

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **LC 50**

<p>4 In the Matter of</p> <p>5 IDAHO POWER COMPANY</p> <p>6 2009 Integrated Resource Plan</p> <hr/>	<p>) CUB’S REPLY TO NANCY PEYRON AND</p> <p>) MIP’S MOTION FOR A CONTESTED</p> <p>) CASE HEARING ON</p> <p>) ACKNOWLEDGEMENT OF BOARDMAN-</p> <p>) HEMINGWAY TRANSMISSION LINE IN</p> <p>) IPC LEAST COST PLAN</p>
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8 **INTRODUCTION**

9 MIP and Nancy Peyron have filed a “Motion for Contested Case Hearing on

10 Acknowledgement of Boardman-Hemingway Transmission Line in IPC Least Cost Plan”

11 (MIP/Peyron Motion). MIP and Nancy Peyron are seeking to bifurcate the OPUC’s Intergrated

12 Resource Plan (IRP) process so that the portion of the IRP process related to discussion of the

13 Boardman-Hemingway proposed transmission line is conducted outside of the normal IRP

14 process as a contested case. MIP and Nancy Peyron’s goal is not to enhance the IRP process but

15 to hijack the IRP process, transform it into a contested case hearing with order, and then fly the

16 order to the Energy Facility Siting Council (EFSC) where the laws are different, the “needs”

17 allegedly greater, and the participants allegedly unheard during the EFSC processes. CUB

18 respectfully requests that the Commission deny MIP and Nancy Peyron’s request to bifurcate the

19 Commission’s normal IRP process.

21 **ARGUMENT**

22 1. The EFSC Process.

23 CUB does not dispute the statement by MIP and Nancy Peyron that some of EFSC’s statutes

1 require the holding of a contested case in siting matters. ORS 469.370(4) and (5).¹ Neither does
2 CUB dispute that the EFSC rules allow for adoption of the OPUC IRP acknowledgment as a
3 finding of need. OAR 345-023-0020(1) and (2). What CUB does dispute is that the EFSC
4 statutes, rules and processes should have any influence over the Commission's conduct of its
5 own IRP process.

6 EFSC has a clear, statutory mandate to regulate the siting of energy facilities through its
7 site certificate procedures. ORS 469.320. EFSC's regulatory purview includes the siting of
8 newly constructed or expanded transmission lines. *Id.* Therefore, EFSC, and not the OPUC, has
9 jurisdiction over the actual siting of a proposed transmission line. There is a clear division of
10 regulatory authority here. EFSC runs its process in the manner it sees fit and OPUC should do
11 the same.²

12 OPUC's jurisdiction, in this instance, relates to least cost planning for types of resources
13 that may be required in the future. OPUC's jurisdiction does not extend to the siting of those
14 resources. While "a specific route of a transmission line can significantly affect its cost-
15 effectiveness" (MIP/Peyron Reply, ¶ 3), litigating the substance and procedures of the siting of a
16 specific transmission line along a specific route is not the intention behind the IRP process.³

17
18 Clearly there is no statutory requirement that requires OPUC to change its process in any
19

20 ¹ CUB notes that other statutes dealing with the adoption of standards for siting permit EFSC to consider least cost
21 plans when adopting a need standard and also allow EFSC to adopt exemptions from any need standard adopted.
22 ORS 469.501(1) (L) and (2).

23 ² Because the Commission is, in most cases, considering acknowledging a general resource, rather than a specific
24 resource, it may be inappropriate for EFSC to rely on the PUC for a need determination. If the Commission were, in
25 this case, to acknowledge a transmission investment within Idaho Power's IRP action plan, it is probably not
26 appropriate to assume that the specific proposal that is being considered is the only investment that could be
27 considered appropriate. A different project running primarily through Washington State, or purchasing capacity on
28 a new transmission line being built by BPA, could theoretically serve the place of the transmission line that the
29 Commission is considering acknowledging.

³ *The primary goal must be the selection of a portfolio of resources with the best combination of expected costs and
associated risks and uncertainties for the utility and its customers.* [emphasis in the original] OPUC Order No. 07-
002 p. 5.

1 way simply to benefit the EFSC process. And, furthermore, adequate measures exist to redress
2 the EFSC litigants' concerns should a decision not go in their favor. If MIP and Nancy Peyron
3 wish to be heard at an EFSC contested case hearing they need to either seek to change the EFSC
4 rules or appeal from the EFSC decision to the Oregon Supreme Court. ORS 469.403.

5 2. The OPUC IRP Process.

6 The Oregon Public Utility Commission (OPUC) established the IRP process by Order.
7 OPUC Order 89-507 and OPUC Order 07-002. The Commission's process is designed to
8 evaluate all resources on a consistent and comparable basis; consider risks and uncertainties;
9 select a portfolio of resources with the best combination of expected costs and associated risks
10 and uncertainties for the utility and its customers; and determine a plan that is consistent with the
11 long-run public interest as expressed in Oregon and federal energy policies. OPUC Order 07-
12 002, at Guideline 1. These guidelines are intended to paint a picture with broad brush strokes so
13 as to develop a plan of the types of resources that may be needed without determining whether
14 any one particular resource is the one resource of that type that should be constructed, purchased
15 or otherwise acquired.

