

I have previously submitted comments on Idaho Power's CPN 5. I would like to add to those comments:

In 2017, despite the public, including the Stop B2H Coalition, raising any number of valid questions concerning Idaho Power's IRP, the Oregon Public Utilities Commission granted "acknowledgement" to Idaho Power for "preliminary construction" of the B2H transmission line. Commenting on that IRP, I presented an extensive analysis of Idaho Power's failure to initiate even the most basic energy efficiency programs. Idaho Power also responded to questions concerning their failure to acquire renewable energy by stating that they "planned to research the effectiveness of solar power." It was obvious then and in the following years, that Idaho Power made every effort to "need" power and to avoid renewables in order to justify construction of the B2H, whose completion, as you know, they previously insisted was essential by 2016.

Idaho Power has repeatedly cited "time constraints" to pressure agency decisions, including the OPUC acknowledgement of the 2017 IRP. Idaho Power has a long history of creating its own time-consuming problems. (Please see Idaho Power Timeline attached.)

Even though a reasonable person might logically assume that OPUC 'acknowledgement' demonstrated the Commission's approval of the line, the public has been informed that "acknowledgement" does not constitute approval." Idaho Power, the other party in this dispute, obviously interpreted that acknowledgement as full out demonstration of Need for the B2H; they proceeded accordingly with an immediate preliminary Application for Site Certificate to the Energy Facility Siting Council (EFSC) which chose to interpret OPUC's acknowledgement as Idaho Power did.

Once in process before the EFSC, the undeniable link between Oregon Department of Energy, its subsidiary, EFSC, and the utility was forged. Despite two years of quasi-legal maneuvering, there was no doubt that what Idaho Power wanted, Idaho Power would get. The ALJ was obviously given her marching orders, issuing preposterous decisions, some of which actually cited Idaho Power's Application as proof of compliance with a methodology which an Idaho Power contractor wrote, which that same contractor then affirmed that her methodology was followed, and she then determined the magnitude of the project's impact on the human population which in every case was "no significant impact." The undeniable extent of the ODOE, EFSC, Idaho Power consortium is narrated in the Oregon Supreme Court amicus brief attached. (See especially pp. 20-66.) They are as intertwined as English ivy strangling a maple tree.

OPUC cannot deny that it is complicit in letting the genie out of the bottle. OPUC knew that IPC and ODOE were using the "acknowledgement" in ways that the OPUC does not intend. Chair Hardie made special comment on that Order when she stated:

"... Although our acknowledgement includes Idaho Power's Boardman to Hemingway (B2H) related action items, we note that our acknowledgement is limited to our interpretation of IRP standards specific to the Public Utility Commission, and does not interpret or apply the standard of any other state or federal agency." ([2017 IRP Order issued on May 23, 2018, Order # 18-176](#),

from LC68, Idaho Power's 2017 IRP.) OPUC's 2017 acknowledgement as proof of Need was an error, and Idaho Power immediately capitalized on the agency's verbal imprecision.

Furthermore, as recently as December 2022, despite the most glaring budgetary inadequacies, OPUC acknowledged Idaho Power's IRP. Based on the haphazard figures the utility supplied to the Commission, not a bank in America would approve \$1.2 billion for the B2H, but the OPUC "acknowledged" it for payment by the ratepayers of Oregon. OPUC recently approved a 20% rate hike for Pacific Power customers. How much more will those Oregon rate payers' power bills increase if the B2H is constructed?

In 2017 some might still have thought it reasonable to consider a 300 mile transmission line as the best means of meeting the power needs of a community. In 2022 that is like asking AT&T to build a new telephone line across Oregon. Consider the changes in the auto industry since 2017. How can you imagine that the utility industry remains in a time warp?

The regulatory capture of ODOE and EFSC is undeniable. The situation with OPUC is more subtle. Consider the reality of the procedure. Twice a year "the public" is allowed to comment on proposed projects. Any day of the year, OPUC staff may interact with the utilities, asking questions and receiving information. OPUC staff are professionals, and they see Idaho Power staff as professionals, and then there is "the public," -- informed, committed citizens -- who, in the case of the B2H, have been raising penetrating questions since 2015.

Consider this basic question honestly: Is this the Oregon PUBLIC Utilities Commission, or the Oregon Public UTILITIES Commission?

EFSC and ODOE are supported by utilities' application and maintenance fees. OPUC Commissioners serve at the Governor's pleasure. Kate Brown still believes that green energy requires transmission lines, and that all transmission lines are equal. The Governor is mis-informed and the Commissioners know better.

As many comments from the public have already suggested, even considering the CPN 5 at this date is premature. After the Oregon Supreme Court cases and the many amendments to the ASC have been decided, Oregon will have a new Governor and OPUC will have an opportunity to validate its mission to represent the ratepayers of Oregon.

Submitted by

/s/ Lois Barry

Lois Barry

OPUC Comment on CPN 5

IN THE SUPREME COURT OF THE STATE OF OREGON

In the matter of the	)	Energy Facility Siting Council
Application for Site)	
Certificate for the	)	OAH Case No. 2019-ABC-
Boardman to Hemingway	)	02833
Transmission Line)	
	)	Supreme Court No. S069919
STOP B2H COALITION,)	
<i>Petitioner</i>	)	<i>AMICUS BRIEF OF ANNE</i>
	)	<i>MORRISON IN SUPPORT OF</i>
v.	)	<i>PETITIONER'S PETITION FOR</i>
	)	<i>EXPEDITED REVIEW</i>
OREGON DEP'T OF)	
ENERGY, OREGON)	
ENERGY FACILITY)	
SITING COUNCIL, and)	EXPEDITED JUDICIAL
IDAHO POWER)	REVIEW UNDER ORS 469.403
COMPANY)	
<i>Respondents</i>)	

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I. INTRODUCTION

Anne Morrison, *amicus*, submits this Brandeis brief on the fundamental issue raised by the Stop B2H Coalition and individual petitioners: whether the Energy Siting Facility Council (EFSC, or Council) erred in issuing a site certificate for the Boardman-to-Hemingway transmission line. *Amicus* submits this Brandeis brief to provide a broader context for the appeals of the decision to issue a site certificate for the B2H transmission line, now pending before this Court.

As a decades-long resident of eastern Oregon, *amicus* speaks as a private citizen to voice her concern regarding EFSC's issuance of a site certificate for the 300-mile, five county-long B2H line, as resulting from multiple flawed actions by an ethically compromised state agency. As a retired attorney, *amicus* knows that it is critical to the function of a democratic government that government agencies represent the interests of a state's own residents, and that those interests are jeopardized when an agency's allegiance is compromised because it receives substantial funding directly from the entities which that agency is expected to regulate.

The EFSC's decision to issue a siting certificate allowing construction of the B2H transmission line raises the broader issue: When a state agency abandons its statutory obligation to protect the

interests of Oregon residents, and instead uses its vast resources against the interests of Oregonians who are not positioned to challenge corporate and agency interests, *who represents the interests of everyday Oregonians?*

Consideration of this question should guide this court in deciding this case, as discussed below.

II. BACKGROUND

From its inception, the B2H project has been controversial and hotly contested. Opponents have raised numerous concerns,^{1,2} including whether the line is actually needed or being built merely because extant provisions of the 1936 Rural Electrification Act guarantee utilities an automatic 10%, rate-payer-paid return on the cost of constructing energy

¹ See, e.g., Todd Brown, *Regulate Eminent Domain*, The [La Grande] Observer, Sept. 14, 2010; Cherise Kaechele, *Union County Commissioners Approve, Appoint B2H Advisory Committee*, The [La Grande] Observer, Dec. 16, 2015; Jayson Jacoby, *B2H Battle: Officials Try to Limit Effects of Proposed Power Line*, The [La Grande] Observer, Dec 1, 2016; Cherise Kaechele, *County, City Hold Joint Session; Commissioners, Councilors Meet to Discuss B2H*, The [La Grande] Observer, Aug 2, 12017; Erick Peterson, *Power Play: In the Path of the New Eastern Oregon Transmission Line*, Capital Press, Feb 12, 2022.

These small newspapers do not have hyperlinks to their articles, but the articles can be accessed by typing the titles into a search engine.

² ODOE - B2HAPPDoc2-1 Proposed Order on ASC w Hyperlink Attachments 2019-07-02, Attachment 2: DPO Comment Index and DPO Comments.

(<https://onedrive.live.com/?authkey=%21AEBE%2Dm62XANUTiQ&cid=026041F18E096594&id=26041F18E096594%215420&parId=26041F18E096594%215419&o=OneUp>)

facilities. Coley Girouard, *How Do Electric Utilities Make Money?*, Apr 28, 2015, <https://blog.aee.net/how-do-electric-utilities-make-money>.

Those concerns are heightened when the line is proposed at a time when America's energy system is poised to transition from the traditional grid system epitomized by high-voltage transmission into one which relies on local systems to distribute local sources of energy, decreasing the need for traditional transmission lines.³

Opponents have also voiced concerns about the proposed B2H line when the traditional energy industry has been widely accused of

³ See, e.g., Dameon Pesanti, *BPA Drops I-5 Corridor Reinforcement Project*, May 18, 2017, <https://www.columbian.com/news/2017/may/18/bpa-drops-i-5-corridor-project-transmission-line/>; Todd Woody, *An Experimental Green Suburb Rises in Riverside County. Is it the Future of Single-Family Housing?*, Nov. 26, 2022, <https://www.latimes.com/business/story/2022-11-26/is-this-experimental-green-suburb-the-future-of-single-family-housing>; Lisa Cohn, *What are Non-Wire Alternatives?* June 21, 2019, <https://www.microgridknowledge.com/about-microgrids/article/11429614/what-are-non-wires-alternatives>; Catherine Von Burg, *Microgrids to Provide Energy Resilience Beyond Transmission Lines*, 2018, <https://www.batterypoweronline.com/articles/microgrids-to-provide-energy-resilience-beyond-transmission-lines/>; Erica Gies, *Microgrids Keep These Cities Running When the Power Goes Out*, Dec 4, 2017, <https://microgridknowlwdgw.com/news/04122017/microgrid-emergency-power-backup-renewable-energy-cities-electric-grid/>; Elisa Wood, *How Many Hurricanes Must Slam the Grid Before We Get the Message?*, Sept 2, 2021, <https://www.microgridknowledge.com/editors-choise/article/11427757/how-many-hurricanes-must-slam-the-grid-before-we-get-the-message>.

actively impeding the change to green power for financial gain.⁴ It is significant that the line would serve only as a conduit for transporting electrical power to Idaho residents, while causing significant damage to Oregon's own resources and the interests of affected Oregon property owners. The line is not an energy source and generates no power. Energy still must be purchased and transmitted, raising electrical rates across the region.

III. OREGON LAW CREATES A PARTICULAR POTENTIAL FOR UNDUE INDUSTRY INFLUENCE.

A. Corruption in the energy industry, including undue industry influence on legislators and regulators, has been a growing nationwide concern.

The past decade has seen growing numbers of reports regarding corruption in the energy industry.⁵ In 2021, the energy/natural resources

⁴ Mario Alejandro Ariza, Miranda Green, Annie Martin, *Leaked: US Power Companies Secretly Spending Millions to Protect Profits and Fight Clean Energy*, July 2022, <https://www.theguardian.com/environment/2022/jul/27/leaked-us-leaked-power-companies-spending-profits-stop-clean-energy?>

⁵ The number of articles addressing this issue is staggering. For a general overview, see generally, Leah Cardamore Stokes, *et.al.*, *Short Circuiting Policy: Interest Groups and the Battle Over Clean Energy and Climate Policy in the United States*, Oxford University Press (2020); Heather Payne, *Game Over: Regulatory Capture, Negotiation, and Utility Rate Cases in an Age of Disruption*, 52 U.S.F.L. Rev. 75, (2017); Adam Nix, Stephanie Decker, Carola Wolf, *Enron and the California Energy Crisis: The Role of Networks in Enabling Organizational Corruption*, January 12, 2022, <https://www.cambridge.org/core/journals/business-history-review/article/enron-and-the-california-energy-crisis-the-role-of->

industry was among the top five spenders for federal lobbying, paying out over \$307,000,000.⁶ In multiple states, utilities have become embroiled in one corruption scandal after another.⁷ Utilities have been implicated in corporate payouts, sometimes involving billions of dollars, made to secure legislators' votes on legislation favorable to the energy industries.⁸ Major utilities have also been implicated in efforts to mislead

[networks-in-enabling-organizational-corruption/457B1E245C6E6DE8903F531DD768D3F4](https://www.opensecrets.org/news/reports/energy-industry-lobbying-networks-in-enabling-organizational-corruption/457B1E245C6E6DE8903F531DD768D3F4).

⁶ Dan Auble, Brendan Glavin and Pete Quist, *Layers of Lobbying: An Examination of 2021 State and Federal Lobbying from K Street to Main Street*, June 22, 2022, <https://www.opensecrets.org/news/reports/layers-of-lobbying/state-and-federal-lobbying>.

⁷ See generally, Matt Kasper, *First Energy Scandal is Latest Example of Corruption, Deceit*, July 23, 2020, <https://www.energyandpolicy.org/utility-corruption/>; U.S. Attorney's Office, District of South Carolina, *Former SCANA Executive Pleads Guilty to Fraud Charges Tied to Failed SC Nuclear Project*, July 23, 2020, <https://www.justice.gov/usao-sc/pr/former-scana-executive-pleads-guilty-conspiracy-commit-mail-and-wire-fraud>; Jaclyn Diaz, *An Energy Company Behind A Major Bribery Scandal In Ohio Will Pay A \$230 Million Fine*, July 23, 2021, <https://www.npr.org/2021/07/23/1019567905/an-energy-company-behind-a-major-bribery-scandal-in-ohio-will-pay-a-230-million->; Justin Gillis, *When Utility Money Talks*, N.Y. Times, Aug. 2, 2020, <https://www.nytimes.com/2020/08/02/opinion/utility-corruption-energy.html>

⁸ See, Justin Gillis, *supra*; Mary Ellen Klas, Nicholas Nehamas, Ana Claudia Chacin, *This Florida Utility's Secret Cash Helped GOP Win Gainesville State Senate Seat*, Aug. 8, 2022, <https://www.tampabay.com/news/florida-politics/2022/08/08/this-florida-utilitys-secret-cash-helped-gop-win-gainesville-state-senate-seat/>; Mary Ellen Klas, Nicholas Nehamas, *DeSantis Got \$25K from Nonprofit*

legislators, regulators, and the public; and to influence rulemaking, sometimes by placing industry-supported utility regulators in powerful agency positions. As a result, multiple major energy projects have failed, communities have seen the liability on their investments soar, and ratepayers have seen utility rates skyrocket.⁹

Secretly Funded by Florida Utility, Sep. 7, 2022, <https://www.seattletimes.com/nation-world/nation-politics/desantis-got-25k-from-nonprofit-secretly-funded-florida-utility/>; Jason Garcia, *Man Behind ‘Ghost’ Candidate Cash also Led Dark-Money Group Supporting Florida’s Big Utility Companies*, Oct 20, 2021, <https://www.orlandosentinel.com/news/os-ne-prem-senate-ghost-candidate-dark-money-utility-industry-20211020-sbve4xsyvsazne3qxnci4epxmi-story.html>; Mark Gillispe, Julie Carr Smyth, *A Year Out, \$60M Bribery Scandal Felt in Business, Politics*, July 19, 2021, <https://www.seattletimes.com/business/a-year-out-60m-bribery-scandal-felt-in-business-politics/>; Jaclyn Diaz, *An Energy Company Behind A Major Bribery Scandal In Ohio Will Pay A \$230 Million Fine*, July 23, 2021, <https://www.npr.org/2021/07/23/1019567905/an-energy-company-behind-a-major-bribery-scandal-in-ohio-will-pay-a-230-million->; Nate Monroe, *Florida Power & Light dominated the state. Now scandal darkens its future*, July 28, 2022, <https://news.yahoo.com/florida-power-light-dominated-state-205851312.html>, Akela Lacy, *Energy Companies Have Spent Billions on Projects That Go Nowhere*, August 7 2020, <https://theintercept.com/2020/08/07/nuclear-power-energy-utility-bribery-scandal/>; Mark Pischea, *Energy Corruption Not Just an Ohio Problem, It Is a Monopoly Problem*, September 4, 2020, <https://insidesources.com/energy-corruption-not-just-an-ohio-problem-it-is-a-monopoly-problem/>; Andrew J. Tobias, *FBI Raid Brings Scrutiny on Obscure but Powerful Ohio Energy Regulator*, Dec. 06, 2020, <https://www.cleveland.com/open/2020/12/fbi-raid-brings-scrutiny-on-obscure-but-powerful-ohio-energy-regulator.html>.

⁹ Jeff Amy, *Georgia Nuclear Plant’s Cost Now Projected to Top \$30B*, May 3, 2022, <https://www.usnews.com/news/best-states/florida/articles/2022-05-08/georgia-nuclear-plants-cost-now>

Industry analysts warn that the energy sector is particularly vulnerable to corruption because individuals in government have power over multi-million dollar decisions related to the siting, construction, and operation of the energy system.¹⁰ Some analysts have discussed these issues in terms of “regulatory capture,” where the regulations guiding utility behavior become so complex and onerous that the utilities themselves become the experts and are largely trusted by legislators and public service commissions to steer policy. *Id.*¹¹

[forecast-to-top-30-billion](#); Ray Long, *ComEd to Give Back \$38 Million in Wake of Madigan Scandal, But Critic Says it Falls Short*, Aug 17, 2022, <https://www.chicagotribune.com/politics/ct-comed-returns-38-million-over-madigan-scandal-20220817-bctxrnaec5gvpgg64xh5gsh4ru-story.html>; Hannah Grover, *PRC Accuses PNM of Misleading Regulators, Requires Utility to Issue Rate Credits Upon San Juan Unit Closures*, June 30, 2022, <https://nmpoliticalreport.com/2022/06/30/prc-accuses-pnm-of-misleading-regulators-requires-utility-to-issue-rate-credits-upon-san-juan-unit-closure/>; Tracy Samilton, *Consumers Energy Seeks "Crippling" Wind Farm Tax Clawbacks from Tuscola County Schools*, November 13, 2022, <https://www.michiganradio.org/environment-climate-change/2022-11-13/consumers-energy-seeks-crippling-wind-farm-tax-clawbacks-from-tuscola-county-schools>.

¹⁰ Matthias Ruth, *Corruption and the Energy Sector*, November 2002, https://pdf.usaid.gov/pdf_docs/PNACT875.pdf; Pischea, *supra*.

¹¹ In the context of undue industry influence on legislation in other states, Oregon law generally requires appellate challenges to power lines sitings that involve tens of thousands of pages of documents and multiple agency hearings over many years, to be briefed, heard and decided within six months. ORS 469.403. In contrast, the normal appellate process for comparatively simple issues often allows years for cases to be briefed, argued and decided.

There is no reason why Oregon would be immune from the same powerful corrupting forces at play in other states, and ODOE has its own history of involvement in corruption scandals. In 2015, Governor John Kitzhaber resigned amid accusations that ODOE officials, including the Department's director, had urged a contractor to give a \$60,000 subcontract to Kitzhaber companion Cylvia Hayes, despite her marked lack of experience or qualifications, or the fact that Hayes' firm had scored lowest in ODOE's competitive bidding process.^{12,13}

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¹² Benjamin Brink, *Documents Detail Oregon's Intervention in Subcontract for Cylvia Hayes, Companion of Gov. John Kitzhaber*, Jan 26, 2011, https://www.oregonlive.com/politics/2011/01/documents_detail_states_in_terv.html; Nigel Jaquiss, *The Cylvia Files*, June 14, 2011, <https://www.wweek.com/portland/article-17619-the-cylvia-files.html>.

¹³ Oregon's Department of Justice chose not to prosecute the ODOE employees involved but recommended they be fired. *Id.* Four employees were placed on leave but ultimately reinstated without criminal charges or discipline for their actions following the Department of Justice's admission of mistakes in the DOJ investigation. Nigel Jaquiss, *Updated: Four Suspended ODOE Employees To Be Reinstated*, June 1, 2011, <https://www.wweek.com/portland/blog-27212-updated-four-suspended-odoe-employees-to-be-reinstated.html>.

B. Oregon law charges ODOE with conflicting responsibilities.

The Oregon Department of Energy is charged with implementing inherently conflicting, and possibly mutually exclusive, responsibilities.

1. ODOE is charged with assisting and advising the Energy Facility Siting Council (EFSC) regarding the legal and technical complexities of siting decisions.

The EFSC serves as Oregon’s one-stop permitting authority for siting large energy facilities, and one of ODOE's major responsibilities is to provide staff and technical support to the EFSC regarding the approval of large energy facilities. Throughout the siting process, ODOE is responsible for researching issues, making recommendations, and advising the Council regarding decisions related to siting applications.

ORS 469.040(1) provides:

“The State Department of Energy shall be under the supervision of the Director of the State Department of Energy, who shall:

“ * * *

“(b) Supervise and facilitate the work and research on energy facility siting applications at the direction of the Energy Facility Siting Council.”

Additionally, ORS 469.450(6) provides that ODOE “shall provide clerical and staff support to the council and fund the activities of the council.” The EFSC’s website explains the relationship further:

“Oregon Department of Energy employees serve as staff members for the council, handling the ongoing work related to the regulation of energy facilities. Staff are energy experts who research issues involved with locating, building and operating

large energy facilities. They make recommendations to the council based on their research and analysis.”¹⁴

Thus, ODOE staff have been involved in the siting B2H siting process since 2010, when Idaho Power submitted its first Notice of Intent to the Department. See, Final Order on the ASC for the Boardman to Hemingway at Transmission Line at 3. ODOE staff has worked closely with Idaho Power staff throughout the 14 years of the siting process. See *generally, id.* at 2-8 (procedural history).

2. ODOE also has a statutory obligation to protect the Oregon public.

ODOE’s statutory responsibilities regarding the siting of an energy facility are not unlimited. At the same time that ODOE provides staff to advise the EFSC in regard to decisions regarding the siting, construction, operation and regulation of energy facilities, ODOE is also mandated to protect the health and welfare of the people of the state of Oregon and to comply with Oregon’s environmental policies enacted to protect the natural resources of the state.¹⁵

ORS 469.310 provides:

“In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be

¹⁴ <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/About-the-Council.aspx>.

¹⁵ Note that the law requires compliance with, not avoidance or the issuance of exceptions or variances to, the various Oregon environmental protection laws.

accomplished in a manner **consistent with** protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state.”

(Emphasis added). The statutory mandate is reiterated in OAR 345-001-0020(1), which provides in pertinent part:

“These rules are to ensure that the siting, construction, operation and retirement of energy facilities and disposal facilities and the transport of radioactive materials are done **consistent with** protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of Oregon.”

(Emphasis added).

The policies regarding public health, welfare and environmental concerns with which ODOE is required to comply are expansive in their scope. They include, but are not limited to, policies which require Oregon’s Department of Agriculture to protect Oregon’s water resources,¹⁶ policies which require the Department of Environmental Quality to enforce noise regulations promulgated in accordance with

¹⁶ ORS 568.225(1) provides:

“ * * * [I]t is hereby declared to be the policy of the Legislative Assembly to provide for the conservation of the renewable natural resources of the state and thereby to conserve and develop natural resources, control and prevent soil erosion, control floods, conserve and develop water resources and water quality, * * * conserve natural beauty, promote recreational development, promote collaborative conservation efforts to protect and enhance healthy watershed functions, assist in the development of renewable energy and energy efficiency resources, * * * protect public lands and protect and promote the health, safety and general welfare of the people of this state.”

state policy,¹⁷ and policies which require Oregon's Department of Forestry to manage Oregon forestlands to maximize benefits.^{18,19}

The mandate to ODOE to site energy facilities consistent with and in compliance with Oregon's environmental protection laws is not restricted to a particular stage of the siting process, and it is not time

¹⁷ ORS 467.010 provides that the DEQ shall adopt and enforce compliance with standards designed to “ * * * provide protection of the health, safety and welfare of Oregon citizens from the hazards and deterioration of the quality of life imposed by excessive noise emissions, it is hereby declared that the State of Oregon has an interest in the control of such pollution, and that a program of protection should be initiated.

* * * ”

¹⁸ ORS 526.460 (1) sets forth the policy guiding Oregon's Department of Forestry. That statute provides:

“ * * * The environmental benefits include maintenance of a forest cover and soil, air and water resources. Other benefits provided are habitats for wildlife and aquatic life, recreation and forest range. Management of all forestlands in Oregon should be encouraged to provide continuous production of all forest benefits.”

¹⁹ Some of the many additional environmental policies and statutes with which ODOE is mandated to comply when siting an energy facility include those which require Oregon's Water Resources Commission to manage Oregon's water resource for multiple purposes, ORS 536.220(2)(a); the Department of Agriculture and to protect Oregon's native plants, ORS 564.105, and to control noxious weeds, ORS 569.180; the Environmental Quality Commission to protect Oregon waters from pollution, ORS 468B.015, and to safeguard the quality of Oregon's air, ORS 468A.010; the State Fish and Wildlife Commission to protect Oregon's wildlife, ORS 496.012; and the Department of Forestry to prevent and suppress wildfires, ORS 477.005.

limited. It does not permit ODOE to claim that by soliciting public input at the start of the siting process, it has met its obligation to protect the public and is free to disregard the public interest regarding siting decisions, including mitigation planning, thereafter. It is a mandate to site, construct, operate, and retire energy facilities in a manner consistent with protecting public health, public safety and Oregon's environmental protections – and to do so through the entire siting process, from inception to completion. The mandate to site energy facilities in accordance with Oregon's public health and safety environmental protection laws is neither optional nor aspirational.²⁰ The statute imposes on ODOE the concrete responsibility to comply with Oregon's environmental laws and public interests when making siting decisions.

ODOE's dual obligations create the potential for a conflict of interest between ODOE's duty to protect the public health and safety

²⁰ Nor would a failure of any other agency to become involved in the siting process be an excuse for ODOE to avoid its charge to act in the public interest. Oregon law imposes on ODOE an independent obligation to comply with Oregon's environmental laws when working to site an energy facility.

As one example, the Oregon Department of Agriculture has been unable to fund its native (rare) plant protection program consistently since 2014 and therefore unable to update its list of rare plants since 1988. This list was started using the federal list and has never been updated for an Oregon-specific list. The standard is meaningless without an updated list and ODOE has not consulted the ODA since 2013.

and to comply with state environmental policies, and ODOE's concomitant role as an advisor regarding the siting and regulation of energy facilities within the state. ODOE is placed in an inherently conflicted position:

- ODOE is charged with advising industry applicants regarding the technical details of siting a facility.

- ODOE is paid by the applicant for ODOE's work to research, evaluate, and make recommendations regarding an energy facility siting application.

- ODOE also advises the EFSC whether the application which an applicant has paid ODOE to help develop complies with applicable laws.

- And ODOE must protect the public's interests in the siting process.

It is difficult to imagine a more perfect way to mire an agency in conflicting obligations.

C. Oregon's funding system invites undue industry influence by giving ODOE a direct financial stake in seeing energy projects move forward.

Oregon law invites undue industry influence in the siting process by creating a unique funding scheme for ODOE. Like other departments and agencies, ODOE receives funding through the legislature. But ODOE differs from other agencies because industry applicants and project operators don't pay into Oregon's general fund to reimburse

agency expenses; instead, an applicant pays ODOE directly for work related to developing an application. ORS 469.421 provides in pertinent part:

“(1) Subject to the provisions of ORS 469.441, any person submitting * * * an application for a site certificate or a request to amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council and the department related to the review and decision of the council.”

Reimbursable expenses may include legal expenses, expenses incurred in processing and evaluating the application, expenses incurred in issuing a final order or site certificate, expenses incurred in commissioning an independent study, or expenses incurred by the council in making rule changes that are specifically required and related to the particular site certificate. *Id.* In addition, Oregon law requires facility operators to continue direct payments to ODOE after a facility has been completed, including annual fees for costs associated with

monitoring the operation of a facility, ORS 469.421(5),²¹ and an annual assessment to fund the programs and activities of EFSC and ODOE.^{22,23}

Oregon law allows—and, in fact, *requires*—an applicant to reimburse ODOE directly for expenses related to the development of a project. At its essence, the statutory scheme sets up an arrangement where an industry applicant pays the Department the salaries of the

²¹ ORS 469.421(5) provides that each holder of a certificate shall pay an annual fee following issuance of a site certificate. The fee includes:

“costs based on the size and complexity of the facility, anticipated costs of ensuring compliance with certificate conditions, anticipated costs of conducting inspections and compliance reviews, and anticipated costs of compensating agencies and local governments for expenses incurred at the request of the council.”

²² ORS 469.421(8)(a) provides that in addition to any other required fees, each energy resource supplier shall pay ODOE annually its share of an assessment to fund the programs and activities of the council and the department.

²³ The B2H transmission line is hardly the only project which may be paying costs and fees to ODOE. The EFSC website lists 18 operating facilities under EFSC jurisdiction, 5 approved facilities, 5 proposed facilities, as well as 8 facilities under review or construction. https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Facilities-Under-EFSC.aspx?Paged=TRUE&p_Facility_Page=8_%3cdiv%20style%3d%27text%2dalign%3aleft%27%3e%3ca%20title%3d%27Click%20for%20more%20info%27%20href%3d%27%2e%2e%2fPages%2fWES%2easpx%27%3eWest%20End%20Solar%20Project%3c%2fa%3e%3c%2fdiv%3e&p_Title=West%20End%20Solar%20Project&p_ID=143&PageFirstRow=61&&View={0820E20D-761F-4D86-88A6-28050E77AD6A}

individuals who are assigned to work on the Idaho Power's project and whose duties involve advising the applicant regarding the project—not unlike having an industry applicant's own employees work on the applicant's behalf from inside ODOE. If needed, a billion-dollar corporation can always provide additional funding to support additional consultants and experts to analyze and give direction regarding its own project. Oregon's funding blueprint gives ODOE employees a direct incentive to see that the project which generates contributes to agency funding and which directly pays their own livelihoods remains viable by ignoring issues that might make a project unbuildable, and pushing for completion of the project, regardless of merit. Further, ODOE will benefit from ongoing direct payments generated by completed projects for decades into the future, giving ODOE an additional financial incentive to see that projects move forward, regardless of compliance with laws to protect public health, public welfare, or Oregon's environmental assets.

Over the past decade, the energy industry has repeatedly been involved in scandals involving the use of illicit means to obtain undue influence and control over regulatory decisions related to the industry.²⁴

²⁴ See, Dave Anderson, *FirstEnergy attributed Ohio Utility regulator's actions to \$4.3 million payment*, March 3, 2021, <https://energynews.us/2022/02/15/former-ohio-regulator-linked-to-4m-payoff-directed-agency-to-limit-response-to-firstenergy-corruption>; Jaxon Van Derbeken, *PG&E to Pay \$86.5 Million for Backdoor Lobbying of*

Where a state's siting process openly invites undue influence, and a billion-dollar corporation stands to reap hundreds of millions of dollars in profits from an energy project, there is no reason to assume that a corporation would not attempt to exert similar influence over energy regulators in Oregon.

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Regulators, March 18, 2017, <https://www.nbcbayarea.com/news/local/pge-to-pay-865-million-for-backdoor-lobbying-of-regulators/48759/>; Andy Balaskovitz, *Former Ohio Regulator Shaped Agency Response to Corruption Scandal*, February 15, 2022, <https://energynews.us/digests/former-ohio-regulator-shaped-agency-response-to-corruption-scandal/>; Dave Pomerantz, *Arizona Commissioner Justin Olson answered Questions About Arizona's Energy Policy by Copying Parts of an APS Memo Verbatim, Emails Show*, October 18, 2018, <https://www.energyandpolicy.org/justin-olson-arizona-aps-emails/>; Matt Kasper, *Electric Utility Industry Created Their Own Air Pollution Permits, Had Private Meetings with Texas Regulators*, May 27, 2015, <https://www.republicreport.org/2015/electric-utility-industry-created-their-own-air-pollution-permits/>; Jeremy Pelzer, *Texts shed additional light on how Sam Randazzo was named PUCO chair, worked to help FirstEnergy*, August 22, 2022, <https://www.msn.com/en-us/news/politics/texts-shed-additional-light-on-how-sam-randazzo-was-named-puco-chair-worked-to-help-firstenergy/ar-AA10WipX>; Daniel Tait, *Questionable Campaign Contributions Tick Back Up as Election Nears, Emails Show*, October 25, 2010, <https://www.energyandpolicy.org/questionable-campaign-contributions-tick-back-up-for-eaton-as-election-nears/>. See generally, Maryanne Demasi, *From FDA to MHRA: Are Drug Regulators for Hire?*, June 29, 2022, <https://www.bmj.com/content/377/bmj.o1538.full>; Rauf Fattakh, *Corruption in the Energy Industry: 10 Serious Consequences*, Nov 16, 2020, <https://energycentral.com/c/ec/corruption-energy-industry-10-serious-consequences>.

D. Oregon law provides the perfect means for ODOE to control the siting process because of the Department's influence over EFSC.

1. ODOE is perfectly situated to influence the EFSC regarding siting decisions because of the makeup of the EFSC.

The EFSC consists of seven part-time, **unpaid volunteers** who determine whether a proposed energy facility meets multiple exceeding complex legal and technical siting standards.²⁵ In addition to their side

²⁵ The EFSC regulates numerous kinds of facilities, including electric power plants, solar generating facilities, transmission lines, underground natural gas storage facilities, liquified natural gas storage facilities, intrastate natural gas pipelines, and radioactive waste disposal sites and nuclear installations. ORS 469.300(11).

And ORS 469.501(1) lists the many disciplines in which councilors must make decisions. They include:

- an applicant's expertise regarding constructing and operating a proposed facility;
- seismic hazards;
- federal and state protected areas;
- the applicant's financial ability and qualifications;
- the facility's effects on fish and wildlife, including threatened and endangered fish, wildlife or plant species;
- the facility's impacts on historic, cultural or archaeological resources;
- the protection of public health and safety;
- the storage, transportation and disposal of nuclear waste;
- the facility's impacts on recreation, scenic and aesthetic values;
- the ability of local communities to provide sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection;
- the need for additional nongenerating facilities, consistent with Oregon's energy policies; and
- compliance with statewide planning goals adopted by the Land Conservation and Development Commission.

activity of making billion-dollar siting decisions on behalf of the state of Oregon, most councilors hold demanding professional positions, or are engaged in significant other civic and volunteer activities. See,

<https://www.oregon.gov/energy/facilities-safety/facilities/Documents/General/EFSC-members.pdf>.

Although each of the complex standards which the councilors are required to address involves a discrete discipline, most councilors have limited to no expertise regarding the areas in which they are asked to make determinations. Three of the individuals who made the million-dollar B2H siting decisions on behalf of the state of Oregon have land use backgrounds and one is a tribal cultural resource specialist. *Id.* The combined council possesses professional expertise in just two of the many hyper-technical areas in which the councilors are expected to make determinations. Consequently, the council is extraordinarily dependent upon the advice and recommendations of ODOE staff and industry-paid consultants to guide their decisions.

2. ODOE is perfectly situated to influence EFSC decision-making because EFSC relies on ODOE for everything up to and including legal advice.

EFSC is housed within the Department of Energy, and relies on ODOE for research, analysis, and legal advice, ORS 469.040(1)(b), as well as for staff and clerical support. ORS 469.450(6). Further, in a facility siting proceeding, ODOE again plays conflicting roles: ODOE

advises the industry applicant regarding the siting of a facility (and is paid by the applicant to do so); ODOE is an automatic, mandatory party to any contested case, (OAR 345-015-0080(2)), and ODOE then advises EFSC whether to approve or overrule ODOE's earlier actions and decisions as a party. ODOE and EFSC are in fact so closely connected that an officer or employee of ODOE may appear in a contested case on behalf of EFSC. OAR 345-001-0060(1). Similarly, the EFSC may appoint a Council member, an ODOE employee, or other person to serve as hearing officer for the contested case. OAR 345-15-0023(1).

It is a cardinal principle of legal ethics that an attorney is prohibited from representing a client if the representation involves a conflict wherein the representation of one client will be directly adverse to another client. ORPC 1.7(a)(1). It is another indication of how deeply intertwined the relationship between ODOE and the EFSC is that from the inception of the B2H project until a petitioner objected,^{26,27} a single

²⁶ Irene Gilbert's Exceptions to Procedures Used During B2H Contested Case and Process and Request for Exception to Summary Determinations FW-4, LU-5, NC-5, M-2, FW-9, FW-10, FW-11, at 5-6.

²⁷ ODOE has made a partial record of this case available on its website; however, in *amicus*' experience, the website has malfunctioned repeatedly and has been inaccessible as often as not. Further, *amicus* understands that ODOE filed the tens of thousands of pages comprising the record of this case with the Supreme Court only days ago, and

attorney, Patrick Rowe, advocated on behalf of ODOE while also advising the EFSC in the B2H siting process.²⁸ The intimate relationship between the two entities – as if the two were but a single client, or as if there is no conflict between the role of representing a party to a proceeding while also providing “objective” advice to the decision maker – is indicated by the fact that Rowe’s dual representation apparently raised no ethical concerns regarding a possible conflict of interest for ODOE/EFSC counsel Rowe, or for the Department of Justice, or for administrators within ODOE.

Still, the EFSC is presented as somehow being an independent decision-making body.

3. The EFSC’s makeup also raises ethical concerns.

Additionally, the Council’s makeup raises concerns regarding the ethics of individual members. Hanley Jenkins, who served for 30 years as a county planning director, chaired the majority of the B2H

because *amicus* is not a party to this case, she has not even been able to access the late-filed record. Therefore, *amicus* is only able to reference documents by title.

²⁸ See *also*, March 1, 2021 letter from EFSC Chair Marcy Grail (discussing EFSC’s role as the sole decision maker regarding extremely complex large infrastructure projects, EFSC’s reliance on and very warm relationship with ODOE staff, and requesting legislative funding on behalf of ODOE. Morrison Decl., Ex. 3.

proceedings.²⁹ As planning director, Jenkins became embroiled in controversy when he advocated fiercely to develop a wind farm within the county, then deleted his emails with the developer in their entirety following a public records request. Bill Rautenstrauch, *County reprimands planning director*, The [La Grande] Observer, May 5, 2011; Staff report, *E-mail probe doesn't pass smell test*, The [La Grande] