</p> <p>8 But the fire suppression plan that would be</p> <p>9 finalized prior to construction under public services</p> <p>10 condition six does have specifics. And it's the</p> <p>11 specifics are about worker training, restrictions, areas</p> <p>12 where vehicles can park, the type of fire response and</p> <p>13 fire prevention equipment that has to be on-site during</p> <p>14 construction.</p> <p>15 MR. RATCLIFFE: So I believe we had a</p> <p>16 suggestion from Councilmember Condon on the table to</p> <p>17 specifically -- to make it explicit that approval is</p> <p>18 required as part of this condition.</p> <p>19 VICE CHAIR HOWE: Do we need a straw poll on</p> <p>20 that or just head nods and then Secretary Cornett does</p> <p>21 the straw poll on public service standards four and six?</p> <p>22 SECRETARY CORNETT: For the record, Todd</p> <p>23 Cornett.</p> <p>24 That was going to be my exact same question,</p> <p>25 which is, do you want to do a single straw poll or PS-4</p>	<p style="text-align: right;">Page 313</p> <p>1 and generate the language. I think the direction is, in</p> <p>2 this case, very clear from Council. Or at least I feel</p> <p>3 very clear on it.</p> <p>4 COUNCILMEMBER JENKINS: Used to say -- this</p> <p>5 is Hanley. It looks like it used to say "submit for</p> <p>6 review and approval by the Department in consultation</p> <p>7 with the county planning departments."</p> <p>8 Looks like it was there.</p> <p>9 Are you suggesting that it be added back in?</p> <p>10 VICE CHAIR HOWE: Yeah. I think staff --</p> <p>11 SECRETARY CORNETT: Yeah. And I'm ready to</p> <p>12 articulate the straw poll, if you're ready.</p> <p>13 VICE CHAIR HOWE: We're ready.</p> <p>14 So this would be for issue PS-4: Agree with</p> <p>15 findings of fact, conclusions of law, and conditions of</p> <p>16 approval in the proposed contested case order pertaining</p> <p>17 to PS-4 with the following modification.</p> <p>18 Change condition six to require approval</p> <p>19 for -- require review and Department and approval.</p> <p>20 COUNCILMEMBER JENKINS: Thank you. Good.</p> <p>21 SECRETARY CORNETT: Is that clear?</p> <p>22 COUNCILMEMBER JENKINS: That captures it.</p> <p>23 SECRETARY CORNETT: Okay. Cindy Condon.</p> <p>24 COUNCILMEMBER CONDON: Yes.</p> <p>25 SECRETARY CORNETT: Jordan Truitt.</p>
<p style="text-align: right;">Page 312</p> <p>1 or do you want to wait or just do it all combined at the</p> <p>2 end of PS-6? Standard PS-4 and PS-6.</p> <p>3 And I have the language, so I can include it</p> <p>4 either now or later on, just depends on Council</p> <p>5 preference.</p> <p>6 COUNCILMEMBER JENKINS: I'd like to do these</p> <p>7 piecemeal. This is Hanley.</p> <p>8 Do you have a suggestion, either of you --</p> <p>9 Cindy or Todd -- have a suggestion as to where to add</p> <p>10 the approval language? Is it in six?</p> <p>11 SECRETARY CORNETT: It would be condition</p> <p>12 six.</p> <p>13 COUNCILMEMBER JENKINS: Yeah.</p> <p>14 COUNCILMEMBER CONDON: This is Councilmember</p> <p>15 Condon. I'd defer to Todd.</p> <p>16 Mine was questioned first, so if approval --</p> <p>17 if there's not an approval process, what I'm -- what I'm</p> <p>18 concerned about is that as I read this, there's a</p> <p>19 submission of a plan. And that checks a box without any</p> <p>20 reviewer approval. And I know that's not what's</p> <p>21 intended. So whatever wording would be best.</p> <p>22 SECRETARY CORNETT: Yeah. For the record,</p> <p>23 Todd Cornett.</p> <p>24 Again, on this one, I don't have anything</p> <p>25 specific to say right now. We can articulate the intent</p>	<p style="text-align: right;">Page 314</p> <p>1 COUNCILMEMBER TRUITT: Yes.</p> <p>2 SECRETARY CORNETT: Ann Beier.</p> <p>3 COUNCILMEMBER BEIER: Yes.</p> <p>4 SECRETARY CORNETT: Hanley Jenkins.</p> <p>5 COUNCILMEMBER JENKINS: Yes.</p> <p>6 SECRETARY CORNETT: Perry Chocktoot.</p> <p>7 COUNCILMEMBER CHOCKTOOT: Yes.</p> <p>8 SECRETARY CORNETT: Kent Howe.</p> <p>9 VICE CHAIR HOWE: Yes.</p> <p>10 SECRETARY CORNETT: Okay. Thank you,</p> <p>11 Council.</p> <p>12 MR. RATCLIFFE: Okay. So, again, the public</p> <p>13 services standard is composed of a number of different</p> <p>14 public services that are being looked at as Kellen</p> <p>15 described for us.</p> <p>16 So our next exception issue from the</p> <p>17 proposed contested case order is from Mr. Horst. It's</p> <p>18 issue PS-6, and this is a traffic safety issue.</p> <p>19 Whether the applicant adequately evaluated</p> <p>20 the potential traffic impacts and modifications needed</p> <p>21 on Hawthorne Drive and Modelaire Drive. It's in</p> <p>22 parentheses, "Hawthorne Loop."</p> <p>23 The hearing officer addressed this in her</p> <p>24 opinion. She found that Hawthorne Loop roads are paved</p> <p>25 and maintained by the City of La Grande. These roads</p>

<p style="text-align: right;">Page 315</p> <p>1 are not proposed by Idaho Power in the application for 2 site certificate to be modified and are, therefore, 3 outside the site boundary.</p> <p>4 She also noted rebuttal testimony that had 5 been provided by Idaho Power's expert witness, which 6 stated that substantial modifications may be necessary 7 on privately owned portions of Hawthorne Drive, but that 8 it is unlikely.</p> <p>9 Idaho Power's expert witness had reviewed 10 aerial imagery and testified that the private access 11 portion of the road is generally 15 to 23 feet wide with 12 dirt and gravel surfacing, with horizontal curves 13 ranging from 60 to 75 feet radii. Idaho Power 14 generally needs 14-foot-wide road surface and 16- to 15 20-foot-wide turn radius, therefore substantial 16 modifications are not anticipated.</p> <p>17 Actions identified for the private portion 18 of the road include blading to maintain the surface and 19 water for dust control but no widening or slope 20 reinforcement is anticipated.</p> <p>21 Idaho Power indicates that a helicopter 22 would likely be used to airlift materials and equipment 23 to avoid tight-turning conditions.</p> <p>24 So the hearing officer went on to find that 25 the Council doesn't have authority to address limited</p>	<p style="text-align: right;">Page 317</p> <p>1 hazard where Idaho Power's expert witness had noted that 2 where substantial road modifications are necessary in an 3 area of geologic hazard, Idaho Power would complete 4 engineering and consult with a licensed civil engineer 5 to ensure the design of the modification accounts for 6 the potential geologic hazards and protects public 7 health and safety.</p> <p>8 Along those lines, Idaho Power proposed a 9 condition in response to the issue, which the hearing 10 officer recommended be included in the final order. She 11 included it in her proposed contested case order. The 12 new condition states that prior to construction or road 13 modification in any area designated as a geologic hazard 14 by Oregon Department of Geology and Mineral Industries, 15 data and maps, for example, as landslide or debris flow 16 fan or by relevant local zoning ordinance and maps.</p> <p>17 The site certificate holder and/or its 18 construction contractors will consult with a licensed 19 civil engineer to assess the proposed construction or 20 road design in relation to potential geologic hazards. 21 So again, that was the new condition language proposed 22 by Idaho Power adopted by the hearing officer in the 23 proposed contested case order.</p> <p>24 So that is my summary of where the proposed 25 contested case order stands on this issue.</p>
<p style="text-align: right;">Page 316</p> <p>1 parties' claims that these roads require substantial 2 modifications for safety or are inadequate for 3 construction vehicle use because of geologic hazards.</p> <p>4 What the hearing officer cited to in support 5 of this is a prior decision of the Council from the 6 Wheatridge case, which at that time the Council decided 7 if a related or supporting facility -- and a road would, 8 you know, fall into that, if -- if it was included. If 9 a related or supporting facility is not proposed by the 10 applicant and the application for site certificate, it 11 cannot be reviewed or required to be reviewed by the 12 Council.</p> <p>13 So the hearing officer also looked at 14 traffic control measures that Idaho Power had proposed, 15 including pilot vehicles, traffic control flaggers, 16 warning lights, signs and barriers, all of these things 17 are going to be addressed under the traffic plan which 18 is a component of public services condition number two.</p> <p>19 These measures will be vetted as part of the 20 finalization of that plan not only by the Department, 21 but also in consultation with Union County and the City 22 of La Grande as applicable, depending on which roads are 23 in which jurisdiction.</p> <p>24 And we have just a couple of more parts of 25 this. The -- one of them is dealing with geologic</p>	<p style="text-align: right;">Page 318</p> <p>1 And with that, it's time for Mr. Horst's 2 oral argument.</p> <p>3 MR. HORST: Start the clock on me. I just 4 want to say one thing real quick is that we get -- you 5 know, sit around and say, hey, we've got nothing better 6 to do than give Idaho Power a bunch of problems.</p> <p>7 You know, I run an auto repair business. 8 We're a hundred dollars an hour. I've spent hundreds of 9 hours on this. So I take this very seriously. So with 10 that said, I'm -- I'm basically ready any time.</p> <p>11 So the -- I want to start off by what Jesse 12 had just said there. He said a lot of things, which 13 means there was a lot of issues.</p> <p>14 On this particular contested case, there was 15 13 safety issues I have with Hawthorne Drive. I didn't 16 have right -- I have four contested cases. I had to 17 kind of pick and choose. I did not have time to write 18 exceptions for all four cases, so I picked the two more 19 important ones and replied to those.</p> <p>20 Our primary goal was to get Mill Creek -- 21 the Mill Creek route completely off the application 22 altogether. There's absolutely too many issues. It's a 23 very steep hill. The lower part has no sidewalks. They 24 should not -- this shouldn't have even been on the plan 25 to begin with.</p>

<p style="text-align: right;">Page 319</p> <p>1 In several letters from Idaho Power to the 2 City of La Grande, the City of La Grande specifically 3 said the La Grande City Council strongly requests IPC 4 remove the proposed routes from their application of the 5 two routes identified in the application, the applicant 6 selected the one that is most impactful to the City of 7 La Grande as their proposed route. 8 They cited the existing geological fault, 9 the steepness with and condition of the city streets 10 that would need to be used to access this route. 11 They -- there was -- there's a couple of 12 misinterpretations. 13 The -- the dirt paved steep portion of the 14 road has some sharp corners that are completely blind. 15 You can make one vehicle can get around it, but if you 16 meet another one coming around any of those three big 17 corners, it's not wide enough for two cars. 18 So you can't -- you can't stop on a downhill 19 gravel road quickly. So those are some serious issues. 20 The City of La Grande also requested and 21 required traffic and safety plan by Idaho Power prior to 22 using this route. The judge said in her findings, Idaho 23 Power's traffic plan required by recommended public 24 services condition two adequately addresses traffic 25 safety concerns. Idaho Power has not submitted a safety</p>	<p style="text-align: right;">Page 321</p> <p>1 area. 2 So again, I -- I highly recommend or request 3 that the Council remove this route completely. 4 There's -- all the other routes are better. This does 5 not need to be there. 6 Thank you for your time. 7 VICE CHAIR HOWE: Thank you, Mr. Horst. 8 Are there any questions from Council? 9 MR. HORST: All right. Thank you. 10 VICE CHAIR HOWE: Thank you. 11 MS. RACKNER: Good morning, again. Lisa 12 Rackner, for the record. 13 The purposed access road of Hawthorne 14 Drive/Modelaire Drive those make -- the paved portions 15 make up Hawthorne Loop. And the unpaved portion of 16 Hawthorne Drive have been the subject of some 17 controversy in this case. 18 In its application, the company did include 19 the unpaved portion of Hawthorne Drive within the site 20 boundary because we conservatively estimated that there 21 may need to be some substantial modifications, but 22 concluded that no modifications would be required for 23 the paved portion. 24 And it is explained by -- in the testimony 25 of the company's expert, Luke Grebe, for the</p>
<p style="text-align: right;">Page 320</p> <p>1 plan for this area at this point in time. 2 On March 24th, 2020, Mark Stokes of Idaho 3 Power wrote a letter to several of us on the Mill Creek 4 route, specifically, said the following: 5 "Over the past two years, the community has 6 shown the preference the Morgan Lake route alternative. 7 That's why we're pursuing it instead of the Mill Creek 8 route. Since your property is near the Mill Creek 9 route, you no longer have to take any further action." 10 I've had three other interactions with Idaho 11 Power and they have told me that every single time; yet, 12 here we still are. 13 I'm asking the Council to -- not just to -- 14 to just remove this route completely. It should not be 15 there. There's too many issues. We've been told that 16 they're not going to use it. And several of the -- 17 several of the other contested case people dropped their 18 cases just for this reason. 19 If no other reason, do it for the safety of 20 the children that have to walk down a very steep 21 Modelaire and Hawthorne Drive with absolutely no 22 sidewalks anywhere in the entire housing project and 23 there's only one way in and out of this housing project 24 with no sidewalks. And then they have to walk across a 25 busy street to get to the first sidewalks in the whole</p>	<p style="text-align: right;">Page 322</p> <p>1 application. The company did perform a desktop review 2 of access roads knowing that it would need to finalize 3 transportation -- excuse me, traffic management plans 4 after final route selection. 5 However, in response to concerns raised 6 during the contested case, Mr. Grebe did go back out to 7 Hawthorne Loop and confirmed his conclusion that no 8 substantial modifications would be required there. With 9 respect to Hawthorne Drive, he didn't have access to 10 that portion of the road and did look at aerial -- 11 aerial photographs of the area. 12 Again, that secondary review that Mr. Grebe 13 performed confirmed his view that no substantial 14 modifications would actually be required on either the 15 paved or the unpaved portions of Hawthorne Drive and 16 Hawthorne Loop. 17 He did detail in his testimony the safety 18 measures that the company would adopt to ensure safe 19 passage for vehicles and pedestrians and animals, those 20 include coordinating with nearby property owners, 21 implementing one-way traffic, using flaggers and pilot 22 spotter vehicles, and placing substantial barriers for 23 pedestrians. 24 Regardless, and probably most importantly, 25 as the hearing officer pointed out in her order, this</p>

<p style="text-align: right;">Page 323</p> <p>1 recommended site conditions will ensure that the 2 company's final access, control and traffic safety plans 3 will not -- will not only need to meet ODOE's approval 4 but will also need to meet the approval of all of the 5 state, local, and county jurisdictions, including Union 6 County and the City of La Grande. 7 In his exceptions, Mr. Horst is arguing that 8 the company -- that the hearing officer failed to 9 consider the City of La Grande's opposition to the Mill 10 Creek route. 11 That's not correct. The hearing officer did 12 consider that opposition. However, she correctly found 13 that the arguments relying on that opposition fell 14 outside the scope of issue PS-6, which was specific to 15 the evaluation that Idaho Power performed for Hawthorne 16 Drive and Modelaire Drive. 17 Furthermore, the hearing officer correctly 18 noted that Idaho Power's route selection was outside the 19 Council's jurisdiction; therefore, it couldn't consider 20 the appropriateness of including the Mill Creek route in 21 the application. 22 Looks like I'm up. But I am available for 23 questions. 24 VICE CHAIR HOWE: Thank you, Ms. Rackner. 25 Any questions from Council?</p>	<p style="text-align: right;">Page 325</p> <p>1 two conditions address traffic safety risks and it's 2 comfortable with those conditions and recommends Council 3 adopt them in the final order. 4 VICE CHAIR HOWE: Thank you, Counsel Rowe. 5 Any questions from Council? Okay. 6 Oh, Councillor Condon. 7 COUNCILMEMBER CONDON: Thank you. 8 Councilmember Condon here. 9 Just so I'm clear on recommended condition 10 two certainly calls for review by the County. This kind 11 of goes back to my previous. 12 So the -- all jurisdictions have to approve. 13 I don't -- again, I don't see approval in here. I know 14 it says "consult," but is there an active approval? 15 After review -- 16 MS. ESTERSON: Are you looking at the 17 condition language in the proposed order? 18 COUNCILMEMBER CONDON: Yes. 19 MS. ESTERSON: Okay. So -- so it has -- the 20 plan has the formal agency review process in it, which 21 there -- that process is the same for all these 22 mitigation plans where we would coordinate within a 23 specific time frame comments and review. 24 And again, if there's a dispute in that -- 25 whatever participating reviewing agency is, they can</p>
<p style="text-align: right;">Page 324</p> <p>1 Okay. Thank you. 2 MR. ROWE: Patrick Rowe, Department of 3 Justice on behalf of the Department of Energy. The 4 Department suggests that Council rely on 5 public service -- the recommended public services 6 condition two. 7 As Ms. Rackner noted, under that condition 8 there is a formal reviewing agency process that would 9 require all local and state agencies to review the draft 10 traffic safety plan. 11 So if you haven't already, if you had -- if 12 you're not happy with that, the Department is 13 comfortable with it. But if Council are not happy with 14 the way that condition is written, now would be the 15 opportunity to give the Department instruction on that. 16 Also, Idaho Power, during the course of the 17 contested case, recommended a new public services 18 condition that addresses properties within geologic 19 hazard zones. Under that condition, which Idaho Power 20 proposed and the hearing officer included in the 21 proposed contested case order, Idaho Power would be 22 required to consult with a licensed civil engineer to 23 assess proposed construction or road design in relation 24 to potential geologic hazards in that area. 25 So it's the Department's position that those</p>	<p style="text-align: right;">Page 326</p> <p>1 bring it to Council to get through that. And then the 2 condition does say they have to have measures as 3 approved by the Department. 4 If you look under sub (a). 5 COUNCILMEMBER CONDON: So this is 6 Councilmember Condon -- 7 MS. ESTERSON: And sub (c) as well, the 8 final transportation and traffic plan must be approved 9 by the Department in consultation with each county or 10 jurisdiction prior to construction. 11 COUNCILMEMBER CONDON: Okay. Thank you. 12 And I see the Department approval. It's 13 just the other jurisdictions. 14 Is it an active approval process that -- I 15 mean, I guess -- 16 MS. ESTERSON: I think that we would have to 17 demonstrate that we have consulted with these entities 18 in order to approve and that their feedback has been 19 incorporated as appropriate. 20 COUNCILMEMBER CONDON: Okay. Sorry. Just 21 one more level. 22 So yesterday we talked about an issue that 23 silence meant approval. 24 And so -- I mean, it's a completely 25 different issue. But is it the same process here?</p>

<p style="text-align: right;">Page 327</p> <p>1 MS. ESTERSON: I mean, we -- we wouldn't be</p> <p>2 able to force the local governments and state agencies</p> <p>3 to participate and comment. But we are doing everything</p> <p>4 we can to make sure that they have the resources to</p> <p>5 participate in this reviewing agency process.</p> <p>6 So if they don't comment at all and then</p> <p>7 they don't work with us to make sure that if they need</p> <p>8 resources that they have those in place -- I mean, it's</p> <p>9 possible that they don't comment and yes, we move</p> <p>10 forward. But we would be obligated to show that we</p> <p>11 tried.</p> <p>12 COUNCILMEMBER CONDON: Thank you.</p> <p>13 MS. TARDAEWETHER: For the record, Kellen</p> <p>14 Tardaewether.</p> <p>15 Up on the screen here, we've -- it's in</p> <p>16 redline, and the Department has added this agency review</p> <p>17 process in the beginning of several of the plans that</p> <p>18 are attached to the proposed order.</p> <p>19 For instance, on the fire management plan</p> <p>20 that we just talked about, this is what -- this is that</p> <p>21 agency review process that the condition was talking</p> <p>22 about.</p> <p>23 So I can slowly just scroll through this.</p> <p>24 But we've added this to several plans which is kind</p> <p>25 of -- rather than just saying approve in coordination or</p>	<p style="text-align: right;">Page 329</p> <p>1 we've done. This is built into all of the substantive</p> <p>2 mitigation plans. They are all substantive.</p> <p>3 COUNCILMEMBER CONDON: Councilmember Condon</p> <p>4 here. What is -- where is this document?</p> <p>5 (Off-record discussion.)</p> <p>6 MS. ESTERSON: So this is attachment --</p> <p>7 attachment U-2 of the proposed order. Okay. So -- so</p> <p>8 what do you have -- do you have the proposed order or --</p> <p>9 COUNCILMEMBER CONDON: Not with attachments.</p> <p>10 Sorry.</p> <p>11 MS. ESTERSON: Okay.</p> <p>12 COUNCILMEMBER CONDON: Sorry. But just for</p> <p>13 future reference, I just wanted to know where it came</p> <p>14 from. It's not in any of our materials here.</p> <p>15 MS. ESTERSON: Right. Right. So all of the</p> <p>16 conditions that have this process in it are part of a</p> <p>17 plan that's attached to the proposed order and then you</p> <p>18 can find it by reference to the attachment.</p> <p>19 COUNCILMEMBER CONDON: Thank you.</p> <p>20 VICE CHAIR HOWE: Okay. So we've gone</p> <p>21 through public service standard six.</p> <p>22 Counsel Ratcliffe, do we need to --</p> <p>23 MR. RATCLIFFE: Yeah. So where we're at</p> <p>24 then is -- because we have the larger public services</p> <p>25 standard and how the proposed order treated that, we</p>
<p style="text-align: right;">Page 328</p> <p>1 consultation with such and such agency, this is really</p> <p>2 kind of a prescriptive prior to finalization the</p> <p>3 certificate holder is going to reach out. We're all</p> <p>4 going to get together. We're going to talk about it.</p> <p>5 We're going to do meetings. So I'll just scroll through</p> <p>6 this. But this is that -- this is what those conditions</p> <p>7 are referencing.</p> <p>8 And it's in redline because we added it on</p> <p>9 in the front of the plan, of several plans.</p> <p>10 VICE CHAIR HOWE: Yes, Councillor Beier.</p> <p>11 COUNCILMEMBER BEIER: For the record, this</p> <p>12 is Councillor Beier. If we can be consistent in our</p> <p>13 application of this to any plans that require outside</p> <p>14 consultation, so whether it's traffic safety or fire</p> <p>15 suppression or noxious weed control, that we're pretty</p> <p>16 consistent in the direction we're giving to the</p> <p>17 consulting agencies, that gives the Council and the</p> <p>18 public some certainty that the same process will be</p> <p>19 followed.</p> <p>20 I don't mean to make extra work for you, but</p> <p>21 it might actually make things easier in the long-term if</p> <p>22 we have that consistent language. And I don't know,</p> <p>23 legally, how we insert that review, but smarter people</p> <p>24 than I can figure that out.</p> <p>25 MS. ESTERSON: And that is exactly what</p>	<p style="text-align: right;">Page 330</p> <p>1 haven't taken a straw poll on that yet because we had</p> <p>2 this other issue to get to first under the umbrella of</p> <p>3 the public services standard. So the next step is any</p> <p>4 deliberation beyond what we've already had on this</p> <p>5 particular contested case issue, and then a straw poll</p> <p>6 on that issue and then, whether combined or separate, a</p> <p>7 poll on the umbrella publish services issue as dealt</p> <p>8 with in the proposed order.</p> <p>9 VICE CHAIR HOWE: Okay. So from Council,</p> <p>10 are there any additional comments, questions on public</p> <p>11 service standard six?</p> <p>12 Looks like we're comfortable where we're at.</p> <p>13 So we're ready to do --</p> <p>14 SECRETARY CORNETT: Okay. So for the</p> <p>15 record, Todd Cornett.</p> <p>16 I have a combined straw poll for the public</p> <p>17 services standard in issue PS-6.</p> <p>18 MR. RATCLIFFE: Okay.</p> <p>19 SECRETARY CORNETT: So this would be agree</p> <p>20 with the findings of fact, conclusions of law and</p> <p>21 conditions of approval in the proposed order pertaining</p> <p>22 to the public services standard that are not related to</p> <p>23 issues in the contested and in the proposed contested</p> <p>24 case order pertaining to PS-6.</p> <p>25 Okay. Perry Chocktoot.</p>

<p style="text-align: right;">Page 331</p> <p>1 COUNCILMEMBER CHOCKTOOT: Yes. 2 SECRETARY CORNETT: Hanley Jenkins. 3 COUNCILMEMBER JENKINS: Yes. 4 SECRETARY CORNETT: Kent Howe. 5 VICE CHAIR HOWE: Yes. 6 SECRETARY CORNETT: Cindy Condon. 7 COUNCILMEMBER CONDON: Yes. 8 SECRETARY CORNETT: Ann Beier. 9 COUNCILMEMBER BEIER: Yes. 10 SECRETARY CORNETT: Jordan Truitt. 11 COUNCILMEMBER TRUITT: Yes. 12 SECRETARY CORNETT: Thank you, 13 Councilmembers. 14 VICE CHAIR HOWE: And so now we need to roll 15 back to the propped order. No? We're done. Okay. 16 Okay. So the next category is historic 17 cultural archeological resource standard issues seven 18 and three. 19 Ms. Tardaewether. 20 MS. TARDAEWETHER: Testing. Thank you. 21 For the record, Kellen Tardaewether. The 22 Council's historic, cultural, and archeological 23 resources standard, I'm going to try -- I'm going to try 24 to go quick, but this -- it gets -- it gets pretty 25 complicated. This is a really big section in the</p>	<p style="text-align: right;">Page 333</p> <p>1 an older barn that meets the criteria. These are to 2 give Council an idea of some of the resources that would 3 get captured and protected underneath the sub (a). 4 Now, then there's some of those resources 5 that maybe they don't. Maybe once the evaluation is 6 done under (a), it actually doesn't meet the criteria. 7 It -- actually, it's not listed on the NRHP and it's not 8 likely to be listed on NRHP because it doesn't meet all 9 of those criteria. So it filters through into one of 10 the bottom buckets. So that's the (b) and (c) of the 11 standard. 12 And really, the difference there is we're 13 looking at resources. It's either archaeological sites 14 and objects on privately owned land and then we're just 15 looking at archaeological sites on public land. So 16 those are kind of out of (a). 17 We then go down to those two other buckets 18 for more potential protection for resources underneath 19 this Council standard. 20 I'm just going to take a minute, Council 21 does -- we've been talking about some definitions in 22 Council's rules. 23 Council does have a definition for 24 mitigation, which I think that would just be interesting 25 to keep in the back of our minds for some of the</p>
<p style="text-align: right;">Page 332</p> <p>1 proposed order. And so I'm just going to really try to 2 set Council up to understand what's in the proposed 3 order and for, you know, some background and just kind 4 of acclimating for the -- for the contested case issues. 5 Council has its historic, cultural, and 6 archaeological resources standard. I like to think 7 about this standard as it has buckets with filters in 8 them. 9 And so the question is, is that the Council 10 must find that the construction operation -- taking into 11 account mitigation -- are not likely to result in 12 significant adverse impacts and then we have our 13 buckets. 14 The first bucket, our resources, and we call 15 them sub (a) resources, these are resources that are 16 likely -- that are either listed or likely to be listed 17 and on the NRHP, which is the National Register of 18 Historic Places. 19 So what are those resources? 20 And I'm just going to give you real, like, 21 high-level specific to this project but an idea what 22 those resources are, are the resources that are of 23 historic or cultural importance to tribes. 24 Oregon Trail Resources. Other historic 25 aboveground resources, for example, a covered bridge or</p>	<p style="text-align: right;">Page 334</p> <p>1 conversations. 2 And this is from OAR 345.001.0010(33). 3 Mitigation means one or more of the 4 following in order of priority: Avoidance, 5 minimization -- minimization, partial or complete 6 restoration of affected resource, preservation and 7 maintenance, partial or complete compensation for 8 replacement or comparable substitute for the resource or 9 implementing other measures as approved by Council. 10 And I can pull that up in our rules. I know 11 it's hard to memorize all of that. 12 And just as a note, as far as the, you know, 13 A, B, and C, this proposed facility does cross public 14 and private lands, lands that are owned by the federal 15 government. And the lead agency for the federal review 16 is the Bureau of Land Management. It also crosses some 17 portions of state-owned lands and then it, of course, 18 also crosses private property. So all of these are -- 19 underneath the Council standard are triggered. 20 So that's kind of the background of the 21 standard for Council. 22 Now, there was an incredible amount of work 23 that was done to review this project. As we understand, 24 this project does have a federal nexus because there -- 25 and it is subject to a NEPA review. It's also subject</p>

<p style="text-align: right;">Page 335</p> <p>1 to the Section 106 process, which is the federal --</p> <p>2 federal government's process of consultation with tribes</p> <p>3 about impacts to cultural resources.</p> <p>4 So, functionally, all of the work that is</p> <p>5 going to be done and needs to be done for Council is</p> <p>6 also going to be done and needs to be done as part of</p> <p>7 the Section 106 process.</p> <p>8 SHPO, Oregon SHPO really relies on a lead</p> <p>9 federal agency for the -- for their recommendations of</p> <p>10 eligible resources. SHPO -- so that is that if there is</p> <p>11 a clear federal nexus, SHPO really is going to rely on</p> <p>12 working with and through that Section 106 process.</p> <p>13 So that said, really where -- for other</p> <p>14 Council projects, we expect the amount of work to be</p> <p>15 done underneath this standard to be done very early.</p> <p>16 And in the review of the application, we were well</p> <p>17 underway and really kind of reviewing a lot of these</p> <p>18 site forms, which are kind of the very detailed data</p> <p>19 form for each one of these hundreds and hundreds of</p> <p>20 resources.</p> <p>21 Then what the proposed order discusses --</p> <p>22 and it discusses it in had the front end and it</p> <p>23 discusses it at length under this cultural end, is under</p> <p>24 469.370.13. This is one of Council's statutes. It</p> <p>25 talks about if there is this federal nexus and if there</p>	<p style="text-align: right;">Page 337</p> <p>1 your tables in the proposed order, what we did and what</p> <p>2 is -- is appropriate underneath Council's standard is</p> <p>3 that we -- because we are, essentially, pinning the</p> <p>4 outcome of the final eligibility to the Section 106, we</p> <p>5 assumed resources to be eligible. So we assumed that</p> <p>6 they would be.</p> <p>7 Now, resources that were still kind of under</p> <p>8 review, they are labeled as unevaluated, which isn't a</p> <p>9 great label but it's what -- it's what SHPO came up</p> <p>10 with.</p> <p>11 But that "unevaluated" is basically treating</p> <p>12 them as eligible as such they are either avoiding</p> <p>13 impacts or impacts would be mitigated.</p> <p>14 So that's how that proposed -- the proposed</p> <p>15 order proposes these resources. They say "likely</p> <p>16 eligible." They were agreed to be likely eligible.</p> <p>17 If we didn't get to that agreement, we</p> <p>18 assume that they are likely eligible with that</p> <p>19 unevaluated. And then go to the mitigation and all of</p> <p>20 this is going to be finalized at the outcome of the</p> <p>21 Section 106, which is very likely -- which is very</p> <p>22 likely that the BLM is probably not going to find all of</p> <p>23 those resources likely eligible.</p> <p>24 So if they end up being, okay, no, these are</p> <p>25 not likely eligible, then they shake out into that B and</p>
<p style="text-align: right;">Page 336</p> <p>1 is a review and permitting done by a federal entity, to</p> <p>2 the extent practicable, to the maximum extent, Council</p> <p>3 should really align its process with the federal</p> <p>4 entity's process.</p> <p>5 And that's an effort to duplicate -- to not</p> <p>6 have duplicative efforts, to use the same types of</p> <p>7 reporting.</p> <p>8 So what the proposed order talks about is</p> <p>9 basically aligning Council's review with the outcome of</p> <p>10 the Section 106 which is just -- which is a longer</p> <p>11 process. It has been ongoing, and it's ongoing right</p> <p>12 now. Which the result is going to be with the lead</p> <p>13 federal agency making eligibility determinations for all</p> <p>14 of these resources which then get sent out to Oregon and</p> <p>15 Idaho SHPOs -- the State Historic Preservation Office --</p> <p>16 for those SHPO offices to review all of that information</p> <p>17 and concur or disagree with those eligibility</p> <p>18 determinations. And then that final -- upon that final</p> <p>19 and then in consultation with tribes, they discuss and</p> <p>20 agree on appropriate mitigation.</p> <p>21 So that said, that is -- that is what --</p> <p>22 that is the structure of your proposed order. That's</p> <p>23 the structure of the conditions that talk about these</p> <p>24 resources.</p> <p>25 Now, to get there, if you're looking through</p>	<p style="text-align: right;">Page 338</p> <p>1 C Council standard still. It is not like they just --</p> <p>2 they just go away and we don't look at them any more.</p> <p>3 Then they shake out and then we look at them in that B</p> <p>4 and C.</p> <p>5 I hope that makes sentence. You are looking</p> <p>6 at me and nodding your head. So I'm going to take that</p> <p>7 and run with it.</p> <p>8 Okay. So that is just kind of background.</p> <p>9 If you're looking to that section that's what it looks</p> <p>10 like.</p> <p>11 So this is a hard table to read, but the</p> <p>12 takeaway here is that there were several analyses</p> <p>13 conducted for the cultural resources.</p> <p>14 The area of direct effects is basically the</p> <p>15 site boundary, if a resource is directly impacted it</p> <p>16 means we are in the construction footprint. And then</p> <p>17 there is the APE which is the area of potential effects.</p> <p>18 And then there's the area -- the visual assessment area,</p> <p>19 which went out five miles for cultural resources.</p> <p>20 Okay. So now, in this -- this section is</p> <p>21 long and there's lots of tables. Now, the tables in</p> <p>22 your proposed order do have a lot of information. It</p> <p>23 has your resource ID number. It gives you a general</p> <p>24 description of the resource.</p> <p>25 And then it kind of talk -- and then they</p>

<p style="text-align: right;">Page 339</p> <p>1 also include -- it's like a bundling of information. 2 They also include potential avoidance or mitigation 3 measures in these tables. 4 So here there are two tables. I'm going to 5 not talk a lot about Oregon and national historic trails 6 because I'll let Jesse cover that. 7 But so we have a couple tables with those -- 8 with those trails. We do have cultural and historic 9 condition one where there are not going to be -- which 10 is an avoidance of direct impacts to the Oregon Trail. 11 What does that mean? 12 It means there is not going to be a tower or 13 construction road constructed over the Oregon Trail. 14 But an indirect impact to the Oregon Trail would be, 15 say, if the transmission line is adjacent to or spanning 16 over it, that is an indirect impact to the Oregon Trail. 17 So that's -- there is that one condition. 18 For better or for worse, we identified these 19 as tribal resources. In archeological reports, some of 20 these resources are also called pre-contact resources. 21 They have different designations under tribal resources. 22 There's Historic Properties of Religious and Cultural 23 Significance to Indian Tribes or "HPRCSIT." We love 24 acronyms. 25 So the applicant worked closely with the</p>	<p style="text-align: right;">Page 341</p> <p>1 eligible historic properties of religious and cultural 2 significance identified by CTUIR." 3 So that -- that is that portion. 4 I know. There's a lot here and I'm flying 5 through. 6 So now -- those were -- we have -- under A 7 we have Oregon Trail. We have resources important and 8 identified to the tribes that could be potentially 9 eligible or eligible. And then we have all of these 10 other resources, which a lot of them are aboveground 11 resources. These examples here I click -- it is hard to 12 see this. 13 But it says "a railroad segment, a 14 homestead, a ranching, and historic archeological 15 sites." 16 So these are some of the examples of the 17 other items that would fall out in the protected under 18 A. 19 And then in this second column from the 20 left, it says "applicable EFSC standard," and this says 21 A or B. Right? 22 So if, ultimately, in Section 106, if this 23 doesn't get wrapped up in A as "likely eligible," then 24 it would be looked at under B of Council's standard. 25 And then we have potential impacts and management</p>
<p style="text-align: right;">Page 340</p> <p>1 Confederated Tribes of the Umatilla Indian Reservation, 2 "CTUIR," who is also the reviewing agency for Council. 3 The Department worked really closely with CTUIR as well. 4 The Warm Springs and Burns Paiute are also 5 reviewing agencies for Council. And we did work with 6 them. But they relied more on CTUIR's involvement as 7 maybe the more impacted tribe. 8 So there is the section in the proposed 9 order where we discuss this. 10 And -- it's a longtime going and a lot. 11 But, ultimately, what the representatives for the tribal 12 government provided -- in fact, I think it was tribal 13 counsel, was a letter confirming that they had been 14 working with the applicant on identifying resources, 15 evaluating resources, evaluating impacts, and agreeing 16 on mitigation. And so I'm going to read a quote from 17 the proposed order from that letter. 18 And it says, "The CTUIR is pleased to inform 19 ODOE and federal agencies that the CTUIR's concerns have 20 been addressed and will be mitigated by Idaho Power 21 pursuant to a confidential mitigation agreement between 22 the CTUIR and Idaho Power. Therefore, the construction 23 and operation of the proposed B2H project, taking into 24 account mitigation, are not likely to result in 25 significant adverse impacts to eligible or likely</p>	<p style="text-align: right;">Page 342</p> <p>1 comments in that final column. 2 And, again, I know that is hard to read, but 3 this is Table HCA-7 in your proposed order. And then 4 so -- then there's the resources that we evaluated that 5 may be -- currently, with current information be 6 evaluated under B and C of the Council standard. 7 One minute here. So -- so I mentioned 8 cultural historic resources condition one. I have HCA 9 or historic cultural and archeological 10 resources condition two. This condition is very 11 important. Jesse is going to talk about it. 12 But there are aspects of this condition that 13 weren't brought up in the contested case. But this is 14 the condition that requires the HPMP, the Historic 15 Properties Management Plan. 16 And what the Department did is we plucked 17 out all of those tables that we generated from that 18 proposed order, and we've added those to that HPMP and 19 we've added other tables from that proposed order 20 section into that HPMP and we also have made revisions. 21 This is the Council-specific HPMP that's 22 going to have to be finalized and trued up based on the 23 outcome of that Section 106 and submitted. 24 Part of that HPMP is -- it addresses 25 monitoring during construction. And they have a</p>

complete cultural and archeological resources monitoring team that they will work with the tribes on -- representation or requests from tribes for that. Part of that HPMP is also in the inadvertent discovery plan or the IDP which covers inadvertent fines when they -- when construction is underway.

And I will stop there. And that was a lot.

MR. RATCLIFFE: We have a couple of issues under this standard. The first one is going to be HCA-7. The party is Williams and the issue is whether the applicant adequately evaluated a particular archeological resource site 6B2H-MC-10 on Mr. Williams' property.

And the proposed contested case order opinion on this started off with an issue that we've been hearing a fair bit about, you know, across standards. She found that the Historic, Cultural and Archeological Resources Standard does not require the applicant to complete a visual assessment and enhanced archeological survey prior to the issuance of a site certificate. A phased evaluation is allowable.

And this is, again, the kind of question that applies to a lot of the standards about the level of detail that is required prior to the site specific evaluation.

analysis area but is within the visual assessment analysis area.

And then the significant -- significance of visual impacts to archeological resources is a portion of the Historic Properties Management Plan which is a component of HCA condition two. And that this is going to be completed following site certificate approval.

So that is the summary of the hearing officer's conclusions and the proposed order. And we can now hear from Mr. Williams in oral argument.

MR. WILLIAMS: I'm John Williams. My contested case is HCA-7. And identified issue is whether applicant adequately evaluated resource site 6B2H-MC-10 on Mr. Williams' property. This is only part of my stated concerns in HCA-7.

The proposed Morgan Lake route crosses my property west of Morgan Lake with two right-of-ways, one for the transmission line; another for an access road to it.

In 2016 an archeological survey crew walked the transmission line right-of-way and discovered site 6B2H-MC-10 a pre-contact hunting blind some 5.14 meters from the right-of-way of the access road and then continued their survey finding no other sites.

Subsequently, I spent three hours with

And the only other thing I think I'll add on that piece at this point is just that -- again, with respect to all these standards, that Council is making a decision that's based on the preponderance of evidence, whether or not, based on the evidence of the record, it is more likely than not that the standard will be met.

And that is, you know, something that comes into play a lot when we're talking about the level of detail that is either available or feasible to be acquired prior to the site certificate decision.

So that comes up again here.

So the hearing officer looked at the site in question here, noted that it's documented as a hunting blind located on Mr. Williams' property. That it is not listed on the NRHP.

But, again, as we heard from Kellen, resources that are not evaluated for NRHP eligibility are assumed for the purposes of this process and the site certificate decision to be potentially eligible. And so they are considered as part of this.

Hearing officer concluded that the site may be indirectly impacted by the proposed facility in a visual sense and a setting sense if the Morgan Lake route is selected.

The site is not located within the direct

another archeologist and located at least three additional pre-contact resources: One within the transmission line right-of-way; one within the access road right-of-way; along with another site within the area of potential effect.

There would seem, according to both archeologists involved, more than enough pre-contact activity on the property for eligibility in the National Registry for Historic Places.

IPC was a signatory on the programmatic agreement regarding compliance with the National Historic Preservation Act.

I read it that commits it, among other things, to avoid adverse affect that may alter, directly or indirectly, any of the characteristics of the historic property that qualify the property for inclusion in the national register in a manner that would diminish the property's location, design, setting, materials, workmanship, feeling, or association.

Finally, Oregon Department of Energy's response to exception issue HCA-7 on the 15th of July this year, in its analysis they stated, second and contrary to Mr. Williams' contention, site 6B2H-MC-10 is not listed in the national historic -- NHRB.

This contention -- I never made this

<p style="text-align: right;">Page 347</p> <p>1 contention. It's a contention I never made or had. 2 Thank you. 3 VICE CHAIR HOWE: Thank you, Mr. Williams. 4 Are there any other questions from Council? 5 Okay. Thank you. 6 MS. RACKNER: Lisa Rackner, again, for the 7 record. 8 The gist of Mr. Williams' concerns is that 9 the company didn't evaluate all of the archeological 10 resources that are on his property. However, the 11 hearing officer did consider and properly rejected these 12 arguments. 13 First, Mr. Williams argues that the 14 company's analysis was complete because it failed to 15 properly evaluate -- and I'm only going to say this 16 once -- 6B2H-MC-10, which Mr. Williams had claimed was 17 on the national register. Sounds like maybe there's a 18 mutual understanding that it's not on the register. 19 But the reason that the company didn't 20 evaluate that resource was that it was outside the 21 direct analysis area, which was the area that the 22 company was looking at during the phase one part of its 23 surveys. 24 Mr. Williams is also claiming that there are 25 other archaeological sites on his property that the</p>	<p style="text-align: right;">Page 349</p> <p>1 At the end of that process, EFSC's historic 2 properties and management plan will be updated, it will 3 be squared with the programmatic agreement that's 4 adopted under Section 106 analysis. And in the end, the 5 Council can be assured that all archeological resources 6 on Mr. Williams' property and elsewhere along the 7 alignment will be protected. 8 VICE CHAIR HOWE: Thank you, Ms. Rackner. 9 Is there any questions from Council? 10 Okay. Thanks. 11 MR. ROWE: Patrick Rowe, Department of 12 Justice on behalf of the Department of Energy. 13 We agree with the statements that 14 Ms. Rackner just made. The recommended historic 15 cultural resources condition one requires avoidance of 16 direct impacts to archeological resources. 17 And under the recommended condition two, the 18 applicant is required to finalize the Historic 19 Properties Management Plan. That will ensure that all 20 sites on Mr. Williams' property are evaluated in 21 conjunction with reviewing agencies and addressing a 22 common theme with the approval of the Department. 23 So again, as we've been discussing, if you 24 have any concerns about those conditions, please let us 25 know. But the Department believes that those conditions</p>
<p style="text-align: right;">Page 348</p> <p>1 company didn't evaluate. Without more information, we 2 don't know whether or not that's true. 3 But regardless, as to what evaluation the 4 company did or did not perform to date, the most 5 important point here is that all archeological sites on 6 Mr. Williams' property will be fully assessed during the 7 enhanced archeological survey that will be conducted in 8 phase two. 9 During that phase, Idaho Power will consult 10 with Mr. Williams and assess the additional sites that 11 he believes are on his property. And if they do, in 12 fact, exist, they will work with the appropriate 13 authorities as well as Mr. Williams to figure out the 14 best way to protect them. 15 In addition, resource eligibility and 16 listings on the national register are also going to be 17 updated prior to construction as recommended by HCA 18 condition two so that any new additions to the register 19 will be given appropriate consideration. 20 You know, I think the -- I have a few more 21 seconds. I just want to say that I think the most 22 important piece here is that not only are we working 23 with a phased approach to the assessment of 24 archeological and cultural resources, but we're working 25 with the federal process as well.</p>	<p style="text-align: right;">Page 350</p> <p>1 provide the protections for archeological resources on 2 Mr. Williams' property. 3 VICE CHAIR HOWE: Questions from Council? 4 Okay. Counsel Ratcliffe. 5 MR. RATCLIFFE: So just as a reminder where 6 we're at on the overall standard here, the Historic, 7 Cultural and Archeological Resources Standard, we have 8 two issues that were part of the contested case where 9 exceptions were filed. The other issue is HCA-3. 10 So the Council has some -- a choice to make 11 here whether or not you want to do any additional 12 deliberation on this issue and a straw poll on it now or 13 hold off until we've heard the other contested case 14 issue. 15 I'll also note the time, which is 12:10. 16 And I don't know, you know, when our next break is 17 planned for. But, you know, so that's just something 18 else to consider whether or not you want to go ahead and 19 do the deliberation on this issue now and take a straw 20 poll or hold off. 21 VICE CHAIR HOWE: This might be a good time 22 to go ahead and act on the straw poll for HC-7 -- HCA-7 23 and then have -- do our lunch break and then come back 24 and do HCA-3. 25 COUNCILMEMBER JENKINS: This is Hanley. I</p>

<p style="text-align: right;">Page 351</p> <p>1 would agree with that. I see hands and thumbs up. 2 SECRETARY CORNETT: For the record, Todd 3 Cornett. So this is only going to be on HCA-7, not the 4 standard and not HCA-3. Just HCA-7. 5 So -- and what I have is agree with the 6 findings of fact, conditions -- findings of facts, 7 conclusions of law, and conditions of approval in the 8 proposed contested case order pertaining to issue HCA-7. 9 VICE CHAIR HOWE: Yes. Straw poll. 10 SECRETARY CORNETT: Okay. And if Council is 11 ready? 12 VICE CHAIR HOWE: We're ready. 13 SECRETARY CORNETT: Ann Beier. 14 COUNCILMEMBER BEIER: Yes. 15 VICE CHAIR HOWE: Perry Chocktoot. 16 COUNCILMEMBER CHOCKTOOT: Yes. 17 SECRETARY CORNETT: Cindy Condon. 18 COUNCILMEMBER CONDON: Yes. 19 SECRETARY CORNETT: Hanley Jenkins. 20 COUNCILMEMBER JENKINS: Yes. 21 SECRETARY CORNETT: Kent Howe. 22 VICE CHAIR HOWE: Yes. 23 SECRETARY CORNETT: Jordan Truitt. 24 COUNCILMEMBER TRUITT: Yes. 25 SECRETARY CORNETT: Thank you,</p>	<p style="text-align: right;">Page 353</p> <p>1 impacts. And that the BLM and SHPO methodologies, that 2 their guidance does not align exactly with the Council's 3 definition of significance. 4 That further -- that the Council -- 5 Council's statutes and rules establish that the Council 6 may use information in the record to make findings and 7 impose conditions to ensure compliance with the 8 standard. 9 She found that the proposed facility would 10 not result in direct physical disturbance to any listed 11 of likely NRHP eligible Oregon Trail segment, however, 12 the proposed facility would cross or be visible from 13 Oregon Trail segments and, therefore, will indirectly 14 impact those resources. 15 She also found that Idaho Power is not 16 required to demonstrate completion or compliance with 17 the Section 106 process in order for the Council to make 18 findings of compliance under the Historic, Cultural and 19 Archeological Resources Standard. 20 The Council doesn't enforce compliance with 21 federal laws. 22 The methodology for evaluating the 23 significance of visual impacts is established in the 24 applicant's Visual Impacts to Historic Properties Study 25 Plan which incorporates aspects of the Bureau of Land</p>
<p style="text-align: right;">Page 352</p> <p>1 Councilmembers. 2 VICE CHAIR HOWE: Okay. We're going to take 3 a 15-minute break to grab lunch. And we'll be back for 4 a working lunch at 12:30. 5 (A break was taken.) 6 MR. RATCLIFFE: Okay. So issue HCA-3 is one 7 that has been raised by two parties. Marlette and 8 Gilbert. 9 The issue is whether the historic cultural 10 and archaeological resources condition one, which 11 includes the HPMP and is related to mitigation for 12 crossings of Oregon Trail resources provides adequate 13 mitigation for visual impacts and sufficient detail to 14 allow for public participation. 15 So the hearing officer's opinion, a summary 16 of that. So as we discussed in reference to HCA-7. And 17 that, again, has come up with a number of other 18 standards. The hearing officer concluded that the 19 Historic, Cultural and Archeological Resources Standard 20 does not require that the applicant complete all tasks 21 that ensure that project impacts are avoided, minimized, 22 or mitigated prior to the issuance of a site 23 certificate. 24 She also found that the standard does not 25 mandate any specific methodology for assessing visual</p>	<p style="text-align: right;">Page 354</p> <p>1 Management and SHPO guidance. 2 She found that limited parties Marlette and 3 Gilbert did not provide persuasive evidence to support 4 their contention that the proposed facility will result 5 in significant adverse impacts to Oregon Trail resources 6 that cannot be mitigated. 7 Further, the Department's recommended HCA 8 condition two would require -- consistent with the 9 Council's definition of mitigation -- that mitigation 10 for all Oregon Trail segments with identified indirect 11 impact must include, first, a design modification which 12 includes a height reduction and a particular kind of 13 finish on the tower; and, second, restoration, 14 preservation, and maintenance or compensation to apply 15 within the affected area of the impact. 16 The scope and scale of mitigation must be 17 established prior to construction. 18 She finally found, in reference to a Court 19 of Appeals decision, that the limited parties had cited 20 a case called "Gould," that this decision does not 21 require further public review and the completion of the 22 HPMP prior to finalization to the plan and the Council's 23 approval of the site certificate. 24 And, finally, that one of the Council 25 statutes authorizes Council delegation of future review</p>

<p style="text-align: right;">Page 355</p> <p>1 and approval to the Department. 2 So, again, that's summary of the findings 3 and conclusions reached by the hearing officer. 4 And, once again, we have two limited parties 5 who are going to be addressing this issue through oral 6 argument. 7 And whether Ms. Gilbert or Ms. Marlette want 8 to come up first is up to them. 9 Oh, is that a recording? Okay. 10 MS. GILBERT: Is this better? 11 Okay. Irene Gilbert. And this exception is 12 due to the denial of my contested case stating, in part, 13 the extent of damages to the public resources are not 14 identified in relation to the necessary mitigation and 15 most of the mitigation listed fails to apply to visual 16 impacts. 17 ODOE, Oregon Department of Energy, rules 18 state that mitigation must be specific and related to 19 the item being mitigated. The courts have also stated 20 that it must actually address the impact. 21 The Oregon Trail is a priceless 22 irreplaceable resource belonging to the citizens of the 23 County. 24 You six people are about to decide whether 25 or not you are going to allow Idaho Power to change the</p>	<p style="text-align: right;">Page 357</p> <p>1 The file does not contain a preponderance of 2 the evidence that the construction and operation of the 3 facility will not result in impacts to the archeological 4 resources listed or likely to be listed in the National 5 Register of Historic Places. 6 The procedure allowing completion of the 7 Historic Properties Management Plan after a site 8 certificate is issued waives the state statute which 9 specifically state that you cannot waive state statutes. 10 The draft Historic Properties Management 11 Plan fails to show the developer will comply with the 12 requirements of the rule. The tables incorporated are 13 not specific. There are lots of general statements. 14 We'll do one of these six different possible mitigation 15 issues that does not meet the standard. 16 The Council is relying upon this Historic 17 Properties Management Plan but you have no idea what is 18 actually going to be included in it. And again, the 19 Council is not doing the final approval. 20 The -- the areas that are impacted by the 21 development that are not previously identified, 22 including those with indirect impacts and identified 23 specific mitigation being required to compensate for the 24 impacts as well as requiring Council review of the final 25 Historic Properties Management Plan are not included in</p>
<p style="text-align: right;">Page 356</p> <p>1 character of the resource for all future generations 2 without providing legitimate compensation for the 3 damages they will cause. 4 Council is being asked to allow the B2H 5 transmission line to be built between 125 feet to one 6 half mile from 25 percent of the Oregon Trail resources 7 in Oregon. 8 Meeting the standard requires the complete 9 application including specific identification of the 10 resources impacted, level of impact, and actual 11 mitigation that will be provided for damages that will 12 exist from now on. 13 I listed multiple rules, statutes, court 14 decisions, that are intended to protect the resource; 15 none of these are currently being required for the 16 developer. 17 Some areas of noncompliance, the proposed 18 order does not require the developer to submit an 19 amendment to the site certificate to add the information 20 regarding sites not yet surveyed and require mitigation 21 for the sites as required by the project order and 22 Council letter. The Council show -- told the public 23 that there would be an amendment and that would allow 24 for public discussion and disclosure for the -- the 25 areas that are not included.</p>	<p style="text-align: right;">Page 358</p> <p>1 the current order. 2 So my appeal should not have -- my contested 3 case should not have been denied. The Council should 4 ultimately take authority for deciding whether or not 5 this management plan actually is consistent with the 6 statutes and the rules. 7 VICE CHAIR HOWE: Thank you, Ms. Gilbert. 8 Are there any questions from the Council? 9 MS. GILBERT: And the statutes and all that 10 are included in my written materials. So please do 11 review them. 12 VICE CHAIR HOWE: Thank you. 13 MS. MARLETTE: I was not going to be -- 14 never mind. I'm JoAnn Marlette and I've been involved 15 in this proposed transmission corridor since 2007, and 16 I'm a limited party to this contested case with issue 17 HCA-3. 18 My understanding is that the purpose of this 19 meeting is to make sure Idaho Power has met the EFSC 20 standards for compliance. The issue on hand is whether 21 Idaho Power adequately provided mitigation for visual 22 impacts and sufficient detail to allow for public 23 participation. 24 Visual effects on historic properties tend 25 to especially risk the alteration of characteristics</p>

<p style="text-align: right;">Page 359</p> <p>1 that qualify a property for the National Register of 2 Historic Places when these effects diminish the 3 integrity of setting and/or feeling of that property. 4 The National Historic Oregon 5 Trail Interpretive Center's segments of the Oregon Trail 6 and the on-the-ground version of the pioneer experience 7 walking the trail will be damaged by the proposed B2H 8 utility corridor forever. 9 The interpretive center was designed so 10 visitors walking remnants of the Oregon Trail would see 11 the vast open space to the west as a pioneer saw them. 12 If this proposed utility corridor were 13 needed, appropriate mitigation is to require Idaho Power 14 to buy portions of the line that would visually impact 15 the historic Oregon Trail, as well as the viewshed in 16 front of NHOTIC. 17 In the cross-examination hearing in January, 18 Gayle Carbiener asked Idaho Power's witness, Dennis 19 Johnson of Power's engineers about line burial. 20 He said it was definitely feasible. Even 21 came up with a better placement for undergrounding where 22 the ends of the line would come up out of the ground 23 in a less visible and less obstructive way. That meant 24 the line would be buried for approximately 1.7 miles 25 which, as stated above, is feasible.</p>	<p style="text-align: right;">Page 361</p> <p>1 benefit Idaho Power administrators and shareholders. 2 Please reverse or remand the ALJ's decision on this 3 issue. Thank you. 4 VICE CHAIR HOWE: Ms. Marlette. 5 Any questions from Council? 6 Okay. Thank you. 7 MS. MARLETTE: You're welcome. 8 MS. RACKNER: Again, Lisa Rackner for the 9 record. 10 In their exceptions regarding HCA-3, 11 Ms. Gilbert and Ms. Marlette make numerous arguments 12 about Idaho Power assessment of impacts to the Oregon 13 Trail and proposed mitigation methods. In three minutes 14 I can't respond to them all, but I respond to their 15 primary arguments. 16 And first, I just want to -- first, I want 17 to emphasize that Idaho Power's analysis of visual 18 impacts to the Oregon Trail and potential mitigation was 19 detailed and comprehensive. The company performed 20 detailed analyses of both direct and indirect impacts 21 that included extensive database and literature 22 research, desktop review, and intensive level field 23 surveys of the direct analysis area and the visual 24 impact areas. 25 With respect to the company's methodology</p>
<p style="text-align: right;">Page 360</p> <p>1 Idaho Power claims that burying the line is 2 more expensive. But who is paying for this line anyway? 3 Yes, we the rate payers. 4 It's the least that Idaho Power should do 5 for the people of Baker County and the State of Oregon 6 who cherish the pioneer history of our historic Oregon 7 Trail and region. 8 The burying of this 500 kV line is not 9 nearly as expensive as the burial of another 500 kV line 10 in Chino Hills, California, which many have testified 11 and brought technical information into this case. At 12 Chino Hills, they went under a shopping mall, a freeway, 13 and an entire neighborhood, yet Idaho Power says they 14 can't just do it. Shame on them. 15 Not only has the public not had access to 16 the information required to decide if the developers 17 will be providing adequate mitigation for the impacts to 18 the historic resources, but the Council has not received 19 anything but general statements regarding the kinds of 20 mitigation that may be required. Definitely not 21 adequate to make a decision that the development 22 complies with historic cultural and archeological 23 standards. 24 EFSC should not allow an 25 out-of-state utility to tear up Oregon's history to</p>	<p style="text-align: right;">Page 362</p> <p>1 for assessing visual impacts, Idaho Power crafted an 2 approach in coordination with SHPO, the BLM, and ODOE to 3 properly address EFSC's standards. The company crafted 4 this hybrid methodology because BLM's visual impact 5 methods were not necessarily aligned with the definition 6 of significant impacts under EFSC's rules. 7 Furthermore, although not required by the 8 Council's rules, Idaho Power also performed a cumulative 9 impact assessment of visual impacts to trail resources. 10 Similarly Idaho Power's proposed mitigation measures 11 under EFSC's -- under the EFSC Historic Properties 12 Management Plan are sufficiently detailed to allow for 13 public participation and they are reasonable and 14 appropriate under EFSC's cultural resources standard. 15 In particular, mitigation regarding the 16 height and color of transmission towers, as well as 17 print publication and media for education, these are all 18 accepted methods to address visual impacts from 19 transmission towers. 20 And with respect to the proposal that -- 21 that Idaho Power underground the line in front of NHOTIC 22 to eliminate impacts, this Council has already 23 determined in the Wheatridge case that it lacks the 24 jurisdiction to order a -- an applicant to underground a 25 line because the job of EFSC is to rule on whether or</p>

<p style="text-align: right;">Page 363</p> <p>1 not the proposed route meets your standards as opposed</p> <p>2 to some hypothetical route, such as undergrounding.</p> <p>3 So regardless, on that issue, the Council</p> <p>4 lacks jurisdiction to order undergrounding.</p> <p>5 VICE CHAIR HOWE: Thank you, Ms. Rackner.</p> <p>6 Any questions from Council?</p> <p>7 Councillor Condon.</p> <p>8 COUNCILMEMBER CONDON: Thank you.</p> <p>9 Councilmember Condon. Thanks again for being at the</p> <p>10 table.</p> <p>11 A question with respect to the mitigation</p> <p>12 and the signage and materials.</p> <p>13 Can you speak a little bit more about how</p> <p>14 that is a -- satisfies the mitigation to the site issue?</p> <p>15 MS. RACKNER: Certainly. So first of all,</p> <p>16 the first rule of mitigation is to avoid.</p> <p>17 And so if the company can't avoid any impact</p> <p>18 at all on the visual side, then the next -- then it will</p> <p>19 first consider the approaches that are very specific to</p> <p>20 the visual impact.</p> <p>21 And so the tools in the company's tool kit</p> <p>22 have to do with non-reflective surfaces of the -- of the</p> <p>23 transmission towers themselves, microsilting to avoiding</p> <p>24 skylining or, you know, to move them slightly to reduce</p> <p>25 that impact.</p>	<p style="text-align: right;">Page 365</p> <p>1 to establish whether or not the applicant has complied</p> <p>2 with the historic and cultural resources standard.</p> <p>3 The Department is recommending that the</p> <p>4 Council find that they have met that standard. Not</p> <p>5 recommending that Council waive that standard.</p> <p>6 Recommending that the applicant meets it one of the ways</p> <p>7 that they will meet it is through preparation of the</p> <p>8 Historic Properties Management Plan.</p> <p>9 Ms. Gilbert suggested that that condition</p> <p>10 would not require Department approval. That's not</p> <p>11 accurate. We've already reviewed that condition once.</p> <p>12 But I'll point it out to you again.</p> <p>13 That is on page 506 of the proposed order.</p> <p>14 It's recommended historic cultural and archeological</p> <p>15 resources condition two. Very first paragraph says that</p> <p>16 "The plan has to be prepared, submitted to the</p> <p>17 Department, submitted to SHPO, applicable tribal</p> <p>18 governments, vote for review, and Department approval,"</p> <p>19 end quote.</p> <p>20 So it will be submitted to reviewing</p> <p>21 agencies. The Department will consult with them and</p> <p>22 must be subject to the Department's approval.</p> <p>23 This -- a common theme has been concerns</p> <p>24 expressed about Council delegating future review and</p> <p>25 approval of plans to the Department. That is expressly</p>
<p style="text-align: right;">Page 364</p> <p>1 And also lowering tower heights. So it does</p> <p>2 have a number of tools in its tool kit to try to reduce</p> <p>3 visual impacts.</p> <p>4 The other, you know -- the other kind of</p> <p>5 runners-up, I would say, such as educational materials,</p> <p>6 those -- you are right, those don't directly reduce a</p> <p>7 visual impact, but they do provide other benefits to the</p> <p>8 trail.</p> <p>9 So educational materials, signage, all of</p> <p>10 those mitigation approaches, they are designed to</p> <p>11 enhance -- to overall enhance the viewer's perception</p> <p>12 and experience of the trail, which is, I think, in the</p> <p>13 end, overall, what we're trying to do is reduce the</p> <p>14 impact and enhance the viewer's experience of the trail.</p> <p>15 VICE CHAIR HOWE: Any other questions from</p> <p>16 Council?</p> <p>17 Okay. Thank you, Ms. Rackner.</p> <p>18 Counsel Rowe.</p> <p>19 MR. ROWE: Patrick Rowe, Department of</p> <p>20 Justice on behalf of the Oregon Department of Energy.</p> <p>21 First, I'd like to address a couple of</p> <p>22 comments that Ms. Gilbert made in her oral testimony.</p> <p>23 She suggested that Council would be waiving</p> <p>24 statutes. I'm not certain what statute or rule she</p> <p>25 might have in mind. But the point of this exercise is</p>	<p style="text-align: right;">Page 366</p> <p>1 allowed in statute. Legislature has authorized this</p> <p>2 Council to do just that.</p> <p>3 In ORS 469.402 delegation of review of</p> <p>4 future action required by site certificate -- I'm just</p> <p>5 going to read this.</p> <p>6 But, again, the statute is 469.402.</p> <p>7 "If the Energy Facility Siting Council</p> <p>8 elects to impose conditions on a site certificate or an</p> <p>9 amended site certificate that requires subsequent review</p> <p>10 and approval of a future action, the Council may</p> <p>11 delegate the future review and approval to the State</p> <p>12 Department of Energy if, in the Council's discretion,</p> <p>13 the delegation is warranted under the circumstances of</p> <p>14 the case."</p> <p>15 Getting short on time.</p> <p>16 In short, we agree with the ALJ's ruling in</p> <p>17 Department's response to these exceptions. It did</p> <p>18 recommend supplementation of the proposed contested case</p> <p>19 order to include additional facts on the record.</p> <p>20 Again, that is in our written response.</p> <p>21 Those facts relate to the ongoing pre-construction role</p> <p>22 that third-party entities would have in reviewing the</p> <p>23 HPMP, including the Oregon Historic Trails Association</p> <p>24 and the Oregon Historic Trails Advisory Council.</p> <p>25 Recognizing that my time is out, again,</p>

<p style="text-align: right;">Page 367</p> <p>1 we're recommending that you supplement the PCCO. And</p> <p>2 any one of you could take a quick look at our written</p> <p>3 response and include that in a straw poll.</p> <p>4 COUNCILMEMBER JENKINS: This is Hanley.</p> <p>5 Patrick, where is that? Is it in your</p> <p>6 response to the exception?</p> <p>7 MR. ROWE: Our response to exceptions under</p> <p>8 HCA-3.</p> <p>9 COUNCILMEMBER JENKINS: So it's fact 68?</p> <p>10 MR. ROWE: I would note one scrivener's</p> <p>11 error in our exception response.</p> <p>12 On page 4 we refer to the Oregon Historic</p> <p>13 Trails Association with the acronym "OCTA." That should</p> <p>14 read Oregon/California Trails Association. With the</p> <p>15 acronym "OCTA."</p> <p>16 VICE CHAIR HOWE: Any other questions from</p> <p>17 Council?</p> <p>18 COUNCILMEMBER CONDON: Cindy Condon, for the</p> <p>19 record.</p> <p>20 Mr. Rowe, can you please read that last</p> <p>21 phrase on the statute that you just read? Or the last</p> <p>22 sentence of the --</p> <p>23 MR. ROWE: Sure. Again, ORS 469.402.</p> <p>24 "The Council may delegate the future review</p> <p>25 and approval to the State Department of Energy if in the</p>	<p style="text-align: right;">Page 369</p> <p>1 MR. ROWE: I think that would be at your</p> <p>2 discretion. If you think the issue is such that you</p> <p>3 want to revisit it and you want to be the -- the</p> <p>4 approving body, then that would be at your discretion to</p> <p>5 do that.</p> <p>6 COUNCILMEMBER CONDON: Thank you.</p> <p>7 COUNCILMEMBER CHOCKTOOT: For the record,</p> <p>8 this is Perry Chocktoot. I would just like to let you</p> <p>9 know how it actually works is you have an archeologist</p> <p>10 do a study and find cultural resources, which are</p> <p>11 basically nonrenewable.</p> <p>12 Once they are destroyed, they are destroyed.</p> <p>13 And they are put on the record. They are put on the</p> <p>14 register, on the federal register. But cultural</p> <p>15 resources will not stop a project. They basically file</p> <p>16 for a permit through SHPO and they figure the site has</p> <p>17 been captured through its being recorded. So it still</p> <p>18 can be impacted just with acquiring a permit.</p> <p>19 Thank you.</p> <p>20 VICE CHAIR HOWE: Perry Chocktoot.</p> <p>21 COUNCILMEMBER CHOCKTOOT: Yes.</p> <p>22 COUNCILMEMBER BEIER: Chair Howe, I had a</p> <p>23 follow-up to Councillor Condon's.</p> <p>24 We had a precedent where the Council has</p> <p>25 taken and instead of delegating responsibility to the</p>
<p style="text-align: right;">Page 368</p> <p>1 Council's discretion the delegation is warranted under</p> <p>2 the circumstances of the case."</p> <p>3 COUNCILMEMBER CONDON: So my question is</p> <p>4 would you give an example of circumstances that wouldn't</p> <p>5 allow for that? For delegation.</p> <p>6 MR. ROWE: I would -- in a general -- not an</p> <p>7 example, but conceptually, a general reason not to would</p> <p>8 be if all of the information is presently available to</p> <p>9 the applicant, that there's no reason to wait. And --</p> <p>10 and wait for future analysis or Department approval if</p> <p>11 they have everything they need right now and can conduct</p> <p>12 the analysis without -- without waiting until after</p> <p>13 issuance of the site certificate, that would be a reason</p> <p>14 not to.</p> <p>15 COUNCILMEMBER CONDON: And I think I'm</p> <p>16 specifically back to the approval.</p> <p>17 Because we -- the Council would be</p> <p>18 delegating approval to the Department as well.</p> <p>19 And the circumstances of that where just an</p> <p>20 example that we couldn't do that.</p> <p>21 MR. ROWE: So do you mean that you would</p> <p>22 wait for future analysis to be done but rather than</p> <p>23 delegate approval to the Department, you retain the</p> <p>24 authority?</p> <p>25 COUNCILMEMBER CONDON: Yes.</p>	<p style="text-align: right;">Page 370</p> <p>1 Department, kept that final approval. And also, thank</p> <p>2 you to -- for the clarification on how cultural</p> <p>3 resources are handled.</p> <p>4 MR. ROWE: Councilmember Beier, I can't</p> <p>5 provide such an example. But I can defer to folks who</p> <p>6 have longer institutional knowledge than I do, such as</p> <p>7 Secretary Cornett or even Jesse Ratcliffe who has been</p> <p>8 involved with this body longer than I have. They might</p> <p>9 have examples they can think of, but I do not.</p> <p>10 COUNCILMEMBER BEIER: Just curious.</p> <p>11 MR. RATCLIFFE: This is Jesse Ratcliffe, for</p> <p>12 the record.</p> <p>13 One thing I'd like to point out is in this</p> <p>14 proceeding, with respect to the bond authority, the</p> <p>15 Council has retained authority to modify that as we've</p> <p>16 discussed.</p> <p>17 So it's slightly different but, you know,</p> <p>18 fundamentally it's still the notion that the Council is</p> <p>19 retaining a final say.</p> <p>20 MS. ESTERSON: Just to add --</p> <p>21 VICE CHAIR HOWE: We call that a precedent,</p> <p>22 though. It's an example.</p> <p>23 MS. ESTERSON: The -- there are numerous</p> <p>24 site certificates that are -- have a condition that's</p> <p>25 similar to what you did yesterday where if a developer</p>

<p style="text-align: right;">Page 371</p> <p>1 or certificate holder wants to adjust that bond amount, 2 it has to be reviewed and approved by Council. 3 So you'll -- that's a pretty consistent one. 4 I think that's the closest example. We have a couple 5 others where we would have a condition that says if you 6 run into this circumstance an amendment is going to be 7 required. And so that immediately kicks it back to 8 Council. 9 It is not exactly the same, but it's, 10 like -- it's kind of a delegation of an uncertainty that 11 immediately would force it through the process. 12 VICE CHAIR HOWE: Okay. So Historic, 13 Cultural Archeological Resource Standard three, what's 14 the Council's pleasure on dealing with the proposed 15 order and the proposed contested case order either 16 individually or separately? 17 SECRETARY CORNETT: Mr. Vice Chair, for the 18 record, Todd Cornett. 19 I do have proposed straw poll language which 20 would be a combination which would include the language 21 which Patrick had read earlier if that's what the 22 Council is interested in. So I can read that -- 23 VICE CHAIR HOWE: Yes, please. 24 SECRETARY CORNETT: -- and let me know if 25 you are in agreement.</p>	<p style="text-align: right;">Page 373</p> <p>1 COUNCILMEMBER CONDON: Yes. 2 SECRETARY CORNETT: Hanley Jenkins. 3 COUNCILMEMBER JENKINS: Yes. 4 SECRETARY CORNETT: Kent Howe. 5 VICE CHAIR HOWE: Yes. 6 SECRETARY CORNETT: Jordan Truitt. 7 COUNCILMEMBER TRUITT: Yes. 8 Thank you, Councilmembers. 9 Okay. Now we're moved to the Scenic 10 Resources Standard and Protected Area Standard issues 11 SR-3, -7, -5, and -6. 12 Councillor Condon. 13 COUNCILMEMBER CONDON: Sorry. 14 Chair Howe and Members of the Council, I 15 apologize. 16 Can we go back to the condition -- the 17 historic -- historic and cultural condition number two? 18 And I just had it up here. And I have lost 19 it. 20 Kellen, is there any chance you can -- 21 MR. ROWE: In the proposed order, it's page 22 506. 23 COUNCILMEMBER CONDON: 506. Okay. And I -- 24 this is Cindy Condon again. 25 In -- at line 27 -- and it's in explanation,</p>
<p style="text-align: right;">Page 372</p> <p>1 So it would be to "agree with the findings 2 of fact, conclusions of law, and conditions of approval 3 in the proposed order pertaining to the Historic and 4 Cultural Resources Standard that are not related to the 5 issues in the contested case and in the proposed 6 contested case order pertaining to issue HCA-3 with the 7 following modifications: Supplement the proposed 8 contested case order to include additional facts from 9 the record. Those facts relate to ongoing 10 pre-construction role of the Oregon/California Historic 11 Trails Association, and Oregon Historic Trails Advisory 12 Council in evaluating Oregon Trail resources, impacts, 13 and mitigation." 14 I believe that's what the language was. 15 With, again, the correction of including "California," 16 as stated in the Department's response. 17 I think we got it. 18 VICE CHAIR HOWE: Okay. How's the Council? 19 Are we ready for straw poll? 20 SECRETARY CORNETT: Okay. 21 Perry Chocktoot. 22 COUNCILMEMBER CHOCKTOOT: Yes. 23 SECRETARY CORNETT: Ann Beier. 24 COUNCILMEMBER BEIER: Yes. 25 SECRETARY CORNETT: Cindy Condon.</p>	<p style="text-align: right;">Page 374</p> <p>1 I think, but there is a statement that "will" was 2 changed to "would." 3 To me that changes the meaning considerably. 4 And I'm curious what that change was 5 intended to do? Because, personally, I think it should 6 be "will" or "must" or "shall," as opposed to "would." 7 MS. ESTERSON: So we generally try to use 8 "would" because it hasn't been approved yet. 9 "They would." Once approved, "they will." 10 So it's just a tense trying -- so as not to 11 be presumptive that it is going to get approved. 12 COUNCILMEMBER CONDON: This is Cindy, again. 13 I think to make it clear, if the sentence 14 finished -- finished with the "if." 15 So "they would do this if." It would make 16 it clearer. Or even better yet, "must do it, if 17 approved by the Council." 18 Apologies. 19 VICE CHAIR HOWE: Do we need to take any 20 more formal action on that? Or that's -- head nods. 21 Okay. So, Ms. Tardaewether, I guess we're 22 ready to go back to -- where were we? Oh, yeah. The 23 scenic resources. 24 MS. TARDAEWETHER: For the record, Kellen 25 Tardaewether, Oregon Department of Energy.</p>

<p style="text-align: right;">Page 375</p> <p>1 Find my notes here.</p> <p>2 I have -- I am starting with the Protected</p> <p>3 Area Standard in this overview.</p> <p>4 As Council and other folks familiar with the</p> <p>5 contested case understand scenic resources and protected</p> <p>6 area issues that were properly raised kind of got</p> <p>7 bundled together.</p> <p>8 And I think that that worked through the</p> <p>9 contested case, but as -- as we've had the conversation</p> <p>10 with Council, the lens that Council applies through each</p> <p>11 standard changes just a little bit.</p> <p>12 So we are -- I'm going to do my portion --</p> <p>13 I'm going to go through protected areas and then scenic.</p> <p>14 But Council -- but there are these differences of -- of</p> <p>15 what is being asked under each standard. And then when</p> <p>16 we pass it over to Jesse, there's kind of this bundling</p> <p>17 of the issue and it has, you know -- it relates to both</p> <p>18 of those standards.</p> <p>19 So anyhow, we'll just -- we will go through</p> <p>20 it.</p> <p>21 And -- and in the proposed order, as we've</p> <p>22 talked about in other examples, the one off the top of</p> <p>23 my head is yesterday under threatened and endangered</p> <p>24 species, part of the findings and recommendation</p> <p>25 underneath that standard was a condition that we said</p>	<p style="text-align: right;">Page 377</p> <p>1 And so I'm just going it read it here pretty</p> <p>2 quickly. Sorry, Crystal. And it's having an important</p> <p>3 consequence either alone or in combination with other</p> <p>4 factors based on the magnitude and likelihood of the</p> <p>5 impact on the affected human population or natural</p> <p>6 resource or on the importance of the natural resource</p> <p>7 affected, considering the context of the action or</p> <p>8 impact, its intensity, and the degree to which possible</p> <p>9 impacts are caused by the proposed action.</p> <p>10 Nothing in this definition is intended to</p> <p>11 require a statistical analysis of the magnitude or</p> <p>12 likelihood of a particular impact.</p> <p>13 I know -- so -- but we love -- we love words</p> <p>14 and so this is what we do. We go through the rules and</p> <p>15 then we, like, apply this. And how does this make sense</p> <p>16 with the particular question going back to the standard?</p> <p>17 But, Council, we can also come back to this</p> <p>18 in another standard if we're really asking what a</p> <p>19 significant adverse impact is.</p> <p>20 The next -- I am going off of a PDF right</p> <p>21 now. So in my PowerPoint, I kind of had these staggered</p> <p>22 so you could see them a little bit more.</p> <p>23 And, again, these are just snippets from</p> <p>24 tables in your proposed order. So -- because we have a</p> <p>25 lot of protected areas. So these are the list of the</p>
<p style="text-align: right;">Page 376</p> <p>1 was imposed over here under Fish and Wildlife Habitat</p> <p>2 Standard.</p> <p>3 So same thing over here. There's conditions</p> <p>4 that are imposed under the Scenic Resources Standard but</p> <p>5 then maybe under "protected areas" we point to four as a</p> <p>6 recommended mitigation or condition approval that helps</p> <p>7 assist in meeting that standard.</p> <p>8 So, with that said, I know Council is</p> <p>9 familiar with protected areas, because we've been</p> <p>10 looking at the rulemaking for it.</p> <p>11 As it stands now, we're looking at the</p> <p>12 current protected areas standard on the books. I don't</p> <p>13 have it all here. Council has looked at it kind of</p> <p>14 after this preamble of protected areas, there's a list</p> <p>15 of the types of protected areas.</p> <p>16 As Council can imagine, for a long linear</p> <p>17 facility with an analysis area of 20 miles, there was a</p> <p>18 lot of protected areas evaluated for this facility.</p> <p>19 So -- and I pointed out under the historic,</p> <p>20 cultural archeological resources, Council does have a</p> <p>21 definition for "mitigation."</p> <p>22 Council does also have a definition for</p> <p>23 "significant."</p> <p>24 And this appears in almost all of your</p> <p>25 standards.</p>	<p style="text-align: right;">Page 378</p> <p>1 protected areas and the definition of the protected</p> <p>2 areas.</p> <p>3 I know it's hard to see here.</p> <p>4 And then it is the type of category. And</p> <p>5 then over on the far right column, we have the distance</p> <p>6 from the proposed route or the applicable alternative</p> <p>7 route and the county that it's in.</p> <p>8 Underneath the Protected Areas Standard -- I</p> <p>9 don't know why these are not advancing -- Council</p> <p>10 evaluates noise, traffic, water, and wastewater disposal</p> <p>11 and visual impacts.</p> <p>12 So underneath the sub provisions of -- and</p> <p>13 I'm going to paraphrase here, which is -- pretty</p> <p>14 interesting because we don't -- we don't see this that</p> <p>15 often, but the Council's Protected Areas Standard does</p> <p>16 contemplate and allow crossing protected areas.</p> <p>17 So protected areas that are listed underneath the</p> <p>18 standard.</p> <p>19 And one of those provisions is that if,</p> <p>20 functionally, the proposed facility is collocated with</p> <p>21 an existing utility right-of-way, such is the case with</p> <p>22 the proposed route in the area of -- of Ladd Marsh.</p> <p>23 That's right here in Union County, not too far away.</p> <p>24 So we have recommended protected areas</p> <p>25 condition one because Ladd Marsh is a wildlife</p>

<p style="text-align: right;">Page 379</p> <p>1 management area that is managed by ODF&W. ODF&W 2 provided comments and the provisions under this 3 condition, protected area condition one, incorporate 4 requests from ODF&W in coordinating activities with 5 ODF&W. And that was the proposed route. 6 And then there's also the Morgan Lake 7 alternative, which did have a public comment earlier and 8 I know when I talked about -- this may help. 9 And forgive me, I forgot who raised it. But 10 we were talking about the proposed route and the Mill 11 Creek route. And then there's the Morgan Lake 12 alternative. 13 So here we are, beautiful La Grande, Union 14 County. And so this is the proposed route. 15 Now, this route in the BLM's NEPA review was 16 called the "Mill Creek Route." So when somebody says 17 "Mill Creek Route" for EFSC and in our EFSC speech, it's 18 the proposed route. And then there's the Morgan Lake 19 alternative. So that is -- I just wanted to kind of 20 paint that picture in our minds. 21 So for this Ladd Marsh, the condition one 22 applies to the proposed route. And then for the Morgan 23 Lake alternative, if the Morgan Lake alternative is 24 selected, then there is -- there is this overlap. 25 Because we talked about the site boundary.</p>	<p style="text-align: right;">Page 381</p> <p>1 It's possible that we took out "proposed" because 2 conditions are supposed -- conditions generally read, it 3 has -- it says certificate holder. The conditions are 4 written under the assumption that it -- this is going to 5 end up being the site certificate condition. 6 So rather than "applicant," it says 7 "certificate holder." 8 Rather than "proposed facility" they say 9 "facility." 10 Does that look like what that edit was made? 11 COUNCILMEMBER CONDON: It just seems like 12 this condition would apply no matter what route. 13 And is that -- is that appropriate? I mean, 14 no matter which route was -- 15 The reason I'm asking the question is, 16 Kellen, you said it would only affect the proposed 17 route. So I'm trying to distinguish between -- if an 18 alternative route were chosen. 19 MS. TARDAEWETHER: If we can look into that. 20 I think we need to look at a map. Or we -- 21 So, yeah, no. I misspoke in my 22 presentation. 23 So, correct -- and maybe it would be 24 helpful. I can pull up a more succinct MAP set because 25 the one MAP set that I pulled up is -- isn't very</p>
<p style="text-align: right;">Page 380</p> <p>1 We talked about the site boundary being the microsites 2 corridor. 3 And so -- but we know that the actual 4 right-of-way for the transmission line is going to be 5 smaller than the 500-foot site boundary. So what this 6 condition two is -- because that Morgan Lake alternative 7 is not within a utility corridor, what this condition 8 two does is it -- it basically -- it does not allow or 9 requires them to site the final right-of-way outside of 10 the boundaries of the protected area, because there's 11 just a little bit of overlap. Like, in a map of the 12 site boundary, it clips a corner. So this condition is 13 saying that none of your facility components can be 14 sited inside this protected area. 15 Yes, Councilmember Condon. 16 COUNCILMEMBER CONDON: Kellen, I just want 17 to make sure I'm following you. 18 So if I'm reading in the proposed order -- 19 maybe I shouldn't be reading the proposed order right 20 now. But the recommended protected areas condition one. 21 So "proposed" facility has been struck from 22 there. It doesn't -- it's not proposed. It's just the 23 facility regardless of route in the reading of it. 24 MS. TARDAEWETHER: Sarah is going to find -- 25 because I don't want to bumble around too much here.</p>	<p style="text-align: right;">Page 382</p> <p>1 detailed. 2 So this does apply to -- to the facility. 3 Right? 4 But then, it's like, where it separates 5 off -- so here in the findings, a small segment of the 6 site boundary for the Morgan Lake alternative. So I can 7 actually pull this up here, which will kind of show us 8 where they break off. Where the proposed route kind of 9 separates from the Morgan Lake alternative. And that is 10 the portion that this condition applies to. 11 I'll try to pull up that MAP set. 12 Sarah's computer is frozen here. So let me 13 see. Where is this at? 14 COUNCILMEMBER JENKINS: So, Mr. Chair, this 15 is Hanley. My question is to Cindy. 16 Are you referring to condition number two? 17 COUNCILMEMBER CONDON: One. I'm really 18 trying to make the distinction between "facility" and 19 the "facility route." 20 You know, they are two different things in 21 my mind, I guess. There's the transmission line 22 wherever it is, which is the facility, no matter what 23 route. 24 COUNCILMEMBER JENKINS: So isn't one 25 referring to, essentially, towers not the power line?</p>

<p style="text-align: right;">Page 383</p> <p>1 COUNCILMEMBER CONDON: Well, it references 2 "facility." 3 I didn't know that "facility" is limited. 4 I'm just trying to be clear. 5 MS. TARDAEWETHER: My understanding is -- I 6 would have to -- to be totally clear, I need to find the 7 MAP set. Because we have to go -- we have to go to the 8 location where -- we have to find Ladd Marsh just to 9 be -- I think that it's the area where basically the 10 proposed facility -- because it's all the proposed 11 route, which is just the proposed facility. 12 And that -- until we get to a place where 13 there is an alternative and then it's still the proposed 14 route and then such and such alternative. And I believe 15 in the Ladd Marsh area, this is the -- like, it happens 16 kind of at the juncture where I think that -- so 17 condition one, but -- but rather than just saying that 18 off of memory, I would need to confirm that in a -- 19 yeah -- in -- with MAPs. 20 COUNCILMEMBER CONDON: Okay. If -- if 21 it's -- this will apply no matter what route, then 22 that's fine. I just want to understand it. Because I 23 heard it as just this proposed route. 24 MS. TARDAEWETHER: Yeah, that's how I did 25 frame it. Absolutely.</p>	<p style="text-align: right;">Page 385</p> <p>1 the Council's definition of "significant" is because the 2 applicant and the Department and SHPO did work together 3 on generating a very specific methodology that derived 4 from, you know, BLM methodology and then Forest Service 5 methodology from -- for visual impacts within forest 6 areas and then wove in EFSC's definition of 7 "significant" to make it more EFSC-ie, or maybe more 8 catered to the Council's process. Because this is the 9 lens that each of those standards evaluates impacts 10 through. 11 So I'm not going to go into a lot of detail 12 here. But, you know, in this slide, there is a -- an 13 evaluation of the baseline conditions and then there's 14 an assessment of the -- the impact likelihood and 15 magnitude. 16 And then there's the consideration of 17 intensity, causation, and context which weaves in the 18 impact integrity -- intensity degree to which impacts 19 the context and the potential significance. 20 So in each of these -- and we'll kind of 21 keep this slide. This is very high level. It is more 22 detailed. But in each of the applicable exhibits for 23 each of these standards there are these impact tables. 24 So every resource that got swept up by 25 protected areas scenic/recreation that got evaluated</p>
<p style="text-align: right;">Page 384</p> <p>1 COUNCILMEMBER CONDON: Thank you. 2 MS. TARDAEWETHER: So I am -- I don't know 3 if we have an ongoing question. I don't know if we want 4 me to find a MAP set or if I want to proceed. 5 Okay. Proceed. All right. Because I 6 can -- I can come back. I'm almost there. 7 Okay. So that is an interesting component 8 to the proposed order. 9 And I'm not going to go into -- because this 10 is -- the gray area of -- of crossover with issues that 11 people rose -- or had in the contested case. But the 12 proposed order discusses the visual impacts -- visual 13 impact methodology. 14 And I'm talking about this here under 15 protected areas because that's where we talked about it 16 in the proposed order. Because it's the first standard 17 you get to, but the same visual impact assessment 18 methodology applies for protected areas, scenic 19 resources, and recreation. 20 So -- and -- and then it does also have 21 some -- you know, some nexus when we get to kind of the 22 discussion of mitigation under the cultural, because 23 we're looking at the conditions for visual impact 24 mitigation over and underneath that condition. 25 So -- and the reason why I brought up the --</p>	<p style="text-align: right;">Page 386</p> <p>1 underneath of those has these impact tables that this -- 2 for visual impacts, this was applied to and then there's 3 this whole assessment baseline, evaluation of the 4 magnitude, likelihood, then the application of -- of 5 significance. 6 So that information is -- is in there. And 7 then the proposed order summarizes it. 8 And then I have a slide -- I have a slide, 9 but because I'm using a PDF, we're just going to kind of 10 go to this slide. 11 I had a table that had -- just a snippet 12 from the proposed order and it's a table of the 13 protected areas with visual impacts. But then this 14 is -- this picture is crossed over it. We'll just try 15 to zoom this up here. And, you know -- I'm sorry, it's 16 hard to see. 17 But this is just -- I thought this was just 18 kind of some of the things that we look at or that are 19 looked at in the application. And I know you can't 20 really see those. I'll go in bigger. This is one -- 21 you know, just under two miles away and then we're kind 22 of getting closer and then you can see transmission 23 structures. 24 But this is one of the -- what I think is 25 interesting about this -- and here we can start seeing</p>

<p style="text-align: right;">Page 387</p> <p>1 them -- is that you just look at the skyline behind it. 2 Right? Your sky coloring, the topography changes, the 3 color of the environment behind it, whether or not it's 4 a forested area or not. And these are all aspects that 5 were evaluated or applied in that visual impact 6 assessment. 7 This visual simulation here isn't of a 8 particular area. It just is a demonstration of -- 9 that -- the context and the -- the site-specific aspect 10 of each of the sites evaluated, you know, matter and 11 change the outcome of the visual impact assessment. 12 And that concludes my portion. 13 Oh, except -- nope. Wait. No, I forgot. 14 Wait. I just wanted to -- I just wanted it to. 15 Now I'm going to continue with scenic 16 resources. 17 Okay. So for scenic resources, the analysis 18 area, protected areas went out 20, for scenic resources 19 we go out 10 miles. Scenic resources, as the standard 20 explains to us are -- these are resources that have -- 21 identified as significant or important in land 22 management plans from federal agencies, state agencies, 23 tribal governments. So the task here for -- to evaluate 24 scenic resources is it's several steps. We go through 25 the management plans or the applicant and then the</p>	<p style="text-align: right;">Page 389</p> <p>1 looking at this and the designation of resources, this 2 is what orients the applicant to do more. 3 Is there a particular resource under any of 4 these standards where they need to go out and do more? 5 And there were photo simulations provided 6 for some of the areas and that's where they -- their 7 KOPs, it's a "key observation point." 8 And those are areas at a particular resource 9 where photos were taken and then simulative towers would 10 be drawn in to demonstrate the magnitude or intensity of 11 visual impact. 12 Okay. And so there are conditions under 13 scenic resources. 14 So condition two is -- and there are 15 conditions that the applicant represents would minimize 16 visual impacts at a particular area. And a lot of those 17 are a particular type of tower and with a particular 18 type of finish. 19 So here under scenic resources condition 20 two, this is back to Ladd Marsh. We have some tower 21 modifications which would be intended to reduce visual 22 impacts. And then -- the scenic resources condition 23 four is specific to Birch Creek area and this is another 24 example where within this area they are proposing a 25 design modification that's intended to reduce the visual</p>
<p style="text-align: right;">Page 388</p> <p>1 Department goes through the management plans and there 2 are resources identified. And then we look at those 3 resources as to whether or not they are -- are they 4 managed for their scenic values and importance. And if 5 so, then they are captured and evaluated underneath the 6 Scenic Resources Standard. 7 There's 33 -- 33 important or significant 8 scenic resources within the 10-mile analysis area that 9 the Department concurred with in the proposed order and 10 evaluated. Seven of them are crossed by the proposed 11 facility. 12 And I have this -- we were just talking 13 about visual impacts. Again, we're not looking at any 14 particular -- this presentation, I'm not looking at any 15 particular one. I'm just trying to orient Council to 16 the information that's in the record and some of what 17 the Department looked at in drafting the findings in 18 their proposed orders. 19 So this is a visual impact, you know, 20 assessment based on these visual impact assessments, 21 you're like, what am I looking at here? So here these 22 are different types of scenic resources. And the 23 coloring is over here. 24 The pink is an area where one or more towers 25 may be visible up to 10 miles. Okay. So then kind of</p>	<p style="text-align: right;">Page 390</p> <p>1 impacts at that area. 2 And then these areas, for instance, Birch 3 Creek. Birch Creek gets captured under protected areas, 4 it gets captured under scenic, and then it also gets -- 5 it is evaluated under the Historic, Cultural and 6 Archeological Resources Standard. 7 So this is one of these areas that also that 8 HPMP of that historic resources condition two, that HPMP 9 is the mitigation in there will -- the final mitigation 10 will also apply to this area as well. In addition to 11 this condition. 12 And now I'm going to pass it off to you, 13 Jesse. 14 MR. RATCLIFFE: Okay. So we'll be moving, 15 first, to scenic resources issue number three. The 16 limited party is Deschner. 17 The issue is whether the applicant 18 adequately assessed the visual impact of the proposed 19 project in the vicinity of the NHOTIC and properly 20 determined the impact would be less than significant. 21 The hearing officer's proposed order on this 22 issue stated that she concluded that the applicant 23 accurately assessed the visual impact of the proposed 24 project in the vicinity of NHOTIC and properly 25 determined the impact would be less than significant as</p>

<p style="text-align: right;">Page 391</p> <p>1 defined by Council rule.</p> <p>2 The standard does not require a</p> <p>3 demonstration of no impact. It requires a demonstration</p> <p>4 of no significant impact and specifically allows for</p> <p>5 consideration of mitigation.</p> <p>6 And, again, as Kellen had referenced here</p> <p>7 earlier, the Council rules do provide a definition of</p> <p>8 "significant."</p> <p>9 And in the context of this issue, the</p> <p>10 hearing officer was noting that it's not appropriate as</p> <p>11 a result to look to a dictionary definition to interpret</p> <p>12 that term.</p> <p>13 The hearing officer also concluded that the</p> <p>14 applicant refined its visual impact assessment to</p> <p>15 consider the Council's definition of "significant" as</p> <p>16 requested by the Department in the application process.</p> <p>17 She also found that the proposed facility</p> <p>18 would be visible from the NHOTIC parcel. That would be</p> <p>19 within -- at one point, within 123 feet of the parcel</p> <p>20 boundary, but existing development within landscape and</p> <p>21 design modifications and an additional mitigation that</p> <p>22 with those mitigating factors that the evidence in the</p> <p>23 record was sufficient to establish that the impacts</p> <p>24 would be less than significant.</p> <p>25 So that is the summary of the hearing</p>	<p style="text-align: right;">Page 393</p> <p>1 The detailed analysis in Exhibits L, R, and</p> <p>2 T of Idaho Power's application for site certificate</p> <p>3 demonstrate that Idaho Power adequately assessed visual</p> <p>4 impacts to the NHOTIC and demonstrated that those</p> <p>5 impacts will be less than significant.</p> <p>6 Mr. Deschner's challenges to the proposed</p> <p>7 contested case order are all either unsupported by</p> <p>8 evidence in the record or misapplied the applicable</p> <p>9 Council standards.</p> <p>10 In his exceptions filing, Mr. Deschner</p> <p>11 repeatedly argues that Idaho Power has not adequately</p> <p>12 mitigated the project's visual impacts to the NHOTIC</p> <p>13 because the project will be visible.</p> <p>14 Idaho Power is not required under any EFSC</p> <p>15 standard to demonstrate that the project will result in</p> <p>16 zero impacts. If there were a zero impact standard, no</p> <p>17 energy facilities could ever be developed in Oregon.</p> <p>18 Rather, Idaho Power must demonstrate that</p> <p>19 the facilities -- that the construction operation of the</p> <p>20 project is not likely to result in a significant adverse</p> <p>21 impact.</p> <p>22 Accordingly, Mr. Deschner's contention that</p> <p>23 the towers will still be visible does not prove by a</p> <p>24 preponderance of evidence in the record that visual</p> <p>25 impacts from those towers are inconsistent with the</p>
<p style="text-align: right;">Page 392</p> <p>1 officer's proposed contested case order with regard to</p> <p>2 issue SR-3. And we can have oral argument from</p> <p>3 Deschner.</p> <p>4 MR. DESCHNER: I couldn't see the screen</p> <p>5 yesterday so I brought my own. And that's my</p> <p>6 presentation that you're holding.</p> <p>7 That's my -- that's it. I don't know what</p> <p>8 to tell you.</p> <p>9 Any questions?</p> <p>10 Thank you.</p> <p>11 VICE CHAIR HOWE: Thanks.</p> <p>12 SECRETARY CORNETT: For the record, Todd</p> <p>13 Cornett.</p> <p>14 Councilmember Chocktoot, so a handout was</p> <p>15 submitted to us in the room. We're going to take a</p> <p>16 picture of that and email it to you so you have it as</p> <p>17 well.</p> <p>18 MS. ESTERSON: For what it's worth, I do</p> <p>19 believe it is in the written record as well.</p> <p>20 COUNCILMEMBER CHOCKTOOT: Thank you.</p> <p>21 MS. PEASE: Thank you. Good afternoon,</p> <p>22 Councilmembers. For the record, this is Jocelyn Pease</p> <p>23 for Idaho Power Company.</p> <p>24 And in response to Mr. Deschner's written</p> <p>25 exceptions, I wanted to just highlight a few points.</p>	<p style="text-align: right;">Page 394</p> <p>1 applicable siting standards.</p> <p>2 Mr. Deschner also argues that the project</p> <p>3 towers have not been mitigated because they will be</p> <p>4 taller than existing transmission towers.</p> <p>5 However, Idaho Power's expert witness,</p> <p>6 Louise Kling, provided testimony and evidence</p> <p>7 demonstrating that the project will be co-dominant with</p> <p>8 the existing features on the landscape, including the</p> <p>9 existing transmission line.</p> <p>10 And I would point out that in the proposed</p> <p>11 order there are conditions regarding the -- the NHOTIC,</p> <p>12 the transmission line in the NHOTIC, which would require</p> <p>13 that the towers be -- be H frames, that they be built to</p> <p>14 a certain height to be 130 feet or less to reduce the</p> <p>15 visual impacts and also that they be -- that they use a</p> <p>16 certain finish so that there would be less reflection or</p> <p>17 glare.</p> <p>18 So based on those conditions, the Council</p> <p>19 can find that Idaho Power has met the standard in this</p> <p>20 case.</p> <p>21 VICE CHAIR HOWE: Thank you, Ms. Pease.</p> <p>22 Any questions from Council?</p> <p>23 MR. ROWE: Patrick Rowe, Department of</p> <p>24 Justice on behalf of the Department of Energy.</p> <p>25 I just want to re-read the issue statement</p>

<p style="text-align: right;">Page 395</p> <p>1 for this issue, since in the contested case, it's issue</p> <p>2 SR-3, whether the applicant adequately addressed the</p> <p>3 visual impact of the proposed project in the vicinity of</p> <p>4 the NHOTIC -- National Historic Oregon Trail</p> <p>5 Interpretive Center -- and properly determined the</p> <p>6 impact would be less than significant.</p> <p>7 So that's really asking two questions: Did</p> <p>8 Idaho Power adequately assess the visual impact of the</p> <p>9 line near NHOTIC; and, second, is it proper to conclude</p> <p>10 that impact will be less than significant?</p> <p>11 Mr. Deschner's exceptions to the ALJ's</p> <p>12 proposed contested case order focused on that second</p> <p>13 question, whether it's proper to conclude that the</p> <p>14 impact will be less than significant.</p> <p>15 Mr. Deschner clearly disagrees with the</p> <p>16 ALJ's conclusion. We agree with Idaho Power that he</p> <p>17 hasn't shown that the ALJ failed to consider relevant</p> <p>18 evidence or make conclusions based on substantial</p> <p>19 evidence.</p> <p>20 The Department believes that there's a</p> <p>21 preponderance of evidence -- again, that's the</p> <p>22 standard -- that supports a conclusion that the impact</p> <p>23 with mitigation will be less than significant.</p> <p>24 And, again, those conditions are the</p> <p>25 recommended scenic resource conditions -- three on page</p>	<p style="text-align: right;">Page 397</p> <p>1 COUNCILMEMBER JENKINS: Which is in between</p> <p>2 milepost 197.9 and 199.1, is that the visual impact</p> <p>3 area?</p> <p>4 Is that why that distance was selected in</p> <p>5 the condition?</p> <p>6 MS. TARDAEWETHER: For the record, Kellen,</p> <p>7 Tardaewether. Yes, let me find this condition.</p> <p>8 COUNCILMEMBER JENKINS: Line 13 of condition</p> <p>9 number four. Or am I in the wrong place?</p> <p>10 MS. TARDAEWETHER: I think it's condition</p> <p>11 two.</p> <p>12 One minute. Yes. In short, that would have</p> <p>13 been in the areas where there are a limitation on the</p> <p>14 mileposts for certain height restrictions or tower</p> <p>15 types. It's because that's what is estimated to be the</p> <p>16 visual impact area.</p> <p>17 And you said it's 3. Scenic Resources 3.</p> <p>18 Yeah, scenic three.</p> <p>19 VICE CHAIR HOWE: Sarah? I don't read lips.</p> <p>20 MS. ESTERSON: You referenced scenic</p> <p>21 resources condition four. That applies to a different</p> <p>22 resource.</p> <p>23 Scenic resources condition three is that it</p> <p>24 applies to the NHOTIC. The same question applies it</p> <p>25 references.</p>
<p style="text-align: right;">Page 396</p> <p>1 417 and four on page 423.</p> <p>2 So the Department, again, is recommending</p> <p>3 that you find compliance with the standard with those --</p> <p>4 with the mitigation outlined in those conditions.</p> <p>5 As I've noted with other conditions that the</p> <p>6 Department has proposed, if Council believes that the</p> <p>7 condition should be revised or supplemented in any way,</p> <p>8 now would be the time to let us know.</p> <p>9 THE COURT: Thank you, Counsel Rowe.</p> <p>10 Any questions from the Council?</p> <p>11 COUNCILMEMBER CHOCKTOOT: For the record,</p> <p>12 this is Perry Chocktoot. And I'm reviewing the picture</p> <p>13 that was sent to me. I had a couple questions.</p> <p>14 Why -- why is it inside a window inside a</p> <p>15 home? When the real impacts happen when you go out and</p> <p>16 see the grid as a whole and hear the noise that it</p> <p>17 makes?</p> <p>18 MR. ROWE: So, Councilmember Chocktoot, I</p> <p>19 think that question would probably be best asked of</p> <p>20 Mr. Deschner since he was the one who submitted the</p> <p>21 photo.</p> <p>22 So he's -- you're welcome to have him come</p> <p>23 back up and answer the question, if you would like.</p> <p>24 COUNCILMEMBER CHOCKTOOT: That's okay. Just</p> <p>25 hoping to have the meeting move along a little quicker.</p>	<p style="text-align: right;">Page 398</p> <p>1 MR. ROWE: And that's my error. I</p> <p>2 referenced when I was discussing it both three and four.</p> <p>3 So thanks for that clarification, Sarah.</p> <p>4 COUNCILMEMBER JENKINS: The milepost</p> <p>5 distances are different in three than they are in four.</p> <p>6 That's okay. It's the same principle.</p> <p>7 MS. TARDAEWETHER: I'm -- I'm sorry to -- to</p> <p>8 interject, Council.</p> <p>9 Whit just indicated that he actually would</p> <p>10 like his recording to play.</p> <p>11 He was providing the visual -- the picture</p> <p>12 was a supplement to go with his recording that he</p> <p>13 submitted.</p> <p>14 So thank you for saying that. And I</p> <p>15 apologize that wasn't clear.</p> <p>16 (Audio played.)</p> <p>17 "I am Petitioner Whit Deschner. Dear</p> <p>18 Councilmembers. Thank you for the</p> <p>19 three- minute boundary to boil down why</p> <p>20 the ALJ has erred in ignoring this</p> <p>21 issue, allowing Idaho Power to proceed</p> <p>22 in ruining NHOTIC's viewshed. Clearly,</p> <p>23 any power line seen from the</p> <p>24 interpretive center will have a</p> <p>25 significant impact on the visitor,</p>

<p style="text-align: right;">Page 399</p> <p>1 period. And that gathering from a 2 buffet of impact studies, Idaho Power 3 concludes that their project's scenic 4 impact will be less than significant. 5 IP themselves conducted this study. No 6 independent entity or no Oregon or 7 visitors' opinions were sought. IP's 8 own attorney conducted the visual impact 9 assessment and made the conclusion of 10 less than significant. IPC further 11 backs their argument by proposing that 12 they have special finishes that 13 virtually hide the pylons and conductors 14 and we need not to worry. ALJ erred in 15 taking this at face value. Dulling the 16 metal finish of conductors and towers 17 does not make the towers less than 18 significant, especially when one of the 19 towers is only 125 feet from Panorama 20 Point, the best vista at the 21 interpretive center. Ms. Kling, IP's 22 expert witness, makes the accusation 23 that photos I submitted were not 24 representative of the project and yet 25 the photos submitted by IP were</p>	<p style="text-align: right;">Page 401</p> <p>1 regarding Mr. Deschner's point that Idaho Power did not 2 ask for any subjective input. I would note that there's 3 no requirement in the Council's standards that Idaho 4 Power asked for that input. 5 And in making certain assumptions regarding 6 the potential impact associated with the project, Idaho 7 Power had conservatively assumed that folks would value 8 the resource and had, thus, assumed that there would 9 be -- that if asked that that folks would have -- would 10 indicate that they have concern for the resource. 11 Mr. Deschner also commented that Idaho 12 Power's attorney conducted the analysis. While there 13 were attorneys that were involved through the 14 application process, Idaho Power used an expert witness, 15 Louise Kling, who has many years of visual impact 16 analysis and is an expert in her field to perform the 17 analysis and did so with consultation with the Oregon 18 Department of Energy as well. 19 And finally, to the comment that the photo 20 that Mr. Deschner had shared is not representative -- I 21 believe the point that Idaho Power's witness was making 22 was that in performing a visual impacts analysis, there 23 are certain parameters that are used to be able to -- to 24 apply that analysis, which involves an observation 25 point, determining the -- the perspective of the viewer</p>
<p style="text-align: right;">Page 400</p> <p>1 impossible to locate exactly where the 2 towers would go. NHOTIC was a community 3 project. Built for the people and by 4 the people who appreciate the pioneer 5 history of our historic Oregon Trail and 6 region and by people proud of the new 7 tourism economy that has developed since 8 the decline of our natural resources 9 economy. They deserve better than to be 10 steam-rolled by a private for-profit 11 corporation who does not even reside 12 here. The people also deserve to be 13 protected by a regulating governing 14 body, one that is looking out for the 15 people not sympathetic to outside 16 interests. These towers will be seen 17 from and about the interpretive center 18 no matter what. This is more than a 19 significant visual impact. I urge the 20 Council to -- I urge the Council to 21 consider these significant human impacts 22 and to deny the site certificate or 23 remand the issue. Thank you. 24 MS. PEASE: Afternoon Councilmembers. There 25 were just a few points there that I wanted to respond to</p>	<p style="text-align: right;">Page 402</p> <p>1 and I think the critique was that the -- the image that 2 Mr. Deschner had shared didn't have those same features. 3 There wasn't any perspective as to where the photo was 4 taken or what's being represented or where it would be 5 within the NHOTIC. And so that is my brief response. 6 Thank you. 7 VICE CHAIR HOWE: Any questions from 8 Council? 9 Council Condon. 10 COUNCILMEMBER CONDON: Cindy Condon, for the 11 record. 12 I'm not sure who to address this to, but I 13 think it might be the Department. 14 So the applicant has certainly made it clear 15 that they will minimize impacts and mitigate impacts. 16 And once built, if the -- if the impact is 17 more significant -- I mean, is found to be more 18 significant, then it's a hundred years of -- or in 19 perpetuity that the impact exists. 20 Is there any look back or -- you know, if 21 the result is something more than what was 22 promised/expected, what's the consequence of that? 23 Or is there consequence? 24 Does that just become the definition of 25 significant?</p>

<p style="text-align: right;">Page 403</p> <p>1 MS. PEASE: That question is a little 2 difficult to answer, obviously. But there were multiple 3 visual simulations provided for what the proposed 4 facility would look like at different viewpoints at 5 NHOTIC. And so that should be the impact assessment. 6 And so I -- if -- if you're asking if it is more 7 impactful from the perspective of the viewer, is there 8 reach-back in mitigation? 9 I mean, I guess then where we pivot over, if 10 you recall, on the HCA issues that the -- the 11 enhanced -- what was it called? The visual -- the 12 formal -- the second phase of the analysis that includes 13 the visual assessment is continuing and will go through 14 pre-construction where then all these entities are going 15 to be assessing the significance of the -- you know, the 16 impact and then what the mitigation would be. 17 So -- and again, visual impacts under the 18 definition of significance for cultural. It's not a 19 direct one-to-one. 20 So you have to account for the benefits of 21 the mitigation that would come out of it, whether it's 22 recordation of fully evaluating the resource, an 23 interpretive sign, an interpretive display at a cultural 24 center. There's a myriad of things that they would 25 do -- but that would be then what is -- so the question</p>	<p style="text-align: right;">Page 405</p> <p>1 And then if there's somewhere in the 2 materials that gives me a nice analysis of the different 3 kinds of towers because I think I know what an H frame 4 looks like, but I'm not sure, and versus a lattice or 5 what all the options are for towers, knowing that there 6 are electrical standards for what kind of towers are 7 needed to support the voltage. 8 So just -- coming in very late to this 9 process, getting a sense of the visual impacts and we 10 can do this offline, but I think it's just important to 11 think about. Thank you. 12 MS. TARDAEWETHER: So on that note, I can 13 give you -- we touched on it in July a little bit. But 14 in Exhibit B -- B has a description of the different 15 types of towers. And it would have a description of the 16 finishes. I have some. And that's kind of in that 17 picture I pulled up in my presentation. 18 It was just to demonstrate with different 19 type of topography or view depending on what the color 20 and the skyline looks like in your background. Towers 21 can be very visible or very hidden. And the applicant 22 does represent different types of towers and different 23 finishes to minimize or to reduce visual impacts in 24 different areas. 25 Now, the question, specifically, is that,</p>
<p style="text-align: right;">Page 404</p> <p>1 is whether that mitigation is adequate. But that's 2 coming out of the HPMP. 3 And so, no, we don't currently have 4 something that says, well, what is the long -- you have 5 to do a long-term evaluation. Almost like a -- yeah. 6 COUNCILMEMBER CONDON: Thank you. 7 It just seems to me like we're relying on, 8 certainly hoped for results, and once it's built, it's 9 built. 10 And so then does the mitigation become, you 11 know, interpretive materials, brochures? I mean, 12 certainly don't mitigate the properties that are seen on 13 the landscape. They may do something else, but they 14 don't mitigate that, and hence my question. So thanks. 15 COUNCILMEMBER BEIER: Question. Again, not 16 sure who to direct this two about the finish on the 17 structures. In some cases, I've had developers say the 18 typical silver gray is less visible in certain skies 19 than the -- I guess it's the weathered steel. And how 20 that issue was weighed in terms of visibility. 21 Because in this part of the world where we 22 have very big skies, how those towers project against a 23 gray sky, today's sky, there will be different seasonal 24 visual impacts and making sure that the finish chosen 25 deals with that.</p>	<p style="text-align: right;">Page 406</p> <p>1 you know, were those proposed because they are very 2 specific to the topography, the skyline, et cetera, to 3 minimize at those specific areas? 4 I don't know if that information was in 5 there. And I think that would be a really good, you 6 know, question to ask the people that really know about 7 transmission towers and finishes. 8 I have -- that, you could ask now. 9 But then I also have some of these visual 10 simulations here of these up here. So these are some 11 H frames. This is the existing landscape. And these -- 12 these are in exhibit -- Exhibit R for scenic resources. 13 So this is out in front of NHOTIC. And as 14 Sarah mentioned, we also have Chris Clark on the line. 15 And he's been helping through the contested case and 16 he's been working on the scenic resources and protected 17 areas sections. 18 And that -- I do believe that there were 19 additional visual simulations submitted -- or 20 evaluations. Our impact assessments submitted through 21 the contested case in the NHOTIC area, so. 22 COUNCILMEMBER BEIER: And the question comes 23 up only because we're so specific in these conditions. 24 MS. TARDAEWETHER: Correct. 25 COUNCILMEMBER BEIER: But I want to make</p>

<p style="text-align: right;">Page 407</p> <p>1 sure that they are the proper conditions and that</p> <p>2 we're -- the design really does fully take into effect</p> <p>3 visual impacts. Not that there are no visual impacts.</p> <p>4 The visual impacts aren't significant and</p> <p>5 here's what's been done to mitigate. Is it the right</p> <p>6 condition for mitigation?</p> <p>7 MS. TARDAEWETHER: Thank you.</p> <p>8 VICE CHAIR HOWE: So we've had the</p> <p>9 presentation from -- from staff and then as well the --</p> <p>10 heard the contested case positions and responses for</p> <p>11 scenic resource three.</p> <p>12 Are we ready to -- of a straw poll? Or do</p> <p>13 we need further discussion on where we're at with this?</p> <p>14 Scenic resource three.</p> <p>15 SECRETARY CORNETT: For the record, Todd</p> <p>16 Cornett.</p> <p>17 So, Vice Chair Howe, so Council's options</p> <p>18 are to conduct a straw poll on SR-3 right now, just that</p> <p>19 issue or hold and wait and consolidate and do one</p> <p>20 broader straw poll later on. The choice is yours.</p> <p>21 COUNCILMEMBER JENKINS: I would prefer to do</p> <p>22 these issue by issue so we don't get crossed.</p> <p>23 SECRETARY CORNETT: Hearing no changes, no</p> <p>24 alterations, I have "agree with the findings of fact,</p> <p>25 conclusions of law, and conditions of approval in the</p>	<p style="text-align: right;">Page 409</p> <p>1 numeric values to the adverse impact and whether the</p> <p>2 applicant used unsatisfactory measurement locations or</p> <p>3 observation points in its visual impact assessment.</p> <p>4 So the summary of the hearing officer's</p> <p>5 opinion on this issue, she concluded that the</p> <p>6 methodology that the applicant used to determine the</p> <p>7 extent of the adverse impact of the proposed facility on</p> <p>8 scenic resources protected areas and recreation along</p> <p>9 the trail was reasonable and appropriate.</p> <p>10 Limited parties have not shown that the</p> <p>11 methodology was flawed or that the company erred in</p> <p>12 applying numeric values to the adverse impact or used</p> <p>13 unsatisfactory measurement locations or observation</p> <p>14 points in its visual impact assessment.</p> <p>15 She found that Council's rules do not</p> <p>16 require that an applicant employ a specific methodology</p> <p>17 for assessing visual impacts. The applicant had no</p> <p>18 legal obligation to collect constituent information to</p> <p>19 demonstrate compliance with scenic resources, protected</p> <p>20 areas, or the recreation standard.</p> <p>21 She noted that the applicant explained its</p> <p>22 method for assessing visual impacts in detail in the</p> <p>23 Exhibit R to the complete application.</p> <p>24 Specifically Attachment R-1.</p> <p>25 That Idaho Power incorporated measures of</p>
<p style="text-align: right;">Page 408</p> <p>1 proposed contested case order pertaining to issue SR-3."</p> <p>2 Okay. Seeing head nods.</p> <p>3 Hanley Jenkins.</p> <p>4 COUNCILMEMBER JENKINS: Yes.</p> <p>5 SECRETARY CORNETT: Perry Chocktoot.</p> <p>6 COUNCILMEMBER CHOCKTOOT: Yes.</p> <p>7 SECRETARY CORNETT: Kent Howe.</p> <p>8 VICE CHAIR HOWE: Yes.</p> <p>9 SECRETARY CORNETT: Ann Beier.</p> <p>10 COUNCILMEMBER BEIER: (No audible response.)</p> <p>11 SECRETARY CORNETT: Jordan Truitt.</p> <p>12 COUNCILMEMBER TRUITT: Yes.</p> <p>13 SECRETARY CORNETT: Cindy Condon.</p> <p>14 COUNCILMEMBER CONDON: Yes.</p> <p>15 SECRETARY CORNETT: Thank you,</p> <p>16 Councilmembers.</p> <p>17 MR. RATCLIFFE: Okay. The next issue up is</p> <p>18 issue SR-7. And the parties here are Stop B2H and Lois</p> <p>19 Barry.</p> <p>20 The issue is whether the methods used to</p> <p>21 determine the extent of an adverse impact of the</p> <p>22 proposed facility on scenic resources, protected area,</p> <p>23 and recreation along the Oregon Trail were flawed and</p> <p>24 developed without peer-review and/or public input;</p> <p>25 specifically, whether the applicant erred in applying</p>	<p style="text-align: right;">Page 410</p> <p>1 the degree to which viewers subjectively value a visual</p> <p>2 resource that were drawn from the Forest Service Scenery</p> <p>3 Management System and the Bureau of Land Management's</p> <p>4 Visual Resource Management System.</p> <p>5 But assume that all viewers would be highly</p> <p>6 sensitive to the resource change rather than collecting</p> <p>7 specific viewer data. Because Idaho Power attached the</p> <p>8 highest viewer sensitivity value to the resources</p> <p>9 evaluated, the data collection on viewers' subjective</p> <p>10 evaluations was not necessary to demonstrate that the</p> <p>11 standard had been met.</p> <p>12 There's no rule that requires an applicant</p> <p>13 to have its impact assessment methodologies</p> <p>14 peer-reviewed or subjected to public input.</p> <p>15 Finally, the site certificate condition</p> <p>16 requiring Idaho Power to underground the transmission</p> <p>17 line for 1.7 miles in the area of NHOTIC was not</p> <p>18 submitted in accordance with the set schedule.</p> <p>19 But even if Stop B2H had submitted this in a</p> <p>20 timely fashion, it was neither necessary nor appropriate</p> <p>21 as, again, based on prior Council decision in the</p> <p>22 Wheatridge application that the Council -- that that</p> <p>23 would be outside the scope of the Council's jurisdiction</p> <p>24 as -- as an alternative.</p> <p>25 So, again, that's the summary of the hearing</p>

<p style="text-align: right;">Page 411</p> <p>1 officer's proposed order.</p> <p>2 And so we have both Lois Barry and Stop B2H</p> <p>3 presenting on this. So whoever is ready to come up for</p> <p>4 oral argument may do so.</p> <p>5 MR. ANUTA: Karl Anuta appearing for Stop.</p> <p>6 And I need to correct Mr. Ratcliffe on this</p> <p>7 one. Actually, Ms. Barry is not presenting on this</p> <p>8 particular issue. She did not accept on this one. But</p> <p>9 I'll be happy to take an additional three minutes if you</p> <p>10 would like to present further on the issue on her</p> <p>11 behalf.</p> <p>12 Let's start with the Wheatridge decision</p> <p>13 issue.</p> <p>14 Our position is simple. You're not</p> <p>15 constrained by Wheatridge because the issue here is not</p> <p>16 the site boundary. It's mitigation and a condition on</p> <p>17 the approval in order to meet your significance</p> <p>18 criteria.</p> <p>19 You have absolute discretion to impose any</p> <p>20 conditions that you think are necessary to meet the</p> <p>21 standards, and that includes requiring undergrounding</p> <p>22 because that is a condition required to reduce this</p> <p>23 level of impact near the NHOTIC to less than</p> <p>24 significant.</p> <p>25 So the Wheatridge decision is a completely</p>	<p style="text-align: right;">Page 413</p> <p>1 not significant.</p> <p>2 Simply saying, I'm standing here and I can</p> <p>3 see X. And I assume that I'm a sensitive person, does</p> <p>4 not assess compliance with the standard, which is</p> <p>5 whether that impact is or is not significant.</p> <p>6 The Idaho Power methodology that they</p> <p>7 developed, which is unique for this proceeding, it never</p> <p>8 existed before. It's pulled together from pieces of the</p> <p>9 BLM and Forest Service materials. Did not include key</p> <p>10 components of those two agency manuals and their</p> <p>11 processes, specifically the subjective feeling</p> <p>12 components, the constituent interviews of "how did it</p> <p>13 affect you?"</p> <p>14 And so to the extent that the PCCO claims</p> <p>15 that in, for example, fact 199, that the manuals were</p> <p>16 incorporated. No. Parts of the manuals were</p> <p>17 incorporated, not all. The key component in those</p> <p>18 holistic programs is missing.</p> <p>19 The final point I would make is as to the</p> <p>20 Idaho Power's contention that they did a significance</p> <p>21 analysis by assuming everybody was sensitive.</p> <p>22 Just because you use the word "significant"</p> <p>23 and you make your analogy look -- or analysis look</p> <p>24 somewhat like the BLM or the Forest Service methodology,</p> <p>25 doesn't mean you actually assessed it.</p>
<p style="text-align: right;">Page 412</p> <p>1 separate decision. Each facility has to be evaluated</p> <p>2 for its own impacts and its own compliance with the</p> <p>3 standards. And to the extent that Idaho Power or the</p> <p>4 Department argues Wheatridge is binding on you, we</p> <p>5 fundamentally disagree. That might be an example of a</p> <p>6 place where you didn't require it. Or it might be an</p> <p>7 example a place where the boundary issue was actually in</p> <p>8 question. That's not the case here.</p> <p>9 With regard to the methodology. The real</p> <p>10 issue here is pretty straightforward. Idaho Power</p> <p>11 admits its developed methodology, which it's a</p> <p>12 consultant, Ms. Kling, developed with the attorneys for</p> <p>13 Idaho Power and that was all who was involved in</p> <p>14 developing it. She admits that it doesn't collect</p> <p>15 subjective feelings of constituents about the impacts.</p> <p>16 Our contention is simple. You have a significant</p> <p>17 standard that requires you to evaluate the impact on</p> <p>18 humans. That includes the subjective impacts in</p> <p>19 addition to the impacts that Idaho Power did assess,</p> <p>20 which is where are you standing and what can you see</p> <p>21 from there?</p> <p>22 But they did not -- they admit they did not</p> <p>23 look at subjective impacts. They said they assumed</p> <p>24 everyone had some subjective impacts. That doesn't tell</p> <p>25 you anything about whether those impacts were or were</p>	<p style="text-align: right;">Page 414</p> <p>1 The question is for you as a Councillor, did</p> <p>2 they actually look at what people would feel when they</p> <p>3 saw this?</p> <p>4 I'd go on if you gave me more time, but</p> <p>5 that's probably where I should stop for now.</p> <p>6 VICE CHAIR HOWE: Thank you, Mr. Anuta.</p> <p>7 Any questions from Council?</p> <p>8 Okay. Thank you.</p> <p>9 MS. PEASE: Thank you. For the record, this</p> <p>10 is Jocelyn Pease for Idaho Power.</p> <p>11 And I would like to respond to several of</p> <p>12 the points that Mr. Anuta had raised.</p> <p>13 First, regarding the Wheatridge example.</p> <p>14 My understanding is in that case it was not</p> <p>15 necessarily a site boundary issue either. But instead</p> <p>16 the Council appropriately considering that when you're</p> <p>17 looking at undergrounding, it's a different facility</p> <p>18 than what the applicant has proposed. And in this case,</p> <p>19 undergrounding would be a different facility with</p> <p>20 different elements, different components than an</p> <p>21 overhead transmission line.</p> <p>22 So we urge the Council to follow its prior</p> <p>23 rationale and decision-making in the Wheatridge case</p> <p>24 and -- and determine that undergrounding is not at issue</p> <p>25 in this case. That the Council is here considering the</p>

<p style="text-align: right;">Page 415</p> <p>1 facility as Idaho Power proposed it in its application 2 for site certificate. 3 Regarding Mr. Anuta's comments about Idaho 4 Power not collecting subjective input or -- or not 5 including portions of the Forest Service plans that 6 would relate to the subjective input from constituents. 7 I would first note that the EFSC standards 8 don't require the applicant to collect any subjective 9 input. And moreover, the documents that Mr. Anuta is 10 referring -- is referring to is a 1995 Forest Service 11 plan that that -- that relates to inventory level 12 planning. It does not relate to performing an impacts 13 analysis. Idaho Power's expert witness, Louise Kling, 14 provided extensive testimony on this subject at the 15 cross-examination hearing. 16 So the documents that Mr. Anuta is referring 17 to are not even relevant to an impacts analysis. 18 Finally, regarding the methodology being 19 a -- sort of a combination of different pieces of Forest 20 Service plans and taking into account the Council's 21 definition of significant. 22 I would note that in earlier iterations of 23 Idaho Power's analysis it had focused primarily on the 24 federal planning documents. 25 And in response to that initial analysis,</p>	<p style="text-align: right;">Page 417</p> <p>1 I'm just curious. 2 MS. PEASE: What Idaho Power endeavored to 3 do with this analysis was to create a methodology that 4 was repeatable and somewhat objective. And so for that 5 reason, there -- there are process steps that another 6 visual resources expert could apply and be able to reach 7 a similar conclusion. 8 So the effort here was to create a method 9 that -- that could be repeated and could produce the 10 same results. And so as it would relate to subjective 11 input, the -- I can't speak exactly to what the decision 12 was or wasn't made, but my understanding is that the 13 method took into account that subjective element by 14 assuming a high degree of impact. Or assuming that 15 people care a lot about the resource. 16 I mean, as it would relate to the 17 inventorying document that I mentioned, I mean, that 18 could help to inform as to whether a resource should be 19 or should not be identified as important. 20 In this case, we were assuming that it was 21 very important to the community. 22 COUNCILMEMBER CONDON: Thank you. 23 VICE CHAIR HOWE: Any other questions? 24 COUNCILMEMBER JENKINS: Yeah. This is 25 Hanley. The question is for Jocelyn, so don't run off.</p>
<p style="text-align: right;">Page 416</p> <p>1 ODOE issued an RAI to Idaho Power directing Idaho Power 2 to more closely look at the Council's definition of 3 "significant." 4 And it's based on that guidance from ODOE 5 that Idaho Power had worked closely with its counsel to 6 understand the Council's definition of "significant" and 7 to tailor its analysis to meet that definition. 8 And I think that is all I will say for that. 9 So thank you. 10 VICE CHAIR HOWE: Any -- 11 MS. PEASE: I will be available for 12 questions, if there are any. 13 VICE CHAIR HOWE: Any questions from 14 Council? 15 COUNCILMEMBER CONDON: Councilmember Condon. 16 Thank you, once again, for being to the 17 table. 18 Just a question. Given that "significant," 19 which we were shown earlier, certainly has that human -- 20 human piece to it and given that this issue is of 21 importance to a community, was it viewed as unnecessary? 22 I mean, I realize the standard does not 23 require it. But you could step out of the requirements 24 and speak to the community. And was there -- was there 25 just a decision not -- not to do that?</p>	<p style="text-align: right;">Page 418</p> <p>1 So to continue the line of Cindy's 2 questioning about the presumption that all viewers found 3 the -- the impact from the resource to be significant, 4 that's all viewers. It's not the guy that doesn't care. 5 Everyone was assumed to find the impact to be 6 significant. 7 MS. PEASE: I think I would phrase that 8 slightly differently. Not so much that everyone -- 9 all -- all potential viewers would view it as 10 significant. Instead that the resource is important. 11 COUNCILMEMBER JENKINS: Important. 12 MS. PEASE: Right. And so it relates to -- 13 COUNCILMEMBER JENKINS: Resources. 14 MS. PEASE: I think as Mr. Anuta had 15 referenced sort of the subjective feelings that one 16 might have about a resource. 17 Is it important? And the assumption was 18 yes, that folks would find it important. 19 VICE CHAIR HOWE: Council Condon. 20 COUNCILMEMBER CONDON: Just to continue 21 this. 22 Cindy Condon. 23 So, certainly, everyone viewed it as 24 important. 25 So at what point if everyone views it as</p>

<p style="text-align: right;">Page 419</p> <p>1 important is it significant?</p> <p>2 I mean, doesn't it become significant if it</p> <p>3 has significant impact?</p> <p>4 MS. PEASE: Certainly. Perhaps I could</p> <p>5 speak a little bit to the history of the analysis with</p> <p>6 respect to, for example, the NHOTIC. That's one</p> <p>7 resource where initially when Idaho Power had first</p> <p>8 developed the route or proposed the route in that area</p> <p>9 and done visual impact modeling using lattice frames, it</p> <p>10 was recognized that there could be significant impact if</p> <p>11 lattice frames were to be used.</p> <p>12 And so to address that potential impact,</p> <p>13 Idaho Power in coordination with other agencies,</p> <p>14 including ODOE and BLM, looked at various mitigation</p> <p>15 options to determine what type of mitigation measures</p> <p>16 could be implemented to reduce the significance of the</p> <p>17 impact.</p> <p>18 And so, for example, in that area, there</p> <p>19 were proposals to consider the use of monopoles, which</p> <p>20 are really big towers, to use H frames, to use shorter</p> <p>21 stature lattice frames. And by sort of looking at all</p> <p>22 of those options and evaluating what the visual impact</p> <p>23 would be, Idaho Power was able to come up with measures</p> <p>24 that -- that were determined to be less than significant</p> <p>25 by using the shorter stature H frames which conform to</p>	<p style="text-align: right;">Page 421</p> <p>1 a condition necessary for approval but it would be</p> <p>2 tantamount requiring an alternative facility, which is</p> <p>3 outside of Council's jurisdiction.</p> <p>4 That's -- that's all I've got on this issue.</p> <p>5 The -- we agree with Idaho Power's</p> <p>6 statements with regard to determining significance.</p> <p>7 VICE CHAIR HOWE: Any questions from</p> <p>8 Council?</p> <p>9 COUNCILMEMBER CONDON: Just quickly,</p> <p>10 Mr. Rowe, just to be clear. Undergrounding of a</p> <p>11 segment, which is, I think, what people are talking</p> <p>12 about, is considered the same as undergrounding the</p> <p>13 whole project?</p> <p>14 And is the segment meaning a completely</p> <p>15 different -- does the Department consider it that would</p> <p>16 be a completely different facility?</p> <p>17 MR. ROWE: Admittedly, we're getting into an</p> <p>18 area here that is -- it's a gray area. Right? So it's</p> <p>19 not -- it's not easy to say, well, this is -- this is an</p> <p>20 alternative and this is a condition.</p> <p>21 But this is a significant enough change from</p> <p>22 what is proposed to Council that in the Department's</p> <p>23 opinion, undergrounding just that segment is tantamount</p> <p>24 to not imposing a condition but would be requiring an</p> <p>25 alternative facility.</p>
<p style="text-align: right;">Page 420</p> <p>1 the other visual elements on the landscape, including,</p> <p>2 for example, the other H frame in that area and the</p> <p>3 fences in that area and other agricultural features as</p> <p>4 well.</p> <p>5 COUNCILMEMBER CONDON: Thank you.</p> <p>6 VICE CHAIR HOWE: Any other questions from</p> <p>7 Council? Okay. Thank you, Ms. Pease.</p> <p>8 MR. ROWE: Patrick Rowe, Department of</p> <p>9 Justice on behalf of the Department of Energy.</p> <p>10 I will speak just briefly to the proposed</p> <p>11 condition that Council require Idaho Power to</p> <p>12 underground the line.</p> <p>13 The ALJ did analyze this in the proposed</p> <p>14 contested case order. She analyzed it in the context of</p> <p>15 issue SR-2, but she referenced her analysis of issue</p> <p>16 SR-2 in this proposed condition in our analysis of SR-7</p> <p>17 in Stop's proposal to underground.</p> <p>18 The ALJ noted Council's task was determining</p> <p>19 whether the facility, as proposed, complies with</p> <p>20 Council's standards. And she determined Council does</p> <p>21 not have jurisdiction to propose alternatives.</p> <p>22 She considered it to be an alternative to</p> <p>23 the facility, not just a condition.</p> <p>24 The Department agrees that requiring Idaho</p> <p>25 Power to underground the line would not just be imposing</p>	<p style="text-align: right;">Page 422</p> <p>1 COUNCILMEMBER CONDON: Thank you.</p> <p>2 VICE CHAIR HOWE: Any other questions from</p> <p>3 Council?</p> <p>4 Okay. We're done now with SR-7.</p> <p>5 Ready for a straw poll?</p> <p>6 SECRETARY CORNETT: For the record, Todd</p> <p>7 Cornett.</p> <p>8 Hearing no proposed changes to the contested</p> <p>9 case order, I have "agree with the findings of fact,</p> <p>10 conclusions of law, and conditions of approval in the</p> <p>11 proposed contested case order pertaining to issue SR-7."</p> <p>12 VICE CHAIR HOWE: I see a consensus of head</p> <p>13 nods. Ready for a poll.</p> <p>14 SECRETARY CORNETT: Cindy Condon.</p> <p>15 COUNCILMEMBER CONDON: No.</p> <p>16 SECRETARY CORNETT: Kent Howe.</p> <p>17 VICE CHAIR HOWE: Yes.</p> <p>18 SECRETARY CORNETT: Jordan Truitt.</p> <p>19 COUNCILMEMBER TRUITT: Yes.</p> <p>20 SECRETARY CORNETT: Perry Chocktoot.</p> <p>21 COUNCILMEMBER CHOCKTOOT: Yes.</p> <p>22 SECRETARY CORNETT: Ann Beier.</p> <p>23 COUNCILMEMBER BEIER: Yes, with the -- I</p> <p>24 need to dig deeper at some point into the mitigation</p> <p>25 versus new facility issue. I'm just like Councilmember</p>

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<p style="text-align: right;">Page 423</p> <p>1 Condon, just a little queasy on that one. But I support 2 this context. Thank you. 3 SECRETARY CORNETT: Hanley Jenkins. 4 COUNCILMEMBER JENKINS: Yes. 5 SECRETARY CORNETT: Thank you, 6 Councilmembers. 7 VICE CHAIR HOWE: Now we move to SR-5; is 8 that correct? 9 MR. RATCLIFFE: That is correct. 10 VICE CHAIR HOWE: Okay. So -- Counsel 11 Ratcliffe, you have it. 12 MR. RATCLIFFE: Great. Thank you. 13 So SR-5 is an issue that the hearing officer 14 dismissed on a request for summary determination, she 15 granted that request and the issue is dismissed. The 16 issue is whether the Rice Glass Hill Natural Area should 17 be evaluated as a protected area. 18 The ruling that the hearing officer made on 19 summary determination was as a matter of law because the 20 Rice Glass Hill Natural Area was not registered as a 21 natural area as of May 11, 2007, under the language of 22 the Council's rules, the applicant had no obligation to 23 evaluate it as a protected area. 24 So the -- the -- you know, the issue is 25 fairly straightforward. The ruling is short. And</p>	<p style="text-align: right;">Page 425</p> <p>1 has been under conservation easements. Since 2001 the 2 natural areas program is complementary to 3 the conservation easement goals. 4 On their website, the natural areas network 5 is designed to include at least one good example of each 6 ecosystem type, geologic formation, and at-risk species 7 to be represented in each eco-region in which they 8 naturally occur. These areas are to be used for 9 scientific research, education, and nature 10 interpretation. 11 The Glass Hill property contains several 12 special species and priority plant associations and so 13 the Rice application was accepted by Oregon Parks and 14 Recreation Department in 2019. 15 The Council rule unprotected areas 16 references various designations of protected areas, 17 including Item I, state natural heritage areas listed in 18 the Oregon Register of National Heritage Areas pursuant 19 to the Natural Areas Register. 20 The rule has a 2007 date and a list of 21 specific protected areas in existence at that time. The 22 categories of protected areas are listed too. It seems 23 obvious that categories listed as of May 11, 2007, are 24 protected. Natural areas is one of those protected 25 categories. The rules were intended to be updated every</p>
<p style="text-align: right;">Page 424</p> <p>1 that's all I have on -- on that one. 2 So the limited party on this one is Ms. Geer 3 and now is the time for oral argument. 4 MS. GEER: Suzanne Geer. Issue SR-5. 5 I'm a botanist and a plant community 6 ecologist specializing in rare plants and long-term 7 monitoring communities of plant communities in Northeast 8 Oregon for over 30 years. 9 I request that the Council deny the site 10 certificate or reverse the proposed contested case 11 order. Alternatively, deny the route that goes through 12 Rice Glass Hill Natural Area. 13 One exception Judge Webster erred in 14 concluding because the Rice Glass Hill Natural Area was 15 not registered as a natural area on May 11, 2007, Idaho 16 Power was not required to evaluate the Rice Glass Hill 17 Natural Area as a protected area in ASC Exhibit L. 18 Over the years, I've been impressed with the 19 conservation value of the Rice Glass Hill property. I 20 was familiar with natural areas program through 21 assisting with the natural areas inventory on federal 22 lands. 23 When I learned that private lands are 24 eligible as state natural areas, I recommended the 25 program to Joel Rice. Much of his Glass Hill property</p>	<p style="text-align: right;">Page 426</p> <p>1 five years, but the schedule has been neglected. Please 2 review the seven responses to ex parte communication 3 dated May 23rd, 2021, to see just how ambiguous and 4 unclear the rule is. 5 The responses show facts are in dispute. 6 Hence, the issue should not have been disposed under the 7 motions for summary determination. The ambiguity and 8 lack of clarity are severe enough to have caused the 9 rulemaking process to become protracted. 10 The Protected Area Standard has not been met 11 for Rice Glass Hill Natural Area. The Protected Areas 12 Rule identifies all Oregon state natural areas on the 13 Natural Areas Register. 14 Clearly, the date of 2007 applies to the 15 category of protected areas specified at the time of 16 rulemaking and it makes no sense to regard that category 17 as static. The natural areas register provides an 18 updated list of protected areas. 19 MS. PEASE: Good Afternoon, Councilmembers. 20 For the record, this is Jocelyn Pease, 21 again, for Idaho Power. There are no material facts in 22 dispute regarding SR-5. This is purely a legal issue. 23 The Protected Area Standard that is 24 applicable to this project clearly states references in 25 this rule to protected areas designated under federal or</p>

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<p style="text-align: right;">Page 427</p> <p>1 state statutes or regulations are to the designations in 2 effect as of May 11th, 2007. 3 It is undisputed that Glass Hill was not 4 designated as a state natural area until September of 5 2019. Therefore, under the plain language of the rule, 6 Idaho Power was not required to analyze Glass Hill for 7 compliance with the Protected Area Standard. 8 In her exceptions filing, Ms. Geer argues 9 that the cutoff date and the Protected Area Standard 10 refers only to the categories of protected areas and not 11 to the specific protected areas listed under the 12 category. However, Ms. Geer's novel interpretation 13 would render the cutoff entirely superfluous and, 14 therefore, should be rejected. 15 The Protected Area Standard lists programs 16 that will be considered as potential designations for 17 protected areas. 18 But the plain language demonstrates that the 19 standard limits consideration to the specific areas 20 designated under those programs as of the cutoff day. 21 Ms. Geer's personal opinion that the 22 standard is outdated is not relevant to the resolution 23 of SR-5. 24 Ms. Geer may argue that the rule is outdated 25 as a basis for revisiting the rule in the rulemaking</p>	<p style="text-align: right;">Page 429</p> <p>1 Standard. 2 Idaho Power, therefore, respectfully 3 requests that the Council affirm the hearing officer's 4 conclusions regarding issue SR-5. 5 VICE CHAIR HOWE: Thank you, Ms. Pease. 6 Any questions from Council? Nope. 7 Counsel Rowe. 8 MR. ROWE: Pretty much the same as what 9 Ms. Pease just said. The rule clearly states that 10 references in the rule to protected areas are to those 11 designated -- are to designations in effect as of May 12 11, 2007. 13 Rice Glass Hill was not a designated 14 protected area as of that date. We believe the hearing 15 officer correctly dismissed this on summary 16 determination. 17 VICE CHAIR HOWE: So any questions of 18 Council? 19 COUNCILMEMBER JENKINS: A question of 20 Patrick. 21 Is there any reference at all in the rules 22 to categories in as far as -- I mean, the rules speak 23 specifically of designated areas. Doesn't speak that I 24 see that it speaks to -- categories. 25 MR. ROWE: I'm looking at it right now.</p>
<p style="text-align: right;">Page 428</p> <p>1 docket, but the concern provides no basis to ignore the 2 rule as it is currently written in this case. 3 EFSC must still apply siting standards that 4 are currently in effect when issuing a site certificate 5 and the standard -- and the rule language at issue still 6 applies to this project. 7 Ms. Geer also argues in her exceptions that 8 an up-to-date list of the state natural areas is 9 available and Idaho Power could have requested that 10 list. 11 However, regardless of whether Idaho Power 12 could have done so, it is clear that the Protected Area 13 Standard did not require the company to request that 14 list because the standard applies only to the areas 15 designated as of the cutoff date, May 11th, 2007. 16 In her exception, Ms. Geer also argues that 17 Glass Hill provides important conservation value, 18 however, the conservation value of Glass Hill is not at 19 issue in SR-5. 20 Regardless of the habitat present at Glass 21 Hill, the company is not required to analyze Glass Hill 22 as a protected area. That said, to the extent Ms. Geer 23 is primarily concerned about Glass Hill providing 24 important habitat, any potential impacts to habitat are 25 analyzed under the Council's Fish and Wildlife Habitat</p>	<p style="text-align: right;">Page 430</p> <p>1 Councilmember Jenkins and, Todd, are you pulling it up? 2 I don't see a reference to categories. It 3 speaks again. References in this rule to protected 4 areas designated under federal or state statutes or 5 regulations are to the designations in effect, and then 6 it lists parks, monuments, et cetera, which could be 7 considered categories. But Rice Glass Hill was not 8 designated as of that date? 9 SECRETARY CORNETT: For the record, Todd 10 Cornett. We apologize. Once there's an update, there's 11 nothing you can do. So that's why we kept having to hit 12 the snooze button on it. So hopefully it will just -- 13 we will get through today and it will update tonight. 14 Any other questions from counsel? 15 VICE CHAIR HOWE: Okay. So we're ready for 16 the straw poll. 17 SECRETARY CORNETT: Okay. For this issue, 18 "agree with the findings of fact, conclusions of law, 19 and conditions of approval in the proposed contested 20 case order pertaining to issue SR-5." 21 VICE CHAIR HOWE: Sounds good. 22 SECRETARY CORNETT: Cindy Condon. 23 COUNCILMEMBER CONDON: Yes. 24 SECRETARY CORNETT: Jordan Truitt. 25 COUNCILMEMBER TRUITT: Yes.</p>

<p style="text-align: right;">Page 431</p> <p>1 SECRETARY CORNETT: Ann Beier. 2 COUNCILMEMBER BEIER: Yes. 3 SECRETARY CORNETT: Hanley Jenkins. 4 COUNCILMEMBER JENKINS: Yes. 5 SECRETARY CORNETT: Perry Chocktoot. 6 COUNCILMEMBER CHOCKTOOT: Yes. 7 SECRETARY CORNETT: Kent Howe. 8 VICE CHAIR HOWE: Yes. 9 SECRETARY CORNETT: Thank you, 10 Councilmembers. 11 VICE CHAIR HOWE: Moving on to SR-6. 12 Counsel Ratcliffe. 13 MR. RATCLIFFE: Thank you. 14 So issue SR-6. We have two limited parties, 15 Lois Barry and Stop B2H. 16 The issue is whether the applicant's visual 17 impact assessments are invalid because the applicant did 18 not incorporate Oregonians' subjective evaluation of 19 their resources to evaluate visual impacts, thereby 20 invalidating the visual impact analysis for Morgan Lake 21 Park and other protected areas, scenic resources, and 22 important recreational opportunities. 23 So this, again, was a summary determination 24 ruling from the hearings officer. She dismissed the 25 issue and finding that the applicants visual impacts</p>	<p style="text-align: right;">Page 433</p> <p>1 skewed definitions. The RAI the applicant referred to 2 questioned applicant's conclusions of no significant 3 impact because they didn't address EFSC's definition of 4 significant as it applied to affect -- to the affected 5 human population. 6 The Judge failed to note that applicants 7 said they considered the rule. And discussed it with 8 ODOE but they didn't use it. 9 Idaho Power admits they didn't incorporate 10 Oregonian subjective evaluation of their resource. 11 Instead, they claim to have done even better by assuming 12 that all viewer groups are highly sensitive. 13 But after that assumption, sensitive 14 disappeared. 15 Instead, in their visual impact analysis, 16 Idaho Power replaced sensitivity with viewer perception. 17 Okay. 18 Perception is a way of understanding or 19 interpreting something. But, once again, Idaho Power 20 did even better. They created their own definition of 21 perception. 22 Whether viewer's perception is either head 23 on or peripheral, that's not perception. Head on and 24 peripheral describe position or perspective and not 25 perception. Those terms don't appear in any of the</p>
<p style="text-align: right;">Page 432</p> <p>1 assessments are valid and found that the applicant had 2 no obligation under the Council's standard as a matter 3 of law to incorporate Oregonians' subjective evaluations 4 of the resource and that the applicant's visual impact 5 methodology accounted for viewer's subjective 6 evaluations by assuming that all identified visual 7 resources were highly sensitive to impacts. 8 So, once again, we have a slightly different 9 procedure used here. This is ruling on a motion for 10 summary determination. The issue is whether or not 11 there are material facts in dispute and the hearing 12 officer concluded that they were not and dismissed the 13 issue. 14 So with that, it's time for oral argument. 15 MS. BARRY: I'm Lois Berry. I was a 16 professor of English for 30 years -- 17 VICE CHAIR HOWE: Is the mic on? 18 MS. BARRY: No, sir. Okay. 19 VICE CHAIR HOWE: Oh, it's on. Okay. 20 MS. BARRY: I'm losing time here. 21 I am a word person and I'm a careful reader. 22 And for the following reasons I ask you to reverse Judge 23 Webster's decision to dismiss SR-6. 24 She accepted without verification 25 applicant's misleading summaries, promised assumptions,</p>	<p style="text-align: right;">Page 434</p> <p>1 established methodologies Idaho Power claims to have 2 used in creating their own methodology. 3 Think about your favorite park. A 4 transmission line is being planned nearby. Here is a 5 direct quote from ODOE proposed order. 6 Quote, "viewers moving through the park 7 seeing the proposed facility could be intermittent and 8 peripheral; however, for viewers engaging in stationary 9 activities such as camping, picnicking, and fishing, the 10 viewer perception could be continuous and head on." 11 That makes no sense. It's an obvious effort 12 to ignore the EFSC rule for assessing the magnitude of 13 significant impact on the affected human population. 14 And that's precisely how Idaho Power was 15 able to conclude that a transmission line bordering 16 Morgan Lake Park and many other valuable recreation, 17 scenic, and protected areas will have no significant 18 impact on highly sensitive Oregonians because our 19 perceptions are head-on and peripheral. 20 No one has ever seen this methodology before 21 and I assume it will never be seen again. 22 VICE CHAIR HOWE: Ms. Barry. 23 Any questions from Council? Okay. 24 Thank you. 25 MR. ANUTA: For Stop B2H, this is Karl</p>

<p style="text-align: right;">Page 435</p> <p>1 Anuta.</p> <p>2 This is another one where the Council is</p> <p>3 sitting as an appellate body evaluating whether Judge</p> <p>4 Webster made factual conclusions or did not make factual</p> <p>5 conclusions. This is another example of where the ALJ</p> <p>6 unfortunately weighed the evidence and concluded, as the</p> <p>7 Department and Mr. Ratcliffe pointed out to you, that</p> <p>8 the methodology used was adequate. That's a factual</p> <p>9 conclusion. Whether the methodology was adequate or</p> <p>10 not.</p> <p>11 She also concluded that the -- there was no</p> <p>12 significant impact. That's, again, a factual</p> <p>13 conclusion. Not something you should be concluding on a</p> <p>14 summary determination where the only issue is what is</p> <p>15 the law.</p> <p>16 She did conclude as a matter of matter of</p> <p>17 law that the Department's rules did not require an</p> <p>18 assessment of subjective impact on that issue. We</p> <p>19 fundamentally disagree.</p> <p>20 As I've outlined previously, we think the</p> <p>21 significance definition that you have absolutely</p> <p>22 requires the assessment of the impact on humans. And</p> <p>23 that is the assessment of the effect on them, not the</p> <p>24 importance.</p> <p>25 As Ms. Pease mentioned in her last argument,</p>	<p style="text-align: right;">Page 437</p> <p>1 Okay. Thank you.</p> <p>2 MS. PEASE: Thank you, Council.</p> <p>3 Again, for the record, this is Jocelyn Pease</p> <p>4 for Idaho Power Company.</p> <p>5 And I would like to respond to several of</p> <p>6 the remarks that we just heard from Ms. Barry and</p> <p>7 Mr. Anuta.</p> <p>8 In connection with the RAI that Ms. Barry</p> <p>9 had alluded to and her argument that Idaho Power did not</p> <p>10 use the definition of significance, I -- this is just</p> <p>11 argument.</p> <p>12 In fact, Idaho Power did very carefully</p> <p>13 review that definition of significance and incorporate</p> <p>14 the elements from that definition into its methodology.</p> <p>15 And as to the -- the questions that</p> <p>16 Ms. Barry had raised around -- around sensitivity and</p> <p>17 viewer perception, I would highlight that in connection</p> <p>18 with viewer perception what Idaho Power did in its</p> <p>19 methodology is -- is approach that from the -- from in</p> <p>20 terms of viewer angles and how a viewer might perceive</p> <p>21 the project.</p> <p>22 And so that -- again, that's part of</p> <p>23 developing a methodology that has some objective</p> <p>24 elements to it and that can be standardized and</p> <p>25 repeatable by other visual resources experts.</p>
<p style="text-align: right;">Page 436</p> <p>1 they assumed everyone was sensitive and so it was an</p> <p>2 important resource. That's different than what or how</p> <p>3 much impact the viewer is feeling. Yes, it's important.</p> <p>4 But am I -- is it important enough that it's a</p> <p>5 significant impact?</p> <p>6 You have to weigh the facts to find that.</p> <p>7 That should not have been done on summary determination.</p> <p>8 And in this particular instance, the -- this rule with</p> <p>9 significance involved should have required the</p> <p>10 measurement of subjective impacts. There's no dispute</p> <p>11 that Idaho Power did not assess subjective impacts.</p> <p>12 They assessed, as Ms. Barry pointed out, perception, the</p> <p>13 location and what you could see, not how it affected</p> <p>14 you.</p> <p>15 We think summary determination on this issue</p> <p>16 is inappropriate. You should reverse the Administrative</p> <p>17 Law Judge, send it back for an assessment of when you</p> <p>18 have all the facts and you have a hearing and you have</p> <p>19 cross-examination.</p> <p>20 Is it an adequate methodology or not?</p> <p>21 Is there significant impacts or not?</p> <p>22 We'd ask that you reverse and remand for</p> <p>23 that reason.</p> <p>24 VICE CHAIR HOWE: Thank you, Mr. Anuta.</p> <p>25 Any questions from Council?</p>	<p style="text-align: right;">Page 438</p> <p>1 And in connection with the impacts being</p> <p>2 intermittent or head-on, that's simply a way to describe</p> <p>3 how a viewer might perceive the project and how -- I</p> <p>4 guess, I would argue here that that -- how the viewer</p> <p>5 perceives the project would relate to how they might</p> <p>6 feel about it. If they see more of the project, then</p> <p>7 they might feel differently about it.</p> <p>8 And that's all to say that the viewer angles</p> <p>9 and viewer perception do address the sensitivity as</p> <p>10 well.</p> <p>11 As to Mr. Anuta's comment about the -- the</p> <p>12 legal standard and that there were disputed facts in</p> <p>13 connection with this motion for summary determination,</p> <p>14 that's simply not correct. There were no disputed facts</p> <p>15 in this case and the hearing officer was not making a</p> <p>16 determination that there were no significant impacts.</p> <p>17 Instead, this was a question about Idaho</p> <p>18 Power's methodology and whether there was any element in</p> <p>19 the Council's standards that would require Idaho Power</p> <p>20 to consider subjective input.</p> <p>21 And there is no such requirement in the</p> <p>22 Council's rules.</p> <p>23 I think with that, I'll conclude my remarks.</p> <p>24 Thank you.</p> <p>25 VICE CHAIR HOWE: Thank you. Ms. Pease.</p>

<p style="text-align: right;">Page 439</p> <p>1 Any questions from Council? 2 Counsel Rowe. 3 MR. ROWE: Patrick Rowe, Department of 4 Justice on behalf of the Oregon Department of Energy. 5 This is another motion for summary 6 determination dispute that was really between Stop and 7 Idaho Power. 8 The Department did not bring a motion on 9 this, but I will, again, state what the issue was that 10 was presented to the hearing officer, because I think 11 that's important. 12 It was whether applicant's visual impact 13 assessments are invalid because applicant did not 14 incorporate Oregonians' subjective evaluation of their 15 resources to evaluated visual impacts, thereby 16 invalidating the visual impact analysis for Morgan Lake 17 Park and other protected areas, scenic resources, and 18 important recreational opportunities. 19 Again, asking is it invalid because they 20 didn't incorporate subjective evaluations? 21 I think the Department agrees that the 22 answer to that question is no, it's not invalid. And 23 the reason is because the rule does not require 24 subjective evaluations. 25 So on that basis, the Department agrees with</p>	<p style="text-align: right;">Page 441</p> <p>1 Are you asking what the actual, like, impact 2 assessment of head-on and peripheral was or were they 3 evaluated generally? 4 COUNCILMEMBER JENKINS: Okay. So my 5 understanding in reading the material is that the 6 applicant came to the Department to submit a methodology 7 that was -- in kind of a second round -- was in an 8 attempt to address the significant issue that was raised 9 by the Department. And in submitting that methodology, 10 the Department agreed to the methodology using part of 11 the Forest Service, part of the BLM, and the 12 addressing -- and the way to address the significance 13 definition. 14 And so what I'm trying to get at is did the 15 Department have a position on the way the affected view 16 was assessed in that methodology? Or was it simply a 17 methodology to meet the significance factor was 18 acceptable? 19 MS. TARDAEWETHER: I think going back in 20 time, because this was all kind of before -- these were 21 my predecessors, Max Woods and then the previous DOJ 22 counsel, Renee France, worked closely with Idaho Power 23 in developing it. 24 I think we would have to go into the record 25 and into the information requests. I don't think in my</p>
<p style="text-align: right;">Page 440</p> <p>1 the ALJ's ruling. 2 VICE CHAIR HOWE: Thank you, Mr. Rowe. 3 Any questions from Council? 4 Okay. Yep. Councillor Jenkins. 5 COUNCILMEMBER JENKINS: Does the Department 6 have any view -- any position on the viewer angle on 7 this? I mean, that was an issue that was raised as a 8 part of the exception. 9 MR. ROWE: The response to that, Hanley, 10 it's just essentially what I just said, which is the 11 standard does not require a particular methodology. So 12 there is no requirement to incorporate a particular 13 angle. Idaho Power proposed a methodology that the 14 Department analyzed and found sufficient. 15 And I'll kick that over to Kellen and Sarah, 16 because they were certainly very involved with this. 17 MS. TARDAEWETHER: And I'm sorry, 18 Councilmember Jenkins. Angle, as in like which 19 factor -- yes, it was peripheral and head-on. 20 COUNCILMEMBER JENKINS: Right. 21 MS. TARDAEWETHER: Were the -- were the 22 angles that were evaluated. 23 COUNCILMEMBER JENKINS: Correct. That's my 24 question. 25 MS. TARDAEWETHER: Yes.</p>	<p style="text-align: right;">Page 442</p> <p>1 understanding we would have that level of detail. 2 However, there were lots of meetings -- of 3 in-person meetings of -- with, like, their consultant. 4 So it is possible that was discussed. 5 But I don't think that we have some sort of 6 record of guidance of that level of detail. 7 COUNCILMEMBER JENKINS: The important thing 8 is the Department agreed to the methodology. 9 MS. TARDAEWETHER: Correct. And it was the 10 assumption of the appropriateness of tailoring the 11 Forest Service and the BLM was that the Forest Service 12 methodology is catered towards forested areas. And that 13 would be applied to the areas that have more forest 14 lands, whereas the BLM methodology is more of a 15 rangeland open EFU zone. 16 So that would be more appropriate for the 17 areas where the transmission line would cross there, and 18 then applying the EFSC definition of "significant." 19 And Chris Clark may have some other input 20 too. I know he's on the line. 21 If you could -- Nancy, if you could elevate 22 him. I see him up there. 23 MR. CLARK: Hello, Councilmembers, can you 24 hear me? 25 VICE CHAIR HOWE: Yes, we can.</p>

<p style="text-align: right;">Page 443</p> <p>1 MR. CLARK: For the record, this is Chris 2 Clark. 3 I note that, you know, the discussion of 4 viewer angle which is really -- you know, how will 5 somebody who's experiencing a view from one of the 6 resources see the proposed facility? 7 Is that a head-on view or is it a peripheral 8 view as you're engaging in, you know, whatever the 9 recreational activity or typical viewing activity would 10 be at that site is just one component of the measurement 11 of how -- what the magnitude of the impact would be. 12 So a peripheral view is less impactful than 13 a full head-on view. I hope that that answers your 14 question. 15 VICE CHAIR HOWE: Any other questions from 16 Council? 17 Councillor Condon. 18 COUNCILMEMBER CONDON: Cindy Condon for the 19 record. 20 Just to verify, this was a new method -- or 21 is a new method that was used and did the Department 22 determine that it was a better method than a previous 23 method or was the previous method not available to be 24 used or -- what's the purpose of this new -- new method? 25 MS. TARDAEWETHER: The method that</p>	<p style="text-align: right;">Page 445</p> <p>1 project? For this application? 2 COUNCILMEMBER CONDON: No. A different -- a 3 transmission line, preferably. 4 MS. TARDAEWETHER: I would have to go back 5 into the record. 6 COUNCILMEMBER CONDON: No. Okay. Any 7 project. 8 MS. TARDAEWETHER: Any project, but a 9 transmission line, or -- 10 COUNCILMEMBER CONDON: Just any project. 11 MS. TARDAEWETHER: Yes, visual impact 12 assessment is included under all of -- for all of 13 Council's projects. And the project orders typically 14 state that there aren't methodologies that Council 15 standards or rules prescribe. 16 COUNCILMEMBER CONDON: And "significant" 17 would have been a feature of all of those studies; 18 right? If not all of them. 19 MS. TARDAEWETHER: Not -- not necessarily. 20 COUNCILMEMBER CONDON: Okay. 21 MS. ESTERSON: So the general method that we 22 see for visual impacts is called a "zone of visual 23 influence." And it's a map that shows based on a color 24 shading, the extent and distance for which, like, the 25 number of components that might be visible out to what</p>
<p style="text-align: right;">Page 444</p> <p>1 incorporated the Council's definition of significant? 2 Channeling Max Woods -- who you didn't 3 know -- but it was really to -- an effort to cater the 4 review for Council's standards. 5 I know that we talked about under "cultural" 6 we're really trying to not duplicate studies with the 7 federal review. 8 However, there are -- so there's a lot of 9 what the applicant generated that is appropriate for the 10 NEPA review. 11 However, Council's standards actually go a 12 lot further in some cases for a lot of impact 13 evaluations to resources, and this is one of those cases 14 where we wanted them to go further so -- and make it 15 more specific to your standard. 16 And so that is -- that is the -- I'd imagine 17 the reason why. 18 And I could look up that basis in that 19 information request that basically served, as kind of, 20 us telling them this is how we want it done. 21 COUNCILMEMBER CONDON: So just to follow up 22 on that. 23 Have -- were other methods used previously 24 to evaluate a transmission line? 25 MS. TARDAEWETHER: Are you saying for this</p>	<p style="text-align: right;">Page 446</p> <p>1 distance. Rarely, do we get visual simulations or 2 detailed analysis that look at the terms of 3 significance. 4 So this is a methodology that is much more 5 than is the normal for EFSC projects. And I think what 6 we -- how we think about it as analysts and reviewers is 7 it's a scaled approach. 8 If most of the resources are 10 miles away, 9 you know, or at some distance based on topography, that 10 the zone of visual influence mapping tool which uses GIS 11 and different layers, if that doesn't necessitate a 12 further analysis where you really need to look at, you 13 know, do a -- we call it a "KOP study," where you are 14 identifying key observation points and then taking 15 pictures and doing visual simulations, that would be a 16 second tier, given what the ZVI might show and for -- 17 for the majority of projects, they land -- they stay on 18 that ZVI. 19 This is Sarah Esterson with the Department 20 of Energy. 21 COUNCILMEMBER CONDON: Okay. So nothing -- 22 there was not a previous methodology that took into 23 account a more subjective human impact. 24 This is -- this actually has gone farther 25 than any previous methodology.</p>

<p style="text-align: right;">Page 447</p> <p>1 MS. ESTERSON: Yeah.</p> <p>2 COUNCILMEMBER CONDON: Thank you.</p> <p>3 VICE CHAIR HOWE: Any additional questions?</p> <p>4 Okay. So I think we're through SR-6 here.</p> <p>5 Are we ready to have a straw poll?</p> <p>6 SECRETARY CORNETT: For the record, Todd</p> <p>7 Cornett.</p> <p>8 So this would be a straw poll for both</p> <p>9 the -- well, Scenic Resources Standard, the Protected</p> <p>10 Area Standard, and issue SR-6. It would be the</p> <p>11 culmination for all three of those.</p> <p>12 Okay. So "agree with the findings of fact,</p> <p>13 conclusions of law, and conditions of approval in the</p> <p>14 proposed order pertaining to the Scenic and Protected</p> <p>15 Area Standards that are not related to the issues in the</p> <p>16 contested case and in the proposed contested case order</p> <p>17 pertaining to issue SR-6."</p> <p>18 VICE CHAIR HOWE: Sounds good.</p> <p>19 SECRETARY CORNETT: Okay. Perry Chocktoot.</p> <p>20 COUNCILMEMBER CHOCKTOOT: Yes.</p> <p>21 SECRETARY CORNETT: Hanley Jenkins.</p> <p>22 COUNCILMEMBER JENKINS: Yes.</p> <p>23 SECRETARY CORNETT: Kent Howe.</p> <p>24 VICE CHAIR HOWE: Yes.</p> <p>25 SECRETARY CORNETT: Cindy Condon.</p>	<p style="text-align: right;">Page 449</p> <p>1 just kind of power through.</p> <p>2 So when we're looking at recreational</p> <p>3 opportunities, we -- the applicant and Department</p> <p>4 evaluate recreational opportunities and we consider</p> <p>5 factors such as special designations or managements, the</p> <p>6 degree of demand, outstanding or unusual qualities,</p> <p>7 availability or rareness, irreplaceability or -- my</p> <p>8 brain -- my brain, I'm not going to pronounce that right</p> <p>9 now.</p> <p>10 Anyhow that's the analysis that we go</p> <p>11 through for the -- the analysis area is the site</p> <p>12 boundary and two miles from the site boundary.</p> <p>13 So we're now kind of coming in from</p> <p>14 protected areas and we're going now out -- out. But,</p> <p>15 however, it's still along the transmission line and now</p> <p>16 we're looking through the lens of recreation. Still</p> <p>17 quite a few recreational opportunities.</p> <p>18 Oh, yes. Yep.</p> <p>19 So in the proposed order -- not too close.</p> <p>20 And I'm doing my presentation this way, because I wasn't</p> <p>21 able -- this gives me a better ability to kind of toggle</p> <p>22 in between the presentation, so I apologize if it's kind</p> <p>23 of small. I'll do my best.</p> <p>24 So there's 21 important recreational</p> <p>25 opportunities that's within the two-mile analysis area</p>
<p style="text-align: right;">Page 448</p> <p>1 COUNCILMEMBER CONDON: Yes.</p> <p>2 SECRETARY CORNETT: Ann Beier.</p> <p>3 COUNCILMEMBER BEIER: (No audible response.)</p> <p>4 SECRETARY CORNETT: Jordan Truitt.</p> <p>5 COUNCILMEMBER TRUITT: Yes.</p> <p>6 SECRETARY CORNETT: Thank you,</p> <p>7 Councilmembers.</p> <p>8 VICE CHAIR HOWE: Okay. We are scheduled to</p> <p>9 take a break at 3:15.</p> <p>10 How are folks doing?</p> <p>11 Do we want to try to go through the</p> <p>12 recreation standard first or -- there's R-2, -4, and -3.</p> <p>13 COUNCILMEMBER JENKINS: Let's get started.</p> <p>14 VICE CHAIR HOWE: Okay. Yeah. Let's keep</p> <p>15 going, then. And we're ready to start on recreation</p> <p>16 standard R-2, I guess. Or maybe -- yeah, recreation</p> <p>17 standard.</p> <p>18 MS. TARDAEWETHER: Okay. For the record,</p> <p>19 Kellen Tardaewether, Oregon Department of Energy.</p> <p>20 We're now continuing into the recreation</p> <p>21 standard. And I know one of the last issues kind of</p> <p>22 bundled -- had a mention in the issue statement of also</p> <p>23 recreational opportunities.</p> <p>24 So you're -- you know, Council is correct.</p> <p>25 These are all very related, so I think it is good to</p>	<p style="text-align: right;">Page 450</p> <p>1 that are evaluated in the proposed order.</p> <p>2 When we're -- once we identify that a</p> <p>3 recreational opportunity is important, then we go</p> <p>4 through what is evaluated underneath the standard.</p> <p>5 So we look at direct and indirect loss.</p> <p>6 Now we've visited direct and indirect</p> <p>7 impacts under cultural, right, a direct loss as there is</p> <p>8 being -- there's going to be a permanent, you know,</p> <p>9 facility footprint impact or construction impact that is</p> <p>10 going to directly impact that recreational opportunity.</p> <p>11 Indirect would be something, like, traffic, noise or</p> <p>12 visual impacts, which are evaluated underneath this</p> <p>13 standard.</p> <p>14 There's four recreational opportunities that</p> <p>15 are crossed by the proposed facility, and -- however,</p> <p>16 the evaluation recommends that because -- even though</p> <p>17 they are crossed, it doesn't -- a lot of times was</p> <p>18 talking about spanning and with the recommendation is</p> <p>19 that even though it is crossed, the transmission line</p> <p>20 crosses the recreational opportunity. It does not</p> <p>21 impact. It's not a direct loss of that recreational</p> <p>22 opportunity because the overall use or importance of the</p> <p>23 resource is maintained.</p> <p>24 So here I had mentioned -- so that was</p> <p>25 direct loss. And so these are the indirect loss</p>

<p style="text-align: right;">Page 451</p> <p>1 evaluation that's done: Construction and operation, 2 noise, traffic, and visual impacts. 3 Over here I just took a snippet of the -- 4 the -- of the exhibit that goes through. And there's an 5 entire -- each recreational opportunity in this 6 example -- and I'll make this a little bit bigger so 7 maybe you can see it. 8 Each recreational opportunity has an entire 9 narrative in the exhibit that goes through, you know, a 10 narrative assessment and also applies, you know, 11 quantitative measures for each of the aspects that is 12 evaluated and this is -- I just plucked out a summary 13 table for each of them. 14 So this is just an example of some of what 15 is looked at and what the Department pulls from and 16 summarizes and evaluates in the proposed order to make 17 its recommendations. 18 I'm going to remind Council, the KOP is a 19 key observation point. So that is if there was a photo 20 simulation associated with the potential impacts at that 21 site. 22 So -- and I'm going to take a minute so -- 23 I'm going to pause with my notes. 24 And I wanted to go over here. Jesse is 25 going to talk about it, but I just kind of -- again, I</p>	<p style="text-align: right;">Page 453</p> <p>1 that would be visible from the park, so there is an 2 assessment of that in the proposed order that takes 3 issue. 4 The -- so the Morgan Lake Road is a related 5 or supporting facility? 6 Okay. Never mind. Okay. Because one of 7 the things we look at for recreation is traffic impacts. 8 And so Morgan Lake Road is a very kind of, like, 9 switchback, steep, windy road that would have to be used 10 to -- if the Morgan Lake alternative would be 11 constructed and so that the construction impacts are 12 discussed and evaluated or construction traffic impacts 13 are evaluated in the proposed order. 14 And that is also underneath that public 15 services condition of that county-specific traffic 16 management plan. 17 Once the final routes are selected, those 18 plans are going to be finalized with the City of 19 La Grande and with Union County in identifying if any 20 improvements need to be made, what those need to be 21 made, making sure they are up to applicable standards. 22 If there is a road that isn't proposed in 23 this application to be substantially modified and the 24 applicant may need -- and proposes to substantially 25 modify it, they would need to come in for an amendment</p>
<p style="text-align: right;">Page 452</p> <p>1 want to be helpful and orient Council to what we're 2 going to be talking about. 3 Now, I can't find anything. 4 So I can't tell if this is my Exhibit C. 5 I just wanted to show -- and now my computer 6 is thinking. 7 Okay. Well, I just wanted to point out to 8 counsel that Morgan Lake Park, which is here, you know, 9 in Union County right outside of La Grande, is a Park 10 that is managed by the City of La Grande. And it is 11 identified as an important recreational opportunity. 12 It's at the top of Morgan Lake Road, 13 which -- there it is. Which is -- this is -- this here 14 is Morgan Lake Road. And you take that road and then 15 Morgan Lake is on a different map. I don't want to 16 freeze anything. 17 But I just kind of wanted to show -- would I 18 be able to get to it? I can't get to it. Okay. 19 Morgan Lake is known for bird 20 watching/viewing. There are campsites there. There's 21 fishing. There's actually two lakes associated with the 22 recreational opportunity. 23 The proposed facility and the Morgan Lake 24 alternative are cited to be outside the boundaries of 25 the park. However, there are some facilities structures</p>	<p style="text-align: right;">Page 454</p> <p>1 to add it to be included into the site boundary. 2 I will stop there and pass it over to Jesse. 3 MR. RATCLIFFE: Our first issue under the 4 recreation standard is issue R-2. Limited parties are 5 Lois Barry and Mr. McAllister. 6 And the issue statement here is whether the 7 visual impacts of the proposed facility structures in 8 the viewshed of Morgan Lake Park are inconsistent with 9 the objective of the Morgan Lake Park recreational use 10 and development plan and should therefore be 11 re-evaluated. 12 So the hearing officer concluded that the 13 applicant is not required to demonstrate compliance with 14 the Morgan Lake Park plan because there are no proposed 15 project components located within the Park boundary. 16 However, the applicant considered the 17 objectives and values of the Morgan Lake plan in 18 determining that scenery is a valued attribute of Morgan 19 Lake Park and incorporated that determination into its 20 analysis of the potential park -- potential project 21 impacts to the park. 22 And this is a function of the way that the 23 Council's recreation standard is written where the -- 24 Council is supposed to be evaluating significant adverse 25 impacts to important recreational opportunities.</p>

1 The determination of the importance of a
2 recreational opportunity depends on a series of factors,
3 including any special designation or management near the
4 location. And so here we do have a special
5 management -- or designation of the location via the --
6 this recreational use and development plan. And one of
7 the attributes that the plan is looking at is scenery.
8 So that's how we end up, you know, with a -- a visual
9 impacts issue under the recreation standard.

10 So in response to the limited parties claims
11 that the applicant did not sufficiently consider the
12 proposed facilities impact to recreational opportunities
13 in undeveloped areas of the park, the applicant provided
14 additional evidence addressing disbursed recreation
15 opportunities in the undeveloped areas, some of these
16 opportunities included bird watching and nature study.

17 The revised analysis acknowledged that the
18 proposed facility would be visible from approximately 16
19 percent of the Park.

20 And that in those areas of the Park where
21 the towers are not screened, the visual contrast would
22 be high.

23 The hearing officer noted that -- that both
24 the applicant and the Department included that impacts
25 to the parks overall would be less than significant and

1 years.

2 There are only 12 modest campsites in a
3 small area on the lake's west shore near the dock. Most
4 of the park's 204 acres are natural forest and
5 grasslands.

6 First-time visitors are stunned by
7 360-degree views unmarred by man's activities.

8 Judge Webster said that Idaho Power had
9 considered the Morgan Lake Plan -- they're great at
10 considering, not so great on carrying through.

11 In her opinion, she stated the project would
12 not be inside the park boundary. Idaho Power has
13 repeated that so often that she seemed to think it was
14 relevant.

15 The recreation rule is that the area two
16 miles from the project site boundary should be
17 evaluated. She ignored the fact that one tower will
18 rise only two-tenths of a mile from the wetlands of
19 Little Morgan Lake, and that will be only 1 of 13
20 130-foot towers visible to the south and west.

21 Describing it's proposed mitigation, Idaho
22 Power refers to lower towers, but in their exceptions
23 they have never mentioned that four, 150-foot towers
24 they first proposed will be replaced by 13, 130-foot
25 towers.

1 that the proposed mitigation, including the proposal to
2 expand the use of the H frame structures to all tower
3 locations between mileposts 5 to 8 would further reduce
4 the potential visual impacts in that 16 percent of the
5 park.

6 Finally, the hearing officer concluded that
7 the recreation standard does not require the Council to
8 find that there would be no impact on a recreational
9 opportunity only that there is sufficient mitigation to
10 ensure that impacts will be avoided, minimized,
11 corrected, or compensated so that the impact is less
12 than significant.

13 We -- although I noted at the outset that
14 the parties who were admitted as limited parties for
15 this issue were Lois Barry and Mr. McAllister,
16 Mr. McAllister did not file exceptions on this issue,
17 and so the oral argument on this would be from
18 Ms. Barry.

19 MS. BARRY: For the reasons that follow, I
20 request that Judge Webster's decision on issue R-2 be
21 reversed.

22 For almost 50 years, the Morgan Lake Plan
23 has maintained the maximum of natural forest and lake
24 areas to encourage solitude and isolation with little
25 change or interference from man's activities. Fifty

1 The historic group who wrote the revered
2 Morgan Lake Plan, as well as current hikers and birders
3 who value the park's completely undeveloped areas would
4 be horrified by the industrial intrusion of 13, 130-foot
5 transmission towers marring their views from the park's
6 protected natural areas.

7 Obviously, the project will result in a
8 complete reversal of the Morgan Lake Plan. And Judge
9 Webster's decision should be reversed.

10 And I'll use the rest of my time to answer
11 your question about methodology that provides
12 information about significant impact on viewers of these
13 areas under discussion.

14 Since 1995, the Forest Service SMS has been
15 used to evaluate forest properties that will be impacted
16 by a project. It contains a 13-page chapter on
17 constituent information and how to gather it.

18 VICE CHAIR HOWE: Thank you, Ms. Barry.

19 Any questions from Council?

20 Okay. Thank you.

21 MS. PEASE: Good afternoon. For the record,
22 Jocelyn Pease for Idaho Power Company.

23 About a year ago, the Council considered an
24 interlocutory appeal in connection with issue R-2. In
25 that appeal the Council already determined that Idaho

<p style="text-align: right;">Page 459</p> <p>1 Power is not required to demonstrate compliance with the</p> <p>2 Morgan Lake Plan because no project component is</p> <p>3 proposed to be located within Morgan Lake Park. That is</p> <p>4 a jurisdictional issue. The project is proposed to be</p> <p>5 located entirely outside the park.</p> <p>6 However, the Council determined that</p> <p>7 designations contained in the Morgan Lake Plan are still</p> <p>8 relevant to demonstrating compliance with the recreation</p> <p>9 standard, because the Council's definition of</p> <p>10 significance requires an assessment of impacts to the</p> <p>11 importance of a resource. And the Council considers any</p> <p>12 special designation or management of the location when</p> <p>13 determining whether a recreational opportunity is</p> <p>14 important.</p> <p>15 As a result of the Council's order</p> <p>16 explaining the scope of R-2, the remaining issue in this</p> <p>17 contested case is narrow. Idaho Power must demonstrate</p> <p>18 that the company adequately considered the values and</p> <p>19 objectives of the Morgan Lake Plan when assessing</p> <p>20 whether the impacts from the project will be significant</p> <p>21 based on the importance of Morgan Lake Park. Consistent</p> <p>22 with that direction from the Council, Idaho Power</p> <p>23 assessed the values and objectives of the Morgan Lake</p> <p>24 Plan to determine whether scenery was a valued attribute</p> <p>25 of Morgan Lake Park and incorporate that assessment into</p>	<p style="text-align: right;">Page 461</p> <p>1 Then it refined the analysis in response to DPO comments</p> <p>2 and again in the contested case process.</p> <p>3 At each turn, Idaho Power considered the</p> <p>4 input from the DPO comments and from the limited parties</p> <p>5 in this case to expand the scope of its analysis.</p> <p>6 And in fact, Idaho Power proposed</p> <p>7 substantial additional mitigation to reduce impacts in</p> <p>8 Morgan Lake Park such that the project would not be</p> <p>9 visible from approximately 84 percent of the park.</p> <p>10 Based on the foregoing, Idaho Power provided</p> <p>11 evidence in the record that the impacts from the project</p> <p>12 would be less than significant and requests that the</p> <p>13 Council affirm the hearing officer's conclusions</p> <p>14 regarding issue R-2.</p> <p>15 VICE CHAIR HOWE: Thank you, Ms. Pease.</p> <p>16 Any questions from Council?</p> <p>17 Councillor Condon.</p> <p>18 COUNCILMEMBER CONDON: Cindy Condon. Quick</p> <p>19 question.</p> <p>20 On the 16 percent that it will be visible,</p> <p>21 can you give a feeling -- it seems like I read it in</p> <p>22 here. Is that used -- like, are there trails through</p> <p>23 that 16 percent of the --</p> <p>24 MS. PEASE: My understanding is that area</p> <p>25 is -- that there are some trails and that it is</p>
<p style="text-align: right;">Page 460</p> <p>1 the company's analysis of potential impacts.</p> <p>2 Therefore, Idaho Power properly and</p> <p>3 appropriately considered the Morgan Lake Plan in the</p> <p>4 context of determining compliance with the Council's</p> <p>5 recreation standard.</p> <p>6 Dispute the Council's order that Idaho Power</p> <p>7 need not demonstrate compliance with the Morgan Lake</p> <p>8 Plan, Ms. Barry continues to argue that the Morgan Lake</p> <p>9 Plan governs the siting of the project. Simply put, it</p> <p>10 does not.</p> <p>11 Ms. Barry suggests that because the Morgan</p> <p>12 Lake Plan is within the analysis area for the project,</p> <p>13 within the two miles, that Idaho Power must comply with</p> <p>14 the Morgan Lake Plan.</p> <p>15 Ms. Barry is incorrect.</p> <p>16 The fact that the Morgan Lake Park is within</p> <p>17 the analysis area of the project simply means that Idaho</p> <p>18 Power must analyze the park in connection with the</p> <p>19 development of the project and not for compliance with</p> <p>20 the Morgan Lake Plan. It's the recreation standard that</p> <p>21 governs, not the Morgan Lake Plan.</p> <p>22 Ms. Barry's assertion that Idaho Power has</p> <p>23 not provided a complete analysis of impacts to Morgan</p> <p>24 Lake Park is also incorrect. Idaho Power has provided a</p> <p>25 complete analysis, the first through the company's ASC.</p>	<p style="text-align: right;">Page 462</p> <p>1 primarily undeveloped disburbed recreation.</p> <p>2 And we understand from comments that were</p> <p>3 provided both in the DPO comment process and then in the</p> <p>4 contested case that that is a valued attribute of the</p> <p>5 Morgan Lake Park, which is also Idaho Power also</p> <p>6 analyzed that area.</p> <p>7 In the initial analysis, the company was</p> <p>8 much more focused on the developed areas of the park</p> <p>9 where there are camping sites and a boat dock and around</p> <p>10 the lake where it's used for fishing.</p> <p>11 Based on that analysis, it was determined</p> <p>12 that there would be hardly any impacts at the park</p> <p>13 because the project wouldn't be visible from those</p> <p>14 areas.</p> <p>15 However, when we expanded the analysis, we</p> <p>16 did recognize that there would be a certain amount of</p> <p>17 impacts in those areas where there is disburbed</p> <p>18 recreation.</p> <p>19 COUNCILMEMBER CONDON: Just a quick</p> <p>20 follow-up on that.</p> <p>21 So just with respect to the 13 lower towers,</p> <p>22 can you just give some idea of how much that reduce --</p> <p>23 do you expect most of those to be screened by trees.</p> <p>24 I know there will be some.</p> <p>25 MS. PEASE: Certainly.</p>

<p style="text-align: right;">Page 463</p> <p>1 So in the -- as part of its rebuttal filing, 2 Idaho Power had submitted a video simulation that can 3 provide a sort of -- a representation of how much you 4 might see, but to -- I guess, to back up a little bit, 5 the idea with reducing the tower heights is that it 6 would be the entire area where you -- where the towers 7 might be visible in the vicinity of Morgan Lake Park. 8 And so it's now a three-mile stretch that 9 will be changed to H frames. And then those towers 10 would be visible in only that 16 percent of the park. 11 There's a significant portion of the park 12 that's forested or where the views would be obscured 13 either by topography or by trees. 14 COUNCILMEMBER CONDON: Thank you. 15 MR. RATCLIFFE: We really need to be keeping 16 this to the exceptions that have been filed and the 17 responses to those. 18 VICE CHAIR HOWE: So any other questions of 19 Ms. Pease? 20 Okay. Counsel Rowe. 21 MR. ROWE: This is on behalf of Department 22 of Energy. 23 Again, I'll repeat, the issue that was 24 before the hearing officer -- because that's what we're 25 here for, an exceptions hearing -- the issue that was</p>	<p style="text-align: right;">Page 465</p> <p>1 That, essentially, is beyond the scope of what this 2 exception is. 3 The recreation standard, the looking at 4 that, does not automatically require compliance with 5 plan requirements within the analysis area. 6 Ms. Barry doesn't contest the finding that 7 there aren't facility components within the boundary of 8 Morgan Lake Park or that the applicant didn't adequately 9 consider the goals and objectives of the plan. 10 We believe for that reason, it was 11 appropriate -- or the exception should be rejected. 12 With regard to the mitigation that's been 13 proposed in the closing arguments on issues R-1, R-2, 14 R-3, R-4, SR-2, SR-3, SR-7, applicant proposed an 15 additional condition to expand the use of the shorter 16 H frame towers, as has just been discussed. 17 Specifically, that condition would expand 18 the use of the proposed mitigation, the lower towers, to 19 milepost -- originally, it was from milepost 6 to 20 milepost 6.9. And now they are suggesting it go from 21 milepost 5 to milepost 8. 22 In the proposed contested case order, the 23 hearing officer doesn't appear to rely on that proposed 24 amended condition in reaching her conclusion. The 25 Department could recommend that Council -- I'm sorry,</p>
<p style="text-align: right;">Page 464</p> <p>1 before her was whether the visual impacts of the 2 proposed facility structures in the viewshed of Morgan 3 Lake Park are inconsistent with the objectives of the 4 Morgan Lake recreational use and development plan. 5 So are they inconsistent with the plan? 6 And if they are, should visual impacts then 7 be re-evaluated? 8 Ms. Barry takes exception to the hearing 9 officer's finding that Idaho Power is not required to 10 demonstrate compliance with the Morgan Lake Plan because 11 there are no projected -- proposed project components 12 within the park boundary. 13 We believe that ALJ got it right. The 14 hearing officer correctly held that the Morgan Lake Plan 15 is intended to apply to management of recreational 16 opportunities within the park. It does not establish 17 specific criteria that would apply to construction in 18 operation of a transmission line located outside of the 19 park boundaries. So this proposal is not inconsistent 20 with the Morgan Lake Plan. 21 So as Ms. Pease stated, really what you need 22 to look at is the recreation standard, not the plan. It 23 is not inconsistent with the plan. 24 Now, you ask, well, is what they are 25 proposing inconsistent with the recreation standard?</p>	<p style="text-align: right;">Page 466</p> <p>1 that Council could include that proposed amended 2 condition as an applicant representation, hold them to 3 it in the final order and modify -- modify the PCCO to 4 say, okay, we'll find compliance with this condition 5 based on your representation that you will include these 6 shorter H frame towers in this expanded area. 7 VICE CHAIR HOWE: Councillor Jenkins, did 8 you have a question? 9 COUNCILMEMBER JENKINS: I think that's 10 appropriate. 11 VICE CHAIR HOWE: Yeah. Okay. 12 COUNCILMEMBER JENKINS: This is Hanley. 13 VICE CHAIR HOWE: Any other question -- or 14 any questions? 15 Okay. We're to the -- if we do what we've 16 been doing in the past, we won't continue. We'll go 17 ahead and do a straw poll on R-2. 18 COUNCILMEMBER JENKINS: Just this part of 19 R-2; right? Just this exception? 20 VICE CHAIR HOWE: Right. Yeah. 21 COUNCILMEMBER JENKINS: I'd like to do that. 22 Keep them distinct. Okay. 23 SECRETARY CORNETT: So I did -- Patrick 24 talked about the expanded distance for the H frames. 25 Is there agreement that Council wanted to</p>

<p style="text-align: right;">Page 467</p> <p>1 include that and make that a representation of that 2 conditional requirement? 3 VICE CHAIR HOWE: Yes. I've seen enough 4 head nods. 5 SECRETARY CORNETT: So then "agree with 6 findings of fact, conclusions of law, and conditions of 7 approval in the proposed contested case order pertaining 8 to issue R-2 with the following modification" -- again, 9 general concept -- "hold the applicant to their 10 representation to require the expanded distance for the 11 shorter H frame towers adjacent or in proximity to 12 Morgan Lake Park." 13 And then we'll get the actual language for 14 that when we write the draft final order. 15 COUNCILMEMBER JENKINS: Which will be the 16 milepost. 17 VICE CHAIR HOWE: Okay. Sounds good. 18 SECRETARY CORNETT: Okay. Ann Beier. 19 COUNCILMEMBER BEIER: (No audible response.) 20 SECRETARY CORNETT: Perry Chocktoot. 21 COUNCILMEMBER CHOCKTOOT: Yes. 22 SECRETARY CORNETT: Cindy Condon. 23 COUNCILMEMBER CONDON: Yes. 24 SECRETARY CORNETT: Hanley Jenkins. 25 COUNCILMEMBER JENKINS: Yes.</p>	<p style="text-align: right;">Page 469</p> <p>1 park will result in long-term visual impacts of varying 2 intensity within the park, these visual impacts will not 3 preclude visitors from engaging in recreational 4 opportunities and the park's impacts will be less -- the 5 project's impacts to the park will be less than 6 significant. 7 So that's all I have on this one and then 8 it's time for oral argument from Ms. Barry. 9 VICE CHAIR HOWE: Ms. Barry, you can come on 10 up. 11 MS. BARRY: You skipped issue R-3. 12 Yeah, okay. I just wanted you to know that 13 there's going to be more after this one. 14 Okay. Well, when I wrote issue R-4, the 15 applicant had provided only eight photos taken from the 16 boat dock parking area as their visual impact assessment 17 of a 204-acre city park. 18 Furthermore, they provided no data for 19 determining "high use." 20 Clearly, Judge Webster's decision to accept 21 that visual impact assessment should be reversed. 22 Based on that initial meager effort, Idaho 23 Power concluded that quote, "Although the project will 24 introduce moderate contrast to the landscape, it will 25 not preclude visitors from enjoying the day-use area and</p>
<p style="text-align: right;">Page 468</p> <p>1 SECRETARY CORNETT: Kent Howe. 2 VICE CHAIR HOWE: Yes. 3 SECRETARY CORNETT: Jordan Truitt. 4 COUNCILMEMBER TRUITT: Yes. 5 SECRETARY CORNETT: Thank you, 6 Councilmembers. 7 VICE CHAIR HOWE: Okay. Counsel Ratcliffe. 8 I guess we move to R-4. 9 MR. RATCLIFFE: Okay. So issue R-4, we have 10 one limited party, Lois Barry. The issue statement is 11 whether the applicant's visual impact assessment for 12 Morgan Lake Park adequately evaluates visual impacts to 13 the more than 160 acres of undeveloped parkland and 14 natural surroundings, as visual simulations were only 15 provided for high-use areas. 16 So the hearing officer's opinion on this. 17 The hearing officer concluded that the 18 applicant's supplemental analysis of Morgan Lake Park 19 adequately evaluated the proposed project's visual 20 impacts in the undeveloped areas of the park. 21 And in a preceding issue, we heard a little 22 bit about the extra analysis that was done through the 23 course of the -- the contested case. 24 The hearing officer also found that a 25 preponderance of evidence establishes that although the</p>	<p style="text-align: right;">Page 470</p> <p>1 overnight facilities offered at Morgan Lake Park." 2 Applicant's exception now argues that 3 visitors need only engage in recreational opportunities 4 but "enjoying" is the term in their ASC -- that's page 5 155 of Exhibit T. 6 You could engage in mud wrestling or 7 skydiving, but it's not like sitting alone for an hour 8 in the quiet, enjoying the sight of ducks swimming 9 through yellow water lilies on Little Morgan Lake. 10 In addition to the developed day use areas, 11 natural areas of the park are other day use. 12 Hikers and birders tend to avoid the 13 developed areas. Scenery is recognized as an important 14 aspect of recreation. Enjoyment of recreation in the 15 park will definitely be precluded by the line of 9, 16 130-foot transmission towers marring the views from the 17 park's natural areas. 18 Idaho Power claims that only 16 percent of 19 the park is natural. 20 I would say quite the reverse. 21 The lakes are natural, and unless an area in 22 the park is accessible by car, it is natural. That's 23 more than 75 percent of the park. 24 This year's analysis admits -- this year's 25 analysis admits the project's impact on the park is high</p>

<p style="text-align: right;">Page 471</p> <p>1 because towers would not be screened by vegetation as 2 was previously claimed. 3 Nevertheless, still using the skewed 4 definition of user perception looking head-on or 5 peripherally, applicant concluded -- no surprise -- 6 there would be less than significant impact visitors to 7 the park. 8 Words and logic matter. It would be clear 9 by now that the visual impact analysis for the Mill 10 Creek and Morgan Lake routes is worse than in -- it is 11 deceptive. 12 VICE CHAIR HOWE: Thank you, Ms. Barry. 13 Any questions from Council? 14 Thank you. 15 MS. PEASE: Thank you. Good afternoon, 16 Councilmembers. 17 Again, for the record, this is Jocelyn Pease 18 for Idaho Power Company. 19 In her exceptions filing, Ms. Barry argues 20 that the hearing officer had dismissed her concerns 21 about Idaho Power's analysis of impacts to Morgan Lake 22 Park, but that is not true. 23 Ms. Barry raised concerns that Idaho Power 24 had not adequately assessed impacts to undeveloped areas 25 and Idaho Power then addressed those concerns by</p>	<p style="text-align: right;">Page 473</p> <p>1 Ms. Barry had also made a comment about 2 language in the -- in the hearing officer's order 3 regarding engaging versus enjoying a resource. 4 And on that point, Ms. Barry is correct that 5 Idaho Power's initial analysis referred to the enjoyment 6 of recreational opportunities rather than engagement. 7 But regardless of the word that's used, 8 Idaho Power's analysis provides ample evidence that the 9 impacts will be less than significant. And for that 10 reason, Ms. Barry's exception does not identify any 11 error in the proposed contested case order and Idaho 12 Power respectfully requests that this Council affirm the 13 hearing officer's conclusions in connection with R-4. 14 Thank you. 15 VICE CHAIR HOWE: Thank you, Ms. Pease. 16 Any questions from Council? 17 Okay. Thank you. 18 Counsel Rowe. 19 MR. ROWE: The Department doesn't really 20 have any comments on this. We agree with the comments 21 that Ms. Pease just made. We don't see any error in the 22 hearing officer's conclusion on issue R-4. 23 VICE CHAIR HOWE: Okay. So we're through 24 recreation standard four. And I -- are there any 25 changes needed?</p>
<p style="text-align: right;">Page 472</p> <p>1 providing additional analysis of impacts to the entire 2 park. 3 This type of process is what the contested 4 case is for. The limited parties get to raise issues 5 and Idaho Power has an opportunity to respond and 6 provide additional analysis and address those concerns. 7 And that is exactly what's happened here. 8 And while Ms. Barry will seek to go back and 9 criticize what Idaho Power put into the initial 10 application, Idaho Power has since responded to the 11 concerns that have been raised and provided a more 12 complete analysis, including the undeveloped areas of 13 the park. 14 Ms. Barry had also made a comment that Idaho 15 Power had asserted that only 16 percent of the park is 16 natural. That comment seems to misunderstand Idaho 17 Power's analysis. 18 Instead, what Idaho Power demonstrated that 19 there is only 16 percent of the park that would -- from 20 which the project facilities would be visible. 21 It is a question not of what area is natural 22 or what's not or what's developed recreation; instead, 23 it's a question of the viewshed and are there barriers, 24 such as trees or topography that would block the view of 25 the project.</p>	<p style="text-align: right;">Page 474</p> <p>1 Are we ready to have a straw poll? 2 All right. Councilor Condon. 3 COUNCILMEMBER CONDON: Cindy Condon. 4 And this might be for Ms. Pease, but in the 5 contested case in the ALJ's comments, it -- it's talking 6 about Idaho Power's statement. The company determined 7 that viewer perception -- quote, "viewer perception will 8 range from low to high throughout Morgan Lake Park," 9 unquote. And that because of this range, quote, "viewer 10 perception for the park as a whole will be medium," 11 unquote. 12 And I just want to ask. 13 So "medium" in Idaho Power's analysis would 14 not be significant? 15 MS. PEASE: That's correct. 16 COUNCILMEMBER CONDON: Okay. It's language 17 that -- thank you. 18 VICE CHAIR HOWE: Okay. With that, I 19 believe, Secretary Cornett, we're ready for a straw 20 poll. You can give us the language if you've got it 21 ready. 22 SECRETARY CORNETT: Specific to issue R-4, 23 "agree with the findings of fact, conclusions of law, 24 and conditions of approval in the proposed contested 25 case order pertaining to issue R-4."</p>

<p style="text-align: right;">Page 475</p> <p>1 VICE CHAIR HOWE: Sounds right. 2 SECRETARY CORNETT: Ann Beier. 3 Hanley Jenkins. 4 COUNCILMEMBER JENKINS: Yes. 5 SECRETARY CORNETT: Jordan Truitt. 6 COUNCILMEMBER TRUITT: Yes. 7 SECRETARY CORNETT: Cindy Condon. 8 COUNCILMEMBER CONDON: Yes, with some 9 reser- -- I mean, I do think that public perception 10 could be better analyzed, but yes. 11 SECRETARY CORNETT: Perry Chocktoot. 12 COUNCILMEMBER CHOCKTOOT: Yes. 13 SECRETARY CORNETT: Kent Howe. 14 VICE CHAIR HOWE: Yes. 15 SECRETARY CORNETT: Thank you, 16 Councilmembers. 17 VICE CHAIR HOWE: Okay. 18 Counsel Ratcliffe, we're ready for R-3. 19 MR. RATCLIFFE: All right. So R-3 is -- 20 limited party is also Ms. Barry. 21 The issue statement is whether the 22 mitigation proposed to minimize the visual impacts of 23 the proposed facility structures at Morgan Lake Park, in 24 parentheses, 100,000 for recreational facility 25 improvements is insufficient because the parks remote</p>	<p style="text-align: right;">Page 477</p> <p>1 the park altogether. 2 The remote area still had not been analyzed 3 when the proposed order stated in 2020 that with 4 appropriate mitigation there would be no significant 5 impact on visitors to the park. 6 This January, just before 7 cross-examinations, applicant's expert witness provided 8 a supplemental analysis of the park. She admitted that 9 the remote areas of the park would be highly impacted. 10 The four proposed 150-foot towers would be 11 replaced with 13, 130-foot towers most with no 12 vegetative screening. 13 Judge Webster erred in citing the 14 supplementary analysis and proposed mitigation as 15 convincing evidence of no significant impact on park 16 visitors. The applicant is careful to mention lower 17 towers but not that they have tripled the number of 18 towers, impacting the park's remote southwestern 19 viewshed. This is not appropriate mitigation. 20 These days, remote areas with natural 21 scenery are highly prized and to have such fantastic 22 open views of distant miles of rolling hills available 23 within a five-minute drive from town and a 15-minute 24 hike in the park is a priceless opportunity. 25 The remote areas of the park will not</p>
<p style="text-align: right;">Page 476</p> <p>1 areas will not benefit from the proposed mitigation. 2 The hearing officer concluded that the funds 3 paid to the City of La Grande, the \$100,000 are not 4 intended to mitigate for the proposed facility's visual 5 impacts at Morgan Lake Park, rather the funds are 6 intended for recreational improvements as mitigation for 7 potential impacts to the park as a recreational 8 resource. 9 Recommended recreation condition number one 10 provides the mitigation for visual impacts. 11 The hearing officer also found that the 12 Memorandum of Agreement between Idaho Power and the City 13 of La Grande is a matter outside of the siting process 14 and, therefore, outside the Council's jurisdiction and 15 scope of review. And that because the Memorandum of 16 Agreement is not intended as mitigation for visual 17 impacts, it is immaterial whether the park's remote 18 areas will benefit from these funds. 19 And that's the summary of the hearing 20 officer's opinion and so Ms. Barry can provide her oral 21 argument. 22 MS. BARRY: Idaho Power's first extensive 23 survey of Morgan Lake Park identified the 67-acre Morgan 24 Lake as the entire 204-acre park. 25 Of course, they missed the remote areas of</p>	<p style="text-align: right;">Page 478</p> <p>1 benefit from the proposed mitigation. They will be 2 destroyed by it. 3 If the line were needed, the only reasonable 4 mitigation is to bury the portions of the line visible 5 from the remote areas of the park. 6 The new analysis concluded that even though 7 views from Morgan Lake Park would be highly compromised 8 there still would be less than significant impact on 9 human perception. 10 Remember, in Idaho Power speak, that's 11 "head-on" or "peripheral." 12 If this EFSC process is to maintain a 13 semblance of validity before a site certificate is 14 issued, this inept, senseless, unreasonable, visual 15 impact analysis must be replaced by a carefully 16 annualized established professional methodology. Fooled 17 you once, don't let them do it again. 18 VICE CHAIR HOWE: Thank you, Ms. Barry. 19 Any questions from Council? 20 Thank you. 21 MS. PEASE: Thank you. 22 Good afternoon, Councilmembers. 23 Again, for the record, this is Jocelyn Pease 24 for Idaho Power Company. 25 I wanted to start out with the issue</p>

<p style="text-align: right;">Page 479</p> <p>1 statement which relates to the mitigation proposed for 2 the visual impacts to Morgan Lake Park and specifically 3 references \$100,000 for recreational facility 4 improvements. 5 And as Mr. Ratcliffe indicated, that was 6 part of a Memorandum of Agreement between Idaho Power 7 and the City of La Grande which would be implemented if 8 the Morgan Lake route is developed. 9 And that gives the City of La Grande the 10 discretion to determine how it might use that money to 11 improve the park. And so if they want to use that for 12 improvements to the undeveloped areas, they can do that. 13 Now, as it would relate to the additional 14 mitigation that Idaho Power had proposed in terms of the 15 use of H frames, Idaho Power proposed that analysis -- 16 or provided analysis regarding the use of H frames in 17 its rebuttal testimony, which was offered in November in 18 accordance with the schedule set forth in the contested 19 case. Ms. Barry had claimed that that was offered late 20 in the game in January and that was just an incorrect 21 statement. 22 That was offered and consistent with the 23 schedule that was defined in our case. 24 Ms. Barry had also made an allegation that 25 Idaho Power has tripled the number of towers that would</p>	<p style="text-align: right;">Page 481</p> <p>1 So there's nothing that says it has to be 2 used to improve the campground or the parking area. 3 It's left to the City to decide as -- and the intent is 4 that the mitigation for the visual impacts is the 5 H frame poles and how those are sited. 6 MS. PEASE: That's right. The mitigation 7 that Idaho Power offered in the form of H frames is in 8 additional to the \$100,000 that's -- that's agreed to in 9 the MOA with the City of La Grande. 10 VICE CHAIR HOWE: Okay. Thank you, 11 Ms. Pease. 12 Any changes that Council needs to make on 13 the proposed contested case order for recreational 14 standard three? 15 Okay. I guess we're then ready for a straw 16 poll. 17 SECRETARY CORNETT: For the record, Todd 18 Cornett. 19 So no changes to R-3 and no changes to the 20 standard. 21 So if that's correct, then, "agree with the 22 findings of fact, conclusions of law, and conditions of 23 approval in the proposed order pertaining to the 24 recreation standard that are not related to the issues 25 in the contested case and in the proposed contested case</p>
<p style="text-align: right;">Page 480</p> <p>1 be used, and that statement is also incorrect. 2 She claims that instead of four towers, 3 there would be 13. And in fact, Idaho Power is 4 replacing 12 lattice towers with 19 H frames. So there 5 is an increase, but it is not quite as dramatic as 6 Ms. Barry contends. 7 Let me see if there's anything else. 8 Finally, regarding Ms. Barry's assertion 9 that the ALJ errs in relying on the rebuttal analysis 10 that was offered in this case -- and errs in relying on 11 Idaho Power's commitment to provide mitigation in the 12 form of H frames in the vicinity of Morgan Lake Park, 13 that -- that statement is -- it can't be supported. 14 The -- the Judge properly relied on the 15 rebuttal analysis that was offered in a timely 16 fashion -- that the Judge did not error in relying on 17 the rebuttal testimony that was offered in accordance 18 with the schedule outlined in this case. 19 Thank you, all. 20 VICE CHAIR HOWE: Yes. Councillor Beier. 21 COUNCILMEMBER BEIER: I just wanted to thank 22 you for clarifying that the agreement with the City of 23 La Grande allows the City to make a decision on how 24 those funds would be used in the event that this route 25 is chosen.</p>	<p style="text-align: right;">Page 482</p> <p>1 order pertaining to issue R-3." 2 VICE CHAIR HOWE: Sounds right. Okay. 3 SECRETARY CORNETT: Perry Chocktoot. 4 COUNCILMEMBER CHOCKTOOT: Yes. 5 SECRETARY CORNETT: Ann Beier. 6 COUNCILMEMBER BEIER: Yes. 7 SECRETARY CORNETT: Cindy Condon. 8 COUNCILMEMBER CONDON: Yes. 9 SECRETARY CORNETT: Hanley Jenkins. 10 COUNCILMEMBER JENKINS: Yes. 11 SECRETARY CORNETT: Jordan Truitt. 12 COUNCILMEMBER TRUITT: Yes. 13 SECRETARY CORNETT: Kent Howe. 14 VICE CHAIR HOWE: Yes. 15 SECRETARY CORNETT: Thank you, 16 Councilmembers. 17 VICE CHAIR HOWE: Okay. We will take a 18 break here. And return at four o'clock. 19 (A break was taken.) 20 VICE CHAIR HOWE: Okay. Ms. Tardaewether. 21 MS. TARDAEWETHER: For the record, Kellen 22 Tardaewether, Oregon Department of Energy. 23 I wanted to take just a quick moment. Let 24 me breeze through here and figure out where I'm at. 25 We're also waiting for a few more -- for the folks on</p>

<p style="text-align: right;">Page 483</p> <p>1 the line. We're waiting for a few other people, 2 Councilmembers, to join our group. 3 I just wanted to take a moment to say that I 4 have been corrected in my description of the Morgan Lake 5 alternative and proposed route. 6 I think I was talking about under the Scenic 7 Resource Standard, I kind of wove in a reference from 8 one of the public comments about the Mill Creek route. 9 And so I said that it was the proposed 10 route. And that -- that's not accurate. The Mill Creek 11 route was a route that came out of the NEPA review, but 12 is not reflected in the application for site 13 certificate. So this is just -- just to make sure -- 14 yeah, so -- is that accurate. 15 Okay. All right. Making sure I'm getting 16 it right. However, what is in front of Council right 17 now, proposed route and the Morgan Lake alternative in 18 Union County. But I just wanted to make sure that we 19 got that -- got that clarified. 20 How is that not -- okay. 21 Well, and I am talking about Union. 22 VICE CHAIR HOWE: Okay. We have a quorum of 23 the Council. We are ready to move forward. 24 MS. TARDAEWETHER: All right. We're going 25 to proceed with the Council's Fish and Wildlife Habitat</p>	<p style="text-align: right;">Page 485</p> <p>1 where each habitat category has a -- separate protection 2 goals and mitigation goals for habitat quantity and 3 quality. 4 So let me go here. I have some maps here. 5 This is another one of those issues where I 6 had to PDF my PowerPoint. 7 So you are missing a table here. But it's a 8 table that it summarizes -- which, actually, it's just 9 more valuable than this figure here. But it summarizes 10 the habitat categorization just along for the proposed 11 route and the alternative routes. 12 An example and so we had talked -- under 13 Threatened and Endangered Species, we talked about 14 category 1 habitat for the Washington ground squirrel. 15 Other examples of category 1 habitat are the 16 occupied WGS colonies, trees or structures with special 17 status raptor nests and then caves with -- that are 18 hibernaculum for bats. 19 Mostly, I'm just working in my favorite word 20 that I've learned here in this job. 21 That's all avoidance. And so -- but there 22 is a lot of the transmission line that crosses through. 23 And Council is pretty familiar with category 24 2 habitat. Category 2 habitat is elk and mule winter 25 range. There's also pygmy rabbits is considered</p>
<p style="text-align: right;">Page 484</p> <p>1 Standard. 2 So to the -- the Fish and Wildlife Habitat 3 Standard, which I'm sitting here staring at it and it 4 does actually have habitat in it. This is not named 5 correctly; correct? 6 Okay. So one of the things I was going to 7 emphasize -- and I'm looking at the name with how we 8 have it labeled here and it's missing the word 9 "habitat." 10 Is the important aspect about this standard 11 is that it really is oriented toward habitat. And so 12 sub (1) directs Council and the Department to work and 13 coordinate with and be consistent with the Oregon 14 Department of Fish and Wildlife Habitat Mitigation 15 Policy, which also includes their habitat 16 categorization. 17 So the habitat categorization from ODF&W 18 goes from a categorization of category 1 to category 6 19 where 1 being the most exclusive. And I'm not using -- 20 I don't have their language right in front of me. 21 And Sarah probably has it memorized best. 22 I'm just going to air quote "best habitat" 23 or "habitat that should be most protected." 24 And then 6 being the poorer quality habitat. 25 And then it continues on that spectrum and</p>	<p style="text-align: right;">Page 486</p> <p>1 category 2 habitat. 2 All in all, there is approximately 4,403 3 acres of category 2, 3, 4, and 5 habitat that would 4 be -- that would be temporarily and permanently impacted 5 by the proposed facility and also incorporated into -- 6 and would be mitigated for and also restored, 7 particularly with those -- the temporary impacts. 8 So this slide, I'm just going to touch on 9 some of the fish and wildlife habitat conditions. We've 10 talked about some of them before. I'm going to start 11 with the bottom here on my screen. 12 In conditions 15 and 16, there are a lot of 13 fish and wildlife conditions. A lot of these have 14 timing restrictions, seasonal restrictions. 15 But 15 and 16 are -- are the conditions that 16 specify that certain surveys must be conducted according 17 to this final biological -- biological survey work plan. 18 And it's attachment P-1 to -- that is attached to the 19 final order -- or proposed order; correct? Right. 20 So -- and that has -- and the reason why 21 that's important is that the survey protocols are agreed 22 to and worked with ODF&W where ODF&W says this is an 23 appropriate methodology to go out in the field and 24 conduct this survey. All of those protocols for all of 25 the habitats and species that we've looked at and that</p>

<p style="text-align: right;">Page 487</p> <p>1 we've kind of talked about under threatened and 2 endangered species and for other -- in other habitats 3 are -- kind of set out in that plan. 4 And so these are the conditions that say do 5 those surveys according to these protocols, you know, in 6 your finalization of your -- of, like, based on your 7 final route what -- and your final -- all your surveys 8 that you have to go back out and do. 9 There is fish -- fish and wildlife condition 10 one has the reclamation and re-vegetation plan, which 11 is -- it says what it is. It is also attached to the 12 order. And this has success criteria for how -- what -- 13 what reclamation and successful re-vegetation will look 14 like. This is also done in -- conducted -- or generated 15 and reviewed in conjunction with ODF&W and then as well 16 as -- as counties. Same with the noxious weed plans. 17 We work with the Counties and their weed 18 supervisors as well as ODF&W and Oregon Department of 19 Agriculture as applicable in the development of that 20 plan. And then we have the fish and habitat wild -- 21 wildlife habitat mitigation plan, or the "HMP." 22 This is the plan that -- that says and 23 outlines how and -- how and where they are going to 24 mitigate for the impacts to those different categories. 25 So -- and we're kind of the same -- seems to</p>	<p style="text-align: right;">Page 489</p> <p>1 MR. RATCLIFFE: Okay. So we have several 2 fish and wildlife issues that were part of the contested 3 case that have filed exceptions. We're going to be 4 starting with fish and wildlife 7. 5 The limited parties are Ann and Kevin March. 6 The issue statement is whether the applicants fish 7 passage plans, including the 3-A and 3-B designs 8 complies with the Fish and Wildlife Habitat Standards 9 category 2 mitigation requirements. 10 Also, whether the applicant must revisit its 11 plans because threatened steelhead redds have been 12 identified in the watershed. 13 And I note on this, when it's referring to 14 "identified in the watershed," what we're talking about 15 here is a part of Union County where the line would 16 cross Ladd Creek streams near I-84. 17 This issue arises in part because the 18 Department of Transportation completed a culvert project 19 not too long ago, a few years ago, which opened fish 20 passage resulting in potential increase in Snake River 21 Basin steelhead and the -- (audio disruption) -- of the 22 watershed. 23 This species of steelhead is a federally 24 listed threatened species. It's not a state-listed 25 species.</p>
<p style="text-align: right;">Page 488</p> <p>1 be the theme of the day is that aside from that 2 biological survey work plan, all of these are draft 3 plans because -- that will be finalized -- and I think 4 it's a really good example of going through that 4400 5 acres of temporary and permanent impacts. Those 6 include -- right -- because everything is a maximum 7 worst-case impact scenario, those include the proposed 8 route and the alternative routes. 9 But we know, let's run this scenario where 10 all routes are approved, but really only one route is 11 going to be selected. These routes are going to drop 12 off. Therefore, there will be no impacts to those -- to 13 the habitat under -- for those routes, so your actual 14 and permanent and temporary impact number is going to be 15 reduced, which then will reduce the -- it's going to 16 impact all of these. 17 So all of these are going to be reflected 18 and finalized based on kind of the final location and 19 details associated with those plans. And these are all 20 based off of the surveys that they have to go out. 21 Based on the final route, they are going to 22 go out and re-survey everything, because they are 23 current and new surveys, and that will all be reflected 24 in these plans. 25 And I will stop there.</p>	<p style="text-align: right;">Page 490</p> <p>1 So the hearing officer, the way she 2 approached this in her opinion was to break it into two 3 sub issues. 4 First, a question on the adequacy the fish 5 passage plan design; and then, second, a question of the 6 adequacy of the habitat categorization and mitigation. 7 So with respect to the fish passage plan 8 design, the hearing officer noted that the applicability 9 of fish passage law requirements -- and these are Oregon 10 Department of Fish and Wildlife laws that the Council is 11 charged with implementing as part of this process -- 12 that those fish passage requirements are triggered by 13 the need for construction of an artificial obstruction. 14 The hearing officer concluded that the 15 applicant has not proposed or requested approval for any 16 construction of new road crossings or major replacement 17 of existing road crossings on any identified streams in 18 the Upper Ladd Creek watershed. 19 The company will rely on existing bridges or 20 culverts for road crossings, therefore, fish passage 21 requirements are not triggered and the proposed 3-A/3-B 22 design for proposed crossings do not apply in this area. 23 With respect to the second issue concerning 24 the adequacy of habitat categorization and mitigation, 25 the Fish and Wildlife Habitat Standard requires that the</p>

<p style="text-align: right;">Page 491</p> <p>1 Council find that the design, construction, and 2 operation of the proposed facility would be consistent 3 with the ODFW fish and wildlife habitat mitigation 4 goals. 5 The first step in figuring out the 6 mitigation goals is categorizing the habitat. And the 7 applicant categorized all potentially fish-bearing 8 streams in Upper Ladd Creek above the I-84 culvert 9 within the site boundaries category 2 habitat. 10 This was something that -- the applicant and 11 ODOE consulted with the Fish and Wildlife Department on. 12 And the hearing officer found that the 13 presence of state or federally listed threatened and 14 endangered or special status species does not 15 automatically elevate the habitat categorization. 16 In this case, that would be from -- the only 17 one to go above two is one. 18 So -- and the reason for that is that the 19 fish species -- the habitat that they exist in, you 20 know, it can vary. And in many cases the fish 21 themselves can exist. Their lifecycle requirements can 22 be met within habitat that would be categorized as a 23 lower category than category 1. 24 Importantly, ODFW is not able to affirm 25 that -- definitively affirm the nonfish-bearing</p>	<p style="text-align: right;">Page 493</p> <p>1 issue. And we're ready now for the Marches' oral 2 argument. 3 MR. MARCH: In 2015, when ODOT completed the 4 first part of a nearly \$50 million fish passage 5 improvement project on I-84 to open up 86 square miles 6 of high quality habitat in the Upper Ladd Creek 7 Watershed for Snake River Basin steelhead, the year 8 following that -- excuse me, the upper watershed had 9 been blocked to migration since the freeway was first 10 constructed in the 1950s. 11 In 2016, ODOT documented a steelhead redd, 12 which is a spawning bed, above the crossing. ODF&W 13 didn't know about that and neither did Idaho Power until 14 we notified EFSC in our letter in 2019. 15 ODF&W has since acknowledged the presence of 16 the steelhead in the watershed, yet Idaho Power 17 continues to assert that the presence of this listed 18 threatened and state-sensitive species is alleged. 19 They're not alleged. They are present in the watershed. 20 This is the basis of our argument that Idaho 21 Power's application was based on out-of-date, faulty, 22 and inadequate data in its analysis. I spent more time 23 the last three years working on this project here than I 24 have at my business. We did five hours of 25 cross-examination, 47 pages of testimony, and 27 pages</p>
<p style="text-align: right;">Page 492</p> <p>1 designation of five nonfish road stream crossings. And 2 so, you know, they are out there trying to make sure 3 that there aren't any fish in these streams. 4 The standard doesn't obligate the applicant 5 to definitively show that streams labeled 6 nonfish-bearing within Ladd Creek Watershed, in fact, do 7 not bear Snake River Basin steelhead or other fish 8 species to establish compliance with the standard. 9 However, the proposed contested case order 10 recommends that the Council adopt a Department 11 recommended amended fish passage condition to require 12 that these five road crossings within Ladd Creek which 13 were not able to be affirmed by ODFW as nonfish-bearing 14 have additional evaluation prior to construction. 15 If the streams are identified as 16 fish-bearing and require construction to support a 17 crossing, and fish passage approval, in that case, a 18 site certificate amendment would be required. 19 So this is not kind of a -- a review and 20 approval by the Department situation. Idaho Power would 21 have to come back in and request an amendment if fish 22 are identified in those streams. 23 Okay. So that is a lengthy summary, but a 24 lengthier issue. And that is the summary of the hearing 25 officer's proposed contested case order opinion on this</p>	<p style="text-align: right;">Page 494</p> <p>1 of closing brief. Yet, as we pointed out in exception 2 one, in her ruling the Judge quoted Idaho Power's 3 closing argument and mistakenly attributed it to us. 4 Her analysis is incorrect. 5 You will hear Idaho Power state that no new 6 fish passage plans are anticipated because they're not 7 constructing anything new in the water. This is 8 allegedly true, yet they have only studied streams they 9 labeled as containing resident fish. 10 As we've pointed out from the beginning, 11 many streams and parts of the watershed are labeled as 12 "nonfish," quote/unquote, by Idaho Power. 13 They stated in the ASC that they wouldn't 14 study those streams then and they fought us for three 15 years to not have to study them now. 16 ODF&W has stated that they don't have 17 adequate maps to ascertain where the crossings are in 18 the streams labeled as "nonfish." And that they don't 19 have the capacity, nor is it a priority to study the 20 watershed. They're not out there studying them right 21 now. 22 And ODOE will state that these details that 23 we brought up will be taken care of by ODF&W in 24 condition one. How can that be? 25 Condition one will be satisfied by the</p>

<p style="text-align: right;">Page 495</p> <p>1 Agency that doesn't have the capacity to do these 2 studies? That makes no sense. 3 Northwest steelhead are in big trouble. 4 2021 is, by far, the lowest recorded migration in 5 history. As a species, they are inquisitive and they 6 will explore new habitat for spawning and rearing when 7 it is open to them. Just as they did in 2016 after 8 being blocked from this historic and important habitat 9 for 70 years. The year after, they went up there. 10 Oregon rules are in place to protect species such as 11 these in just this kind of case. 12 Please remand FW-7 so that complete and 13 accurate studies can be undertaken before the 14 application is approved so that these iconic fish can 15 have ever chance possible to continue to repopulate this 16 important watershed. Thank you for your time. I know 17 you are all tired. 18 VICE CHAIR HOWE: Thank you, Mr. March. 19 Are there any questions from Council? 20 Okay. Thank you. 21 MS. PEASE: Thank you and good afternoon, 22 Councilmembers. Again, this is Jocelyn Pease for Idaho 23 Power Company. 24 Issue FW-7 asks whether the potential 25 reintroduction of steelhead into the Upper Ladd Creek</p>	<p style="text-align: right;">Page 497</p> <p>1 construction or major replacement of any artificial 2 obstructions in the Upper Ladd Creek watershed. Thus, 3 there is no trigger event. The fish passage rules do 4 not apply to the project-related crossings in these 5 streams, not withstanding the potential reintroduction 6 of steelhead. 7 Additionally, the Marches ask the Council to 8 remand their newly raised issue regarding ephemeral 9 streams to allow Idaho Power to provide additional 10 evidence of compliance with the fish passage rules as 11 they relate to those streams. 12 However, these newly raised issues do not 13 allege noncompliance with the fish passage rules, 14 because again, no fish passage plan is required for any 15 crossing in the Upper Ladd Creek watershed. 16 As to the Marches' claim that Idaho Power 17 has not demonstrated compliance with the habitat 18 category 2 requirements because the company's nonfish 19 designations in the Upper Ladd Creek watershed are 20 potentially inaccurate. 21 Idaho Power submitted a map in the contested 22 case comparing the project-related crossings and their 23 associated fish-bearing or nonfish-bearing designations 24 to ODF&W's most recent distribution data for Snake River 25 Basin steelhead.</p>
<p style="text-align: right;">Page 496</p> <p>1 watershed affects the project's compliance with both the 2 fish passage rules and the requirements for habitat 3 category 2. 4 The Marches assert that Idaho Power failed 5 to comply with the fish passage rules because the 6 company allegedly relied on incomplete data on fish 7 presence. 8 However, as Idaho Power explained in its 9 responsive briefing, regardless of whether fish are 10 present in these streams, no fish passage plan is 11 required for any of the crossings in the Ladd Creek 12 watershed because the fish passage rules require a fish 13 passage plan only if there is a trigger event. 14 Specifically, under ODF&W regulations, no 15 person shall construct or maintain any artificial 16 obstruction across any waters of this state that are 17 inhabited or historically inhabited by native migratory 18 fish without providing passage for native migratory 19 fish. 20 For purposes of the fish passage rules, the 21 trigger event is construction, fundamental change in 22 permit status, or abandonment of an artificial 23 obstruction. 24 During the contested case, Idaho Power 25 definitively stated that the company does not propose</p>	<p style="text-align: right;">Page 498</p> <p>1 Those maps demonstrate that Idaho Power's 2 identification in the ASC of potential fish presence in 3 the Upper Ladd Creek watershed is consistent with the 4 most up-to-date data available regarding the Snake River 5 Basin distribution within that watershed. 6 Additionally, as Mr. Ratcliffe had 7 explained, the hearing officer had adopted ODOE proposed 8 condition that would require Idaho Power to come back to 9 the Council in the event that there were any road 10 crossings that are proposed in these streams that would 11 require a fish passage plan. 12 And with that, I'll conclude my remarks. 13 Thank you. 14 VICE CHAIR HOWE: Thank you, Ms. Pease. 15 Any questions from Council? 16 Councillor Jenkins. 17 COUNCILMEMBER JENKINS: This is Hanley. 18 So I'm going to try and restate what you've 19 said, but even if there are fish in the upper watershed 20 of Ladd Creek, Idaho Power proposes no improvements that 21 would require a permit and, therefore, there's no need 22 for a fish passage plan. 23 MS. PEASE: That is correct. A fish passage 24 plan is only required if there is a trigger event. 25 COUNCILMEMBER JENKINS: And so what the</p>

<p style="text-align: right;">Page 499</p> <p>1 hearings officer has done is said that if that changes 2 and there is a need for a plan, then you have to come 3 back to the Council for an amendment. 4 MS. PEASE: That is correct. 5 COUNCILMEMBER JENKINS: Okay. Thank you. 6 MS. PEASE: Thank you. 7 VICE CHAIR HOWE: Any other questions? 8 Okay. Thank you. 9 Counsel Rowe. 10 MR. ROWE: Patrick Rowe, Department of 11 Justice on behalf of Department of Energy. 12 Councilmember Jenkins, you stole my thunder, 13 as did Mr. Ratcliffe. 14 This is an example -- that condition is an 15 example of how the contested case -- how the proposed 16 order is evolving -- the Department's recommendations 17 are evolving as a result of the contested case. 18 The Marches, through the contested case, 19 identified that there were nonfish-bearing streams 20 that -- I wanted to make -- make sure I get my 21 terminology correct. 22 Give me one second. 23 That the Marches identified whether stream 24 crossings designated as nonfish-bearing if ODF&W had 25 adequately evaluated them.</p>	<p style="text-align: right;">Page 501</p> <p>1 Patrick, so the last -- in the amended 2 condition, it's the last sentence of the amendment 3 itself. The bold language, "If fish passage 4 requirements apply, certificate holder shall seek 5 approval from the Energy Facility Siting Council," dot, 6 dot, dot. 7 So if fish passage requirements apply, that 8 is a triggering event -- I mean, it's deemed any 9 triggering event, a change in nonfish-bearing streams, 10 in fish-bearing streams, if there is a triggering event, 11 an amendment happens. 12 Am I understanding that correctly? 13 MR. ROWE: Requirements apply and then they 14 were to identify fish in that stream. 15 COUNCILMEMBER CONDON: Yes. Fish -- a 16 nonfish-bearing stream or one that was -- had fish in 17 it. If there is a triggering event not -- 18 MR. ROWE: Then they will come in and seek 19 EFSC for an amendment. Right. 20 COUNCILMEMBER CONDON: Yes. Okay. 21 VICE CHAIR HOWE: Any other questions? 22 COUNCILMEMBER JENKINS: This is Hanley. 23 So we need to concur with this proposed 24 amendment in order to alter the proposed order. 25 MR. ROWE: Yes. And Secretary Cornett will</p>
<p style="text-align: right;">Page 500</p> <p>1 ODF&W acknowledged that they had not and so 2 that is what led to the proposed condition amendment 3 that you see in the hearing officer's proposed contested 4 case order at pages 159 to 160. 5 We believe that -- we were -- felt pretty 6 good about that. We were -- listened to the input. We 7 were responsive and amended -- proposed this amended 8 condition. 9 The only input I've heard today is that they 10 now question ODF&W's ability to -- to comply with that 11 condition because ODF&W had indicated that previously it 12 didn't have the capacity to address all of the streams. 13 Well, that -- that may be that they -- that 14 they said they didn't have the capacity to investigate 15 all the streams across the state. But that doesn't mean 16 that they -- once -- if this is -- if there's a trigger 17 event and they are asked to investigate those streams by 18 ODOE, that they won't. 19 In fact, the reverse is true, they will. An 20 ODF&W witness testified at the cross-examination about 21 this condition and indicated their satisfaction with the 22 condition. 23 VICE CHAIR HOWE: Any questions from 24 Council? 25 COUNCILMEMBER CONDON: Cindy Condon.</p>	<p style="text-align: right;">Page 502</p> <p>1 propose -- will have a straw poll for you that would be 2 consistent with the other straw polls, where you adopt 3 the hearing officer's findings of fact and conditions in 4 the proposed contested case order, and if you were to 5 vote in favor of that, then that would achieve that. 6 COUNCILMEMBER JENKINS: So this is part of 7 the contested case order that will affect the proposed 8 order? Okay. Thank you. 9 VICE CHAIR HOWE: So in that case, are we -- 10 do we do a straw poll on just the proposed contested 11 case order at this time? 12 SECRETARY CORNETT: For the record, Todd 13 Cornett. 14 Yes, this just would be a straw poll on 15 issue FW-7. And the proposed contested case order 16 already includes that condition, so there would be no 17 modification necessary for -- to add that condition. 18 VICE CHAIR HOWE: Perfect. 19 SECRETARY CORNETT: "Agree with the findings 20 of fact, conclusions of law, and conditions of approval 21 in the proposed contested case order pertaining to issue 22 FW-7." 23 VICE CHAIR HOWE: Sounds good. 24 SECRETARY CORNETT: Okay. Hanley Jenkins. 25 COUNCILMEMBER JENKINS: (No audible</p>

<p style="text-align: right;">Page 503</p> <p>1 response.)</p> <p>2 SECRETARY CORNETT: Perry Chocktoot.</p> <p>3 COUNCILMEMBER CHOCKTOOT: Yes.</p> <p>4 SECRETARY CORNETT: Kent Howe.</p> <p>5 VICE CHAIR HOWE: Yes.</p> <p>6 SECRETARY CORNETT: Ann Beier.</p> <p>7 COUNCILMEMBER BEIER: Yes.</p> <p>8 SECRETARY CORNETT: Jordan Truitt.</p> <p>9 COUNCILMEMBER TRUITT: Yes.</p> <p>10 SECRETARY CORNETT: Cindy Condon.</p> <p>11 COUNCILMEMBER CONDON: Yes.</p> <p>12 SECRETARY CORNETT: Thank you,</p> <p>13 Councilmembers.</p> <p>14 MR. RATCLIFFE: Okay. Our next fish and</p> <p>15 wildlife issue is fish and wildlife one. The limited</p> <p>16 party is Stop B2H.</p> <p>17 The issue here is -- pertains to sage grouse</p> <p>18 habitat. It's whether the applicant adequately analyzed</p> <p>19 sage-grouse habitat connectivity in the Baker and Cow</p> <p>20 Valley priority areas of conservation.</p> <p>21 The potential indirect impacts of the</p> <p>22 proposed facility on sage-grouse leks, and the existing</p> <p>23 number of sage-grouse in the Baker and Cow Valley</p> <p>24 priority areas of conservation.</p> <p>25 So this was another instance of the issue</p>	<p style="text-align: right;">Page 505</p> <p>1 And -- or sage-grouse connectivity.</p> <p>2 Finally, the company has no obligation to</p> <p>3 ascertain the existing number of sage-grouse in Baker</p> <p>4 and Cow Valley priority areas of conservation to</p> <p>5 establish compliance with the standard.</p> <p>6 So, once again, this was a rule on motion</p> <p>7 for summary determination. And with that, I'll turn it</p> <p>8 over to Stop B2H for their oral argument.</p> <p>9 MR. ANUTA: Karl Anuta appearing on behalf</p> <p>10 of Stop B2H. I feel a little bit like a broken record</p> <p>11 on the summary determination issue.</p> <p>12 You're, again, looking at one where, in our</p> <p>13 view, the Administrative Law Judge erred by not allowing</p> <p>14 the parties to present further factual information.</p> <p>15 There was a factual dispute here about the</p> <p>16 sufficiency of the analysis because there was no</p> <p>17 analysis and there's no dispute. There isn't an</p> <p>18 analysis.</p> <p>19 What Idaho Power is proposing is to rely on</p> <p>20 a habitat mitigation analysis tool later on. But the</p> <p>21 standard requires them to evaluate, in our view, and it</p> <p>22 requires the Department and the commission to -- Council</p> <p>23 to evaluate.</p> <p>24 Have they done an analysis now and is it</p> <p>25 adequate?</p>
<p style="text-align: right;">Page 504</p> <p>1 being dealt with in a ruling on motion for summary</p> <p>2 determination.</p> <p>3 The proposed contested case order opinion</p> <p>4 finds that the Fish and Wildlife Habitat Standard</p> <p>5 requires that the Council find that taking into account</p> <p>6 mitigate the design, construction, and operation of the</p> <p>7 proposed facility is consistent with the sage-grouse</p> <p>8 specific habitat mitigation requirements of the greater</p> <p>9 sage-grouse conservation strategy for Oregon.</p> <p>10 So I want to stop here and point out really</p> <p>11 quickly that sage-grouse are a special case in the ODF&W</p> <p>12 Fish and Wildlife Habitat Mitigation Program. There was</p> <p>13 a multi-year effort that resulted in a set of rules.</p> <p>14 ODF&W is one of the agencies that adopted</p> <p>15 those that -- that address sage-grouse habitat</p> <p>16 specifically.</p> <p>17 So the hearing officer found that Stop B2H</p> <p>18 did not previously raise the issue of whether the</p> <p>19 applicant's analysis of indirect impacts is incomplete,</p> <p>20 because the applicant is yet to quantify impacts and</p> <p>21 compensatory mitigation through the habitat</p> <p>22 quantification tool.</p> <p>23 No evidence was provided demonstrating</p> <p>24 insufficiencies in the applicant's analysis of the</p> <p>25 proposed facilities. Potential impacts, sage leks.</p>	<p style="text-align: right;">Page 506</p> <p>1 There is no analysis, so it can't be</p> <p>2 adequate.</p> <p>3 Part of what you have to do in your position</p> <p>4 and part of what the ALJ should have done is when you're</p> <p>5 on a summary determination issue, you must view all</p> <p>6 facts in the light most favorable to the party opposing</p> <p>7 the motion.</p> <p>8 We pointed out that it is a fact that there</p> <p>9 is no analysis. The -- viewing that fact in the light</p> <p>10 most favorable to the party opposing the motion, which</p> <p>11 is Stop, you must conclude that the analysis wasn't</p> <p>12 adequate because there -- it didn't exist. That's how</p> <p>13 you have to determine that fact, because you have to</p> <p>14 assume it in the light most favorable to us. That was</p> <p>15 not done by the ALJ. That should have been done here</p> <p>16 because that was not done, the analysis by the ALJ was</p> <p>17 in error.</p> <p>18 You are being asked to approve a lack of</p> <p>19 analysis as compliant with the standard because at some</p> <p>20 point in the future they will do a habitat and a</p> <p>21 modification mitigation analysis.</p> <p>22 You can't keep kicking that can down the</p> <p>23 road. You have to force them to do the analysis now.</p> <p>24 Is -- are there any birds there? How many</p> <p>25 birds are there?</p>

<p style="text-align: right;">Page 507</p> <p>1 And then once they know that, down the road 2 they can do a mitigation analysis to determine whether 3 that impact is significant or not. But you can't find a 4 nonexistent analysis compliant with the standard. 5 I could say more, but I think I've covered 6 the issue. 7 I'm happy to answer any questions. 8 VICE CHAIR HOWE: Questions? 9 Thank you, Mr. Anuta. 10 MS. PEASE: Thank you. 11 Good afternoon. For the record, this is 12 Jocelyn Pease for Idaho Power Company. 13 What Mr. Anuta has highlighted in his 14 comments is a timing issue. Stop B2H's exceptions focus 15 on the fact that Idaho Power has not yet performed the 16 final step in its analysis of potential impacts to 17 sage-grouse habitat and Mr. Anuta argues that because 18 Idaho Power has not yet done this analysis, the Council 19 cannot ensure compliance with the -- with the 20 sage-grouse rules. 21 However, Idaho Power explained in its 22 responsive briefing that it has not calculated the final 23 mitigation acreage for indirect impacts, and that it is 24 only because ODF&W requires that the mitigation be 25 calculated using its habitat quantification tool or</p>	<p style="text-align: right;">Page 509</p> <p>1 research regarding the type of impacts, the timing, the 2 duration, the quantification metrics, and potential 3 mitigation measures related to potential permanent and 4 temporary direct impacts, as well as indirect impacts to 5 sage-grouse habitat. 6 Exhibit P-2 also includes the State of 7 Oregon's preliminary calculation of the project's direct 8 impacts using a draft direct impact assessment tool 9 which totals approximately 543 acres of impacts. 10 Idaho Power also included with Exhibit P-2 a 11 draft sage-grouse mitigation plan that includes analysis 12 of four potential mitigation sites, totaling over 6,500 13 acres of habit for mitigation purposes. 14 Accordingly, Stop B2H's unsupported claims 15 that Idaho Power has not completed any analysis is 16 plainly wrong and fails to identify any error in the 17 hearing officer's ruling. 18 And in sum, I would add in response to 19 Mr. Anuta's argument that there are disputed facts here 20 that there are not -- what is -- the Council has before 21 it is a path to compliance using the recommended 22 condition 17 and the HQT that is required by ODF&W's 23 rules. 24 Thank you. 25 VICE CHAIR HOWE: Thank you, Ms. Pease.</p>
<p style="text-align: right;">Page 508</p> <p>1 "HQT." And that tool had not yet been completed when 2 Idaho Power filed its ASC, thus the timing issue. 3 To ensure compliance with ODF&W requirement, 4 the proposed order requires Idaho Power to provide all 5 information necessary to use the HQT to calculate the 6 mitigation for potential impacts. 7 Specifically, the -- the recommended Fish 8 and Wildlife condition 17 requires Idaho Power to 9 provide all information necessary to ODF&W to calculate 10 the amount of required compensatory mitigation using the 11 HQT and to provide mitigation commensurate with the 12 HQT's results. These are what ODF&W rules require and 13 the Council, through the recommended Fish and Wildlife 14 condition 17, can be assured that those rules will be 15 followed. 16 Second, Stop B2H asserts incorrectly that 17 Idaho Power has not done any actual analysis. This 18 assertion is plainly contradicted by the record in this 19 case. 20 While Idaho Power has not yet completed its 21 final calculations with the HQT, as I mentioned, the 22 company still provided substantial analysis of potential 23 impacts to sage-grouse in Exhibit P-2 of the ASC. 24 In that exhibit, Idaho Power provided 25 analysis backed by expert biologists and scientific</p>	<p style="text-align: right;">Page 510</p> <p>1 Are there questions? 2 Councillor Jenkins. 3 COUNCILMEMBER JENKINS: This is Hanley. 4 So, Jocelyn, condition 17 requires the 5 certificate holder to provide to the Department the 6 information for conducting the analysis. And then 7 it's -- it's Oregon Department of Fish and Wildlife that 8 actually does the analysis. It's not the applicant, 9 it's not the Department of Energy, at least that's the 10 way I read condition 17. 11 MS. PEASE: Yes. That's my understanding -- 12 COUNCILMEMBER JENKINS: So it's ODF&W then 13 that identifies the acreage threshold -- or the acreage 14 necessary for the mitigation. 15 MS. PEASE: Yes. And fundamentally, the HQT 16 is ODF&W's tool. It's not a tool that Idaho Power 17 developed. It's what is required to be applied in this 18 case. 19 COUNCILMEMBER JENKINS: Thank you. 20 VICE CHAIR HOWE: Any other questions? 21 Councillor Condon. 22 COUNCILMEMBER CONDON: Thank you. 23 Just teeing off of what Councillor Jenkins 24 asked. 25 So if Idaho -- I mean, if Department of Fish</p>

<p style="text-align: right;">Page 511</p> <p>1 and Wildlife does not respond to something, if I 2 understand, it's ODF&W's responsibility to do the 3 analysis; is that right? 4 MS. PEASE: It is ODF&W's responsibility to 5 assist in that analysis. 6 COUNCILMEMBER CONDON: And so we'll be 7 relying on them to meet this condition, or Idaho Power 8 will be relying on ODF&W to do that analysis 9 regardless of timing. 10 MS. PEASE: That's correct. 11 And my understanding is that, to date -- and 12 I believe this would be in the record -- that ODF&W has 13 been a cooperative partner in -- and working with Idaho 14 Power in the -- in the sage-grouse issues. 15 COUNCILMEMBER CONDON: So you don't 16 anticipate any timing issue -- if -- if we determine to 17 issue a site certificate, it will be without the 18 analysis required by condition 17. 19 And so your -- there's not a concern about 20 timing, because ODF&W is cooperating and -- 21 MS. PEASE: That's my understanding. 22 Is there anything else that -- 23 My -- my understanding is that Idaho Power 24 is required by law to -- to work with ODF&W and follow 25 the HQT. So independent of what's in the site</p>	<p style="text-align: right;">Page 513</p> <p>1 within areas of potential sage-grouse habitat. 2 VICE CHAIR HOWE: Okay. That completes us 3 on Fish and Wildlife exception 1. 4 So are we ready to do the straw poll for the 5 proposed contested case order? 6 SECRETARY CORNETT: For the record, Todd 7 Cornett. 8 "Agree with the findings of fact, 9 conclusions of law, and conditions of approval in the 10 proposed contested case order pertaining to issue FW-1. 11 VICE CHAIR HOWE: Works. 12 SECRETARY CORNETT: Cindy Condon. 13 COUNCILMEMBER CONDON: Yes. 14 SECRETARY CORNETT: Kent Howe. 15 VICE CHAIR HOWE: Yes. 16 SECRETARY CORNETT: Jordan Truitt. 17 COUNCILMEMBER TRUITT: Yes. 18 SECRETARY CORNETT: Perry Chocktoot. 19 COUNCILMEMBER CHOCKTOOT: Yes. 20 SECRETARY CORNETT: Ann Beier. 21 COUNCILMEMBER BEIER: Yes. 22 SECRETARY CORNETT: Hanley Jenkins. 23 COUNCILMEMBER JENKINS: Yes. 24 SECRETARY CORNETT: Thank you, 25 Councilmembers.</p>
<p style="text-align: right;">Page 512</p> <p>1 certificate, that's what Oregon law requires. 2 COUNCILMEMBER CONDON: Okay. Thank you. 3 VICE CHAIR HOWE: Any other questions? 4 Thank you, Ms. Pease. 5 Counsel Rowe. 6 MR. ROWE: The dialogue we just heard about 7 condition 17, I think, pretty much addresses what I was 8 going to say. The Department is comfortable that Idaho 9 Power will comply in light of this condition. 10 I don't have anything further. And looking 11 over at Kellen and Sarah, it doesn't look like they have 12 anything further to add. 13 MS. ESTERSON: I guess the one thing I would 14 add is that the condition references ODF&W in lieu fee 15 program, which is an established program that once the 16 HQT is run and there is a dollar amount associated with 17 the acreage and the long-term mitigation into 18 perpetuity, that program exists so that -- that means 19 that mitigation -- like, the availability of mitigation 20 is affirmed because there's an existing program to 21 implement the mitigation. 22 And it's -- it's similar to what we do under 23 the Fish and Wildlife Habit Standard where mitigation is 24 like long-term enhancement and monitoring for 25 improvement of, you know, maybe lower quality habitat</p>	<p style="text-align: right;">Page 514</p> <p>1 MR. RATCLIFFE: So our next Fish and 2 Wildlife issue is dealing with the draft Noxious Weed 3 Plan. 4 The limited parties involved here are 5 Gilbert and Geer. 6 The issue is whether the draft Noxious Weed 7 Plan, which is in proposed order attachment P1-5, 8 adequately assures compliance with the weed control 9 laws, ORS 569.390, ORS 569.400, and ORS 569.445. 10 The hearing officer's opinion on this issue 11 included that the applicant's not required to 12 demonstrate compliance with ORS Chapter 569 to 13 demonstrate with the Fish and Wildlife Habitat Standard 14 because it was not listed in the Department's order, nor 15 included in Division 21, the information requirements. 16 And, again, as a reminder, Department's 17 project order is the document that sets out the -- not 18 only the Department's -- or the Council's standard but 19 also the other sources of law, other permitting 20 programs, et cetera, that an applicant is going to be 21 required to comply with as part of the process. 22 The hearing officer concluded that the 23 Council is not responsible for enforcing Oregon weed 24 control laws. That enforcement authority lies with the 25 county courts. The Council is not waiving compliance</p>

<p style="text-align: right;">Page 515</p> <p>1 with the weed control laws by findings that the proposed 2 facility would comply with the Fish and Wildlife Habit 3 Standard. 4 The hearing officer also found that the 5 applicant is only obligated to address, in other words, 6 prevent and mitigate, noxious weed infestations that 7 result from the proposed facility. 8 The applicant is not obligated to address 9 pre-existing or subsequent noxious weeds within the site 10 boundary that exist outside of project-related areas of 11 use or disturbance. 12 The applicant is committed to identifying, 13 controlling, treating, and monitoring noxious weed 14 species on Oregon Weed Board Class A, B, and T lists and 15 County Class B lists, A and B lists. 16 In the contested case proceeding, the 17 company updated its Draft Noxious Weed Plan, including 18 additional requirements of the plan that require the 19 company to consult annually with county weed districts 20 regarding treatment, if anything, for Class C weeds, and 21 on any updates to state and county weed lists to be 22 reflected in their Noxious Weed Plan. 23 The Draft Noxious Weed Plan identifies that 24 the applicant would monitor at least once annually for 25 the first five years. After year five, the company</p>	<p style="text-align: right;">Page 517</p> <p>1 compliance with the standards. 2 The weed supervisors from three counties 3 submitted the information saying that Idaho Power must 4 comply with state law regarding controlled noxious weeds 5 on lands they manage or hold right-of-way on regardless 6 of cause or pre-existence, the same as any other 7 landowners. 8 ODF&W, Ms. Rice stated, weed management 9 should occur on all project areas for the life of the 10 project. The risk discovery infection in the areas of 11 operation and areas of re-vegetation will remain high 12 for the life of the project. 13 The current weed management plan fails to 14 meet the requirements that weeds not be allowed to go to 15 seed or comply with state statutes and rules including 16 requiring annual monitoring for the life of the project 17 to assure noxious weeds are not allowed to go to seed 18 and infest other areas. 19 The procedure for finalizing the weed 20 management plan fails to comply with the requirements 21 for Council approval of the weed management plan to show 22 the statutes and rules are complied with. 23 The agency review process being required is 24 controlled by the Oregon Department of Energy and 25 detailed requirements for counties or agencies to</p>
<p style="text-align: right;">Page 516</p> <p>1 would prepare location-specific, long-term monitoring 2 plans for noxious weed control. 3 The hearing officer found that nothing in 4 the weed control statute specifically requires twice 5 annual monitoring and finally that ORS 569.445, that 6 deals with wheel washing is limited to other machinery 7 used for agricultural purses and does not apply to 8 construction equipment or vehicles. 9 Okay. That is the summary of the hearing 10 officer's ruling on that issue. 11 And we can have oral argument from 12 Ms. Gilbert/Ms. Geer, whoever wants to come first. 13 MS. GILBERT: Anyway, am I okay here? 14 I guess I can be heard. 15 The applicant -- I'm going to just deal with 16 the one issue here, which is that weeds are not allowed 17 go to seed. This requirement is necessary to comply 18 with the Oregon statute, also with EFSC rules requiring 19 that the development not significantly increase the cost 20 to the county, which includes the cost of noxious weed 21 control in compliance with the habitat standard 22 requiring the plan to assure that the development will 23 not result in infestations of noxious weeds and 24 resulting damage to wildlife habitat and that conditions 25 be imposed that require monitoring mitigation to assure</p>	<p style="text-align: right;">Page 518</p> <p>1 disagree with the drafts presented by the developer 2 include identifying a rule that specifically requires 3 the change in providing only a 14-day time frame for 4 review and objection to what's submitted. 5 And I'm going to read the rule that keeps 6 getting referred to in terms of ODOE being able to 7 finalize these plans. 8 469.402. "Delegation of review of future 9 action required by site certificate. If the Energy 10 Facility Siting Council elects to propose conditions on 11 a site certificate or an amended site certificate that 12 requires subsequent review, then they can refer it to 13 ODOE." 14 That's what the rule says. 15 The language is referring to the fact there 16 is a site certificate. 17 Now, 469.377 says, "At the conclusion of the 18 contested case, the Council shall issue a final order 19 either approving or rejecting the application based upon 20 the standards adopted in 469.501 and what's in" the -- 21 "the project order." 22 So the bottom line is, yes, ODOE can do some 23 follow-up, but not until the Council actually issues a 24 site certificate. That is your responsibility. Your 25 duty. They can only do the actions that you have</p>

<p style="text-align: right;">Page 519</p> <p>1 included after you decide that there is eligibility for 2 the site certificate. 3 So with these plans, if they are required in 4 order to issue a site certificate, that's your 5 responsibility. They can draft it. You have to approve 6 it. 7 So that's -- 8 VICE CHAIR HOWE: Thank you, Ms. Gilbert. 9 Are there any questions from Council? 10 Okay. 11 MS. GILBERT: Yeah. This applies all across 12 the Board. You know that. 13 VICE CHAIR HOWE: Ms. Geer. Oh, recorded. 14 SECRETARY CORNETT: For the record, Todd 15 Cornett, Mr. Vice Chair. So Ms. Geer has provided a 16 recording for issues FW-3 and FW-6, but they are one 17 six-minute long recording. 18 So what I would request is a little 19 alteration here, which would be to play the entire 20 recording of Ms. Geer, which is six minutes, and then 21 allow Idaho Power six minutes to respond to both of the 22 issues, as well as Mr. Rowe six minutes to respond to 23 both issues. And then you would do a straw poll on a 24 combination of those issues. 25 VICE CHAIR HOWE: And there's nobody else.</p>	<p style="text-align: right;">Page 521</p> <p>1 five, which is consistent with other re-vegetation and 2 weed control plans approved by the Council. 3 Ms. Geer has not demonstrated that the 4 noxious weed plan is inadequate for the purpose of 5 controlling noxious weeds. Okay. 6 (Recording played.) 7 "Susan Geer, issue FW-3 and FW-6. I've 8 been a botanist and plant community 9 ecologist for over 30 years. I'm a 10 landowner who controls weeds and who 11 assists in vegetation management at Rice 12 Glass Hill Natural Area. I ask the 13 Council deny the site certificate or 14 remand the proposed contested case order 15 to Judge Webster for more evidence and 16 remand to ODOE for updated analysis and 17 further development of the various 18 plans. I'm adopting Ms. Gilbert's 19 exceptions for FW-3 plus the following. 20 Judge Webster erred when she summarized 21 FW-3. The affects of residual 22 herbicides on native plant communities 23 was omitted from the issue. I have 24 great concerns for the effects of 25 residual herbicides on native plant</p>
<p style="text-align: right;">Page 520</p> <p>1 SECRETARY CORNETT: This is it. 2 VICE CHAIR HOWE: Okay. That works. 3 MR. RATCLIFFE: One friendly amendment to 4 that proposed one. That's before we hear the recording 5 that will cover both issues, maybe I should say what the 6 second issue is. 7 Okay. So issue FW-6 -- again, the 8 single-limited party on this issue is Susan Geer -- is 9 whether the Noxious Weed Plan provides adequate 10 mitigation for potential loss of habitat due to noxious 11 weeds when it appears to relieve the applicant of weed 12 monitoring and control responsibilities after five years 13 and allows for compensatory mitigation if weed control 14 is unsuccessful. 15 The hearing officer addressed this in her 16 opinion and ruled that no Council standard requires 17 prevention or eradication of nonnative invasive species 18 in natural areas. 19 Further, the treatment of nonnative invasive 20 plant species is a matter outside of Council 21 jurisdiction. 22 The noxious weed control plan would require 23 noxious weed monitoring and control annually, at a 24 minimum, for the first five years and then requires 25 development of a long-term monitoring plan after year</p>	<p style="text-align: right;">Page 522</p> <p>1 communities. Large amounts of 2 herbicides would be used to address 3 invasive plants resulting from 4 disturbance of construction. This 5 important concern is not addressed in 6 any of the other issues or discussed in 7 the plans. The draft noxious weed, the 8 reclamation and re-vegetation, or the 9 vegetation management plan, proposed in 10 the application for site certificate, 11 This concern should be part of the 12 discussion of habitat standards. 13 Exception for FW-6. Judge Webster erred 14 in how she addressed FW-6. She failed 15 to address the potential loss of habitat 16 in the type of litigation, the 17 compensatory mitigation raised in FW-6 18 and by incorrectly limiting the scope of 19 FW-6 with prejudicial wording in her 20 opinion, even beyond the limited wording 21 she originally chose for the issue in 22 the amended order. The judge's 23 conclusion of law states the updated 24 draft Noxious Weed Plan is adequate to 25 serve its intended purpose of</p>

Page 523	Page 525
<p>1 establishing the measures the company 2 will take to scroll noxious weed species 3 and prevent the introduction of these 4 species during construction and the 5 operation of the project. Ms. Geer has 6 not presented evidence or persuasive 7 argument to show the Noxious Weed Plan 8 is invalid or that Idaho Power will be 9 unable to implement and adhere to the 10 plan when finalized. This conclusion 11 completely ignores the loss of habitat 12 which is central to the issue. In a 13 letter to the judge dated October 1, 14 2020, I appealed for and gained 15 recognition of this very issue stating 16 the following issue is not mentioned by 17 ODOE but is recognized as properly 18 raised by Idaho Power in response to 19 petitions for party status, 2D fish and 20 wildlife habitat standard mitigation for 21 potential habitat loss from noxious 22 weeds, whether the new action in the 23 proposed order allowing Idaho Power to 24 mitigate for a potential loss of habitat 25 due to noxious weeds is an adequate</p>	<p>1 solely for natives plants and animals 2 for over 20 years and has special status 3 species and priority plant associations. 4 The judge draws faulty conclusions about 5 mitigation of loss of habit and 6 compensatory mitigation the judge 7 offers. As previously discussed, issue 8 FW-6 is limited to whether the Noxious 9 Weed Plan provides adequate mitigation 10 for potential adverse affects from 11 noxious weeds resulting from project 12 construction and/or operation. The 13 Judge has replaced the words, loss of 14 habitat and in her initial wording of 15 the issue with adverse impacts, taking 16 the issue even further from my concerns 17 as initially expressed. The judge 18 further dismisses concerns about habit 19 loss because of invasive plants by 20 focusing only on the words "Noxious Weed 21 Plan." In her view, the Noxious Weed 22 Plan is the only aspect of invasive 23 plants under consideration. The judge 24 erroneously reasons that since the 25 Council is not responsible for the</p>
Page 524	Page 526
<p>1 solution to the risk of noxious weed 2 impacts. The judge was able to draw 3 this conclusion only because she chose 4 to re-word and prejudicially narrow the 5 scope of FW-6 in her opinion. The 6 judge's opinion states: Idaho Power is 7 not required to demonstrate compliance 8 with the weed control laws to satisfy 9 Fish and Wildlife Habitat Standard. The 10 judge incorrectly assumes that 11 compliance with weed control laws is the 12 only factor related to disturbance and 13 invasives that would affect habit. The 14 opinion is moot because without 15 beginning construction, Idaho Power 16 could not demonstrate compliance. All 17 they can do is demonstrate a willingness 18 to comply, at least, in the writing. 19 Loss of high quality native habitat 20 would occur under the proposed order. 21 There is no mitigation that can atone 22 for unique high quality native habitat. 23 This is particularly true for Rice Glass 24 Hill Natural Area, which has been 25 undisturbed, undeveloped, and managed</p>	<p>1 Noxious Weed Plan, the Council retains 2 zero responsibility for the long-term 3 effects of introducing invasives to the 4 landscape. In her opinion about my 5 concerns, regarding compensatory 6 mitigation, the judge, once again, 7 restricts the issue even beyond her 8 previously chosen wording, allows for 9 compensatory mitigation if weed control 10 is unsuccessful stating this argument 11 exceeds the scope of issue FW-6, which 12 as previously discussed, is limited to 13 the adequacy of weed monitoring and the 14 control positions of the Noxious Weed 15 Plan. By excluding wording about 16 habitat in compensatory mitigation, the 17 judge has prejudicially changed the 18 emphasis of issue FW-6 and rendered her 19 opinion invalid. 20 MS. PEASE: Thank you. 21 And good afternoon, members of the Council. 22 Again, this is Jocelyn Pease for Idaho Power 23 Company. 24 We'll start with issue FW-3. Ms. Geer and 25 Ms. Gilbert had both filed exceptions for FW-3 raising</p>

<p style="text-align: right;">Page 527</p> <p>1 numerous arguments that Idaho Power has fully addressed 2 in its responsive briefing. 3 And for purposes of these comments, I'll try 4 to focus on two main arguments and also try to hit some 5 of the points that were raised in the oral comments. 6 First, Ms. Gilbert and Ms. Geer argue that 7 the hearing officer erred in her conclusion that the 8 Draft Noxious Weed Plan is not required to demonstrate 9 compliance with the weed control laws to satisfy the 10 Fish and Wildlife Habitat Standard. 11 And the Council is not the agency 12 responsible for enforcing compliance with the weed 13 control laws. 14 Here, the hearing officer correctly 15 recognized that the Draft Noxious Weed Plan was designed 16 to address the Fish and Wildlife Habitat Standard. It 17 was not specifically intended to address compliance with 18 the full extent of the Oregon weed control statutes in 19 ORS Chapter 569. 20 In particular, all though, ORS Chapter 569 21 requires an owner or occupant of land to take action 22 regarding control of noxious weeds located on that 23 person's land, EFSC's Fish and Wildlife Habitat Standard 24 instead focuses on the impacts resulting from the 25 project.</p>	<p style="text-align: right;">Page 529</p> <p>1 Moreover, Idaho Power provided a robust 2 Noxious Weed Plan to demonstrate how the company will 3 address project-related noxious weeds for compliance 4 with the Fish and Wildlife Habitat Standard. 5 And importantly, during this contested case, 6 Idaho Power updated the Draft Noxious Weed Plan to 7 address several of the concerns that limited parties had 8 raised, including concerns about treating Class B weeds, 9 clarify Idaho Power's intent to prepare a long-term 10 monitoring plan following the initial five-year 11 assessment period, and clarifying plans for vehicle 12 cleaning as well as a number of other updates. 13 Let's see. Okay. Moving on to FW-6 and the 14 assertions that Ms. Geer had raised. 15 First, she made a number of arguments about 16 the hearing officer narrowly framing her issues or that 17 her issue should have been stated more expansively. 18 Unfortunately, we're in a contested case 19 process where we need to define the scope of the issues 20 early on, and there was a process for the judge to do 21 that, which occurred over a year and a half ago. 22 So the time for raising concerns about the 23 framing of issues has long past and the Council should 24 reject those claims. 25 Additionally, regarding FW-6, the basic</p>
<p style="text-align: right;">Page 528</p> <p>1 And what -- what Idaho Power explained in 2 its briefing is that there's basically two tracks. 3 There is the EFSC Fish and Wildlife Habitat Standard 4 track and then the counties also still retain a local 5 enforcement of the weed control laws. 6 Ms. Gilbert had made a point about there 7 being a critique from county weed supervisors from -- I 8 believe it was a meeting in 2017. 9 In fact, during the contested case and at 10 cross-examination, there was testimony from an ODA 11 witness, Mr. Porter, explaining an understanding of 12 these parallel tracks, that there's an EFSC process 13 where the applicant demonstrates compliance with the 14 EFSC standards, and then the County still retains 15 jurisdiction to enforce the weed control laws as they 16 need to. 17 Additionally, Ms. Gilbert had asserted 18 that -- that the hearing officer's conclusions related 19 to the Draft Noxious Weed Plan are null and void because 20 the plan may be later changed or updated. 21 However, the process for finalizing the 22 Council's weed plan is entirely consistent with the 23 agency review process for finalizing plans in the 24 Council's roles, which are provided in OAR 25 Chapter 345.025.0016.</p>	<p style="text-align: right;">Page 530</p> <p>1 thrust of Ms. Geer's argument is that mitigation should 2 not be available in connection with the Noxious Weed 3 Plan. 4 The Noxious Weed Plan provides that Idaho 5 Power will take measures to ensure -- to minimize and to 6 the extent possible ensure the limited transmission of 7 noxious weeds in connection with the development of the 8 project. 9 However, in the event that there -- that 10 there are noxious weeds that take hold, the plan also 11 provides for compensatory mitigation to address any 12 impacts to any potential loss of habit. 13 Those -- this framework is consistent with 14 the Council's Fish and Wildlife Habitat Standard which 15 provides for mitigation in the event of impacts. 16 Thus, it is entirely consistent here for the 17 Council to find that mitigation can be appropriate in 18 the event that there is a loss of habitat. 19 However, in light of the measures that Idaho 20 Power has proposed and updated in its Draft Noxious Weed 21 Plan, the Council can find that it's consistent with the 22 Fish and Wildlife Habitat Standard and affirm the 23 hearing officer's conclusions with respect to FW-3 and 24 FW-6. 25 And I can be available for any further</p>

<p style="text-align: right;">Page 531</p> <p>1 questions.</p> <p>2 VICE CHAIR HOWE: Any questions from</p> <p>3 Council?</p> <p>4 Looks good. Thank you.</p> <p>5 Counsel Rowe.</p> <p>6 MR. ROWE: I could say I have nothing to say</p> <p>7 and then we could all leave, but I have a couple things</p> <p>8 to say. Not much. I'll take it one issue at a time.</p> <p>9 FW-3, again, the issue is whether the Draft</p> <p>10 Noxious Weed Plan adequately ensures compliance with the</p> <p>11 weed control laws at ORS 569, dot, dot, dot.</p> <p>12 Department's position on that is that the</p> <p>13 hearing officer correctly ruled that it's the counties,</p> <p>14 not EFSC, that are responsible for enforcing those weed</p> <p>15 control laws.</p> <p>16 With regard to compliance with EFSC's</p> <p>17 standards, recommended Fish and Wildlife condition</p> <p>18 three, that's in your proposed order at page 319, that</p> <p>19 would require that Idaho Power submit a draft of</p> <p>20 their -- they already have a Draft Noxious Weed Plan.</p> <p>21 And it's actually quite well-developed, but</p> <p>22 that condition would require Idaho Power to submit their</p> <p>23 draft of their final Noxious Weed Plan and that would be</p> <p>24 subject to the formal local state and federal review</p> <p>25 that Kellen was discussing earlier.</p>	<p style="text-align: right;">Page 533</p> <p>1 before the hearing officer, whether the Noxious Weed</p> <p>2 Plan provides adequate mitigation for potential loss of</p> <p>3 habitat due to noxious weeds when it appears to relieve</p> <p>4 applicant of weed monitoring and control</p> <p>5 responsibilities after five years and allows for</p> <p>6 compensatory mitigation if weed control is unsuccessful.</p> <p>7 First, I'd like to address the assertion</p> <p>8 that it appears to relieve the applicant of weed</p> <p>9 monitoring and control responsibilities after five</p> <p>10 years.</p> <p>11 If you were to look at the Draft Noxious</p> <p>12 Weed Plan, section 5.3.4 addresses timing.</p> <p>13 And it states -- basically, what they can --</p> <p>14 they are going to go out there and if they identify</p> <p>15 noxious weeds, they are going to try to control them.</p> <p>16 And if they believe they have successfully controlled</p> <p>17 them within five years, then they can come to the</p> <p>18 Department and they can request a concurrence of the</p> <p>19 Department that they successfully controlled the weeds</p> <p>20 in that time period.</p> <p>21 If ODOE concurs, Idaho Power still needs to</p> <p>22 continue to monitor. Okay. This -- I'm just going to</p> <p>23 read it directly.</p> <p>24 "If ODOE concurs, IPC will continue to</p> <p>25 monitor the sites as described below in Section 6.1 but</p>
<p style="text-align: right;">Page 532</p> <p>1 If you look at -- this is in the record.</p> <p>2 The version I'm looking at the Department attached to</p> <p>3 its response on exceptions FW-3.</p> <p>4 I don't know -- are you -- is everyone able</p> <p>5 to pull that up relatively easily? If not, I can</p> <p>6 certainly summarize for you what's in it.</p> <p>7 But, again, it's an attachment to the</p> <p>8 Department's response to the exceptions of FW-3. The</p> <p>9 very beginning of that includes the agency review</p> <p>10 process that Kellen described for us earlier. And</p> <p>11 the -- and I want to pull up the condition itself.</p> <p>12 And the condition says, "Prior to</p> <p>13 construction of a phase or segment of the facility in</p> <p>14 accordance with the rule governing agency consultation</p> <p>15 process and outlined in the Draft Noxious Weed Plan,</p> <p>16 Idaho Power must finalize and submit to the Department</p> <p>17 for its approval the final plan."</p> <p>18 The Department believes that that final plan</p> <p>19 sufficiently addresses Idaho Power's responsibilities</p> <p>20 under Council's standards. That's FW-3.</p> <p>21 Now I'm going move to FW-6.</p> <p>22 VICE CHAIR HOWE: Any questions from Council</p> <p>23 on FW-3?</p> <p>24 Okay.</p> <p>25 MR. ROWE: FW-6, again, the issue that was</p>	<p style="text-align: right;">Page 534</p> <p>1 will cease treatment" -- so they can stop treatment but</p> <p>2 they have to continue to monitor -- unless determined --</p> <p>3 "unless treatment is determined to be necessary through</p> <p>4 subsequent monitoring."</p> <p>5 "If control of noxious weeds is deemed</p> <p>6 unsuccessful after five years of monitoring and noxious</p> <p>7 weed control actions, IPC will coordinate with ODOE</p> <p>8 regarding appropriate steps forward."</p> <p>9 So they're not off the hook after five</p> <p>10 years. If they come to the Department, the Department</p> <p>11 concurs you did adequately control, they can stop</p> <p>12 treatment, but they still have to continue monitoring.</p> <p>13 That's right in the plan.</p> <p>14 In addition to the Draft Noxious Weed Plan,</p> <p>15 the Department would also point out to the Council that</p> <p>16 temporary and permanent disturbance that might be caused</p> <p>17 as a result of construction or operation of the</p> <p>18 facility, that could result in noxious weed impacts they</p> <p>19 would be mitigated not just through the Noxious Weed</p> <p>20 Plan, but there are other mitigation obligations in</p> <p>21 place. And they include the 1200-C permit, the</p> <p>22 agricultural mitigation plan, the right-of-way clearing</p> <p>23 assessment, the reclamation and re-vegetation plan.</p> <p>24 Almost all of those, except for 1200-C,</p> <p>25 require landowner consultation, treatment, and short- to</p>

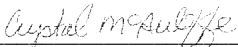
<p style="text-align: right;">Page 535</p> <p>1 long-term monitoring for noxious weeds.</p> <p>2 These plans that I just listed are required</p> <p>3 under the following conditions. Fish and Wildlife</p> <p>4 habitat -- or would be, were you to adopt them -- fish</p> <p>5 and wildlife habitat condition one, recommended fish and</p> <p>6 wildlife habitat condition three, recommended land use</p> <p>7 condition 14, recommended land use condition 16, and</p> <p>8 soil protection condition one.</p> <p>9 That's all I have. Thank you.</p> <p>10 VICE CHAIR HOWE: Any questions from</p> <p>11 Council?</p> <p>12 COUNCILMEMBER JENKINS: This is Hanley.</p> <p>13 So, Patrick, again, if they are unsuccessful</p> <p>14 after five years in their weed plan, they need to submit</p> <p>15 a new plan to the Department for subsequent evaluation</p> <p>16 and mitigation.</p> <p>17 MR. ROWE: I had not -- yeah, I don't --</p> <p>18 yes, is that correct? Sarah?</p> <p>19 COUNCILMEMBER JENKINS: Long-term plan.</p> <p>20 Yeah, new long-term plan.</p> <p>21 Thank you.</p> <p>22 VICE CHAIR HOWE: Councillor Beier.</p> <p>23 COUNCILMEMBER BEIER: So this is just a</p> <p>24 question for, I think, staff.</p> <p>25 Where does compensatory mitigation come in,</p>	<p style="text-align: right;">Page 537</p> <p>1 SECRETARY CORNETT: For the record, Todd</p> <p>2 Cornett. It's a request for inspection. So if somebody</p> <p>3 believes a condition is not being met or a facility is</p> <p>4 not being operated consistent with the approval, they</p> <p>5 can request the Department conduct an inspection to</p> <p>6 evaluate that so we can come to our own conclusion.</p> <p>7 COUNCILMEMBER CONDON: Thank you.</p> <p>8 VICE CHAIR HOWE: Any other questions?</p> <p>9 So I believe we're ready.</p> <p>10 Are any changes needed in fish and wildlife</p> <p>11 issues 3 and 6?</p> <p>12 If not, I think we're ready for the roll</p> <p>13 call.</p> <p>14 SECRETARY CORNETT: So this would be for the</p> <p>15 fish and wildlife standard in addition to issues FW-3</p> <p>16 and FW-6.</p> <p>17 "Agree with the findings of fact,</p> <p>18 conclusions of law, and conditions of approval in the</p> <p>19 proposed order pertaining to" fish and wildlife -- "the</p> <p>20 Fish and Wildlife Standard that are not related to the</p> <p>21 issues in the contested case and in the proposed</p> <p>22 contested case order pertaining to issues FW-3 and</p> <p>23 FW-6."</p> <p>24 VICE CHAIR HOWE: Sounds good.</p> <p>25 SECRETARY CORNETT: Cindy Condon.</p>
<p style="text-align: right;">Page 536</p> <p>1 then, if we don't get everything right in the first five</p> <p>2 years and we come up with a new plan? I know that it's</p> <p>3 allowed, in general, for fish and wildlife standards.</p> <p>4 But what triggers that here and who triggers</p> <p>5 it?</p> <p>6 MS. ESTERSON: Well, the way I think it will</p> <p>7 work is that the -- like the reclamation re-veg plan and</p> <p>8 the Noxious Weed Plan are to address temporary impacts.</p> <p>9 So if those become a permanent impact</p> <p>10 because it's taking much longer than five years,</p> <p>11 compensatory mitigation would start to come into play</p> <p>12 but that doesn't mean you don't still have to try in</p> <p>13 some way. It is just now you have more of an</p> <p>14 obligation.</p> <p>15 VICE CHAIR HOWE: Any other questions?</p> <p>16 Councillor Condon.</p> <p>17 COUNCILMEMBER CONDON: I'm just curious, in</p> <p>18 the plan, is there a provision for public input?</p> <p>19 Like, if the public sees evidence of noxious</p> <p>20 weeds, is there a public process for coming to us, ODOE,</p> <p>21 Idaho Power?</p> <p>22 MS. ESTERSON: Well, what first comes to</p> <p>23 mind is our -- in our compliance program, we have a</p> <p>24 process where you can file a complaint. I don't know if</p> <p>25 you want to talk about that?</p>	<p style="text-align: right;">Page 538</p> <p>1 COUNCILMEMBER CONDON: Yes.</p> <p>2 SECRETARY CORNETT: Jordan Truitt.</p> <p>3 COUNCILMEMBER TRUITT: Yes.</p> <p>4 SECRETARY CORNETT: Ann Beier.</p> <p>5 COUNCILMEMBER BEIER: Yes.</p> <p>6 VICE CHAIR HOWE: Hanley Jenkins.</p> <p>7 COUNCILMEMBER JENKINS: Yes.</p> <p>8 SECRETARY CORNETT: Perry Chocktoot.</p> <p>9 COUNCILMEMBER CHOCKTOOT: Yes.</p> <p>10 SECRETARY CORNETT: Kent Howe.</p> <p>11 VICE CHAIR HOWE: Yes.</p> <p>12 SECRETARY CORNETT: Thank you,</p> <p>13 Councilmembers.</p> <p>14 VICE CHAIR HOWE: So we got through that.</p> <p>15 The time is now 5:18, in the August 29th, 30th, 31st of</p> <p>16 the 2022 meeting of the Energy Facility Siting Council</p> <p>17 is now in recessed until tomorrow morning at 8 a.m.</p> <p>18</p> <p>19 (Meeting adjourned at 5:18 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I, CRYSTAL R. McAULIFFE, a Certified Court
Reporter in and for the State of Washington, do hereby
certify that the foregoing transcript of the Energy
Facility Siting Council Meeting on AUGUST 30, 2022, is
true and accurate to the best of my knowledge, skill and
ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 9th day of September, 2022.


CRYSTAL R. McAULIFFE, RPR, CCR #2121
Oregon CCR 22-0002



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