16
17 CUB does not dispute that the IRP guidelines permit consideration of issues related to
18 transmission lines. Guideline 1 provides:

19 *a. All resources must be evaluated on a consistent and comparable*
20 *basis.*

21 *All known resources for meeting the utility's load should be*
22 *considered, including supply-side options which focus on the*
23 *generation, purchase and transmission of power – or gas*
24 *purchases, transportation, and storage – and demand-side*
25 *options which focus on conservation and demand response.*

See also Guideline 5, Page 13. But, CUB does dispute that the guidelines intend for in-depth
review of any specific resource. Certainly if a specific resource is listed by a utility in its IRP it

1 is appropriate for parties to the docket to comment on that specific resource, as well as the need
2 for that type of resource to be included in the utility's proposed plan. The prudence of the choice
3 of that specific resource, however, is not what is being debated here; it is the fit of any one type
4 of resource within the overall plan. While the Commission has recognized that there could be
5 exceptions to this process, the request made in this docket does not fit within the parameters of
6 the possible exceptions as explained by the Commission in Order 07-002, Page 25.

7 Third, ICNU recommends that acknowledgement be limited to generic
8 resources, rather than specific utility resource proposals. ICNU claims that the
9 consideration of specific resources may transform the IRP into a form of resource
10 pre-approval. ICNU Opening Comments at 6-7. To keep the IRP process separate
11 from the procurement process, we prefer to acknowledge general, not specific
12 resources, in the IRP process. We note, however, that circumstances might arise
13 to justify acknowledgement of a specific resource. For example, in Order No. 06-
14 446, we stated that a utility may request, in an IRP, that the Commission
15 acknowledge an exception to the RFP requirement for a Major Resource.⁴

16 CUB, like ICNU before it, is particularly concerned about the precedent that might be set in this
17 docket were the Commission to change its position and grant MIP and Ms. Peyron's request for a
18 contested case to review a specific resource.⁵ There is no requirement that an IRP process
19 include a contested case.

20 *a. The public, which includes other utilities, should be allowed
21 significant involvement in the preparation of the IRP. Involvement
22 includes opportunities to contribute information and ideas, as well
23 as to receive information. Parties must have an opportunity to*

24 ⁴ OPUC Order No. 07-002 p 25.

25 ⁵

26 We decline . . . to base that examination solely on information presented during the IRP
27 process. As the Coalition notes, the nature of an IRP proceeding is fundamentally
28 different than that of a contested rate case proceeding. While interested parties are able to
29 participate in the IRP process and obtain information from the utilities, they do not have
30 the full opportunity to conduct discovery and obtain access to all critical information that
31 is "knowable" at the time. Consequently, we oppose using information presented in an
32 IRP proceeding to serve as the evidentiary record in a prudence review proceeding.

33 OPUC Order 07-002 p25

1 *make relevant inquiries of the utility formulating the plan.*
2 *Disputes about whether information requests are relevant or*
3 *unreasonably burdensome, or whether a utility is being properly*
4 *responsive, may be submitted to the Commission for resolution.*
5 *b. While confidential information must be protected, the utility should*
6 *make public, in its plan, any non-confidential information that is*
7 *relevant to its resource evaluation and action plan. Confidential*
8 *information may be protected through use of a protective order,*
9 *through aggregation or shielding of data, or through any other*
10 *mechanism approved by the Commission.*
11 *c. The utility must provide a draft IRP for public review and comment*
12 *prior to filing a final plan with the Commission.*⁶[emphasis in original]

13 The granting of MIP and Nancy Peyron’s request for a contested case would likely spawn many
14 future such requests as utilities seek what would amount to “pre-approval” of a specific resource
15 in their IRPs. This is not a road down which CUB believes the Commission should choose to
16 travel. This would, to CUB’s way of thinking, be a road with a very slippery slope, down which
17 the Commission, CUB and the other intervenors would begin to slide losing
18 traction/authority/effectiveness as we went.

19 In CUB’s opinion, including consideration of transmission line issues in the normal IRP
20 debate, and specifically analyses of various methods of risk calculation, does not require the
21 Commission change its IRP process. As noted above, if MIP and Nancy Peyron wish to be heard
22 at an EFSC contested case hearing, they need to either seek to change the EFSC rules or appeal
23 from the EFSC decision to the Oregon Supreme Court. ORS 469.403.

24 CONCLUSION

25 To sustain MIP/Peyron’s Motion and bifurcate a portion of the LC 50 docket would not
only unduly burden this proceeding but would also set a bad precedent for future IRP and other
OPUC proceedings. The OPUC’s IRP process is not, and should not be permitted to be, a

⁶ OPUC Order No. 07-002 Guideline 2 p 8.

1 vehicle for circumventing other agency's rules especially at the expense of the OPUC's own
2 processes.

3 For these reasons, CUB respectfully requests that the MIP/Peyron Motion be denied.

4 DATED March 16, 2010.

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6 Respectfully submitted,

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LC 50 – CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of March, 2010, I served the foregoing **CUB’S REPLY TO NANCY PEYRON AND MIP’S MOTION FOR A CONTESTED CASE HEARING ON ACKNOWLEDGEMENT OF BOARDMAN-HEMINGWAY TRANSMISSION LINE IN IPC LEAST COST PLAN** in docket LC 50 upon each party listed in the LC 50 OPUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending 2 copies by U.S. mail, postage prepaid, to the Commission’s Salem offices.

(W denotes waiver of paper service)

(C denotes service of Confidential material authorized)

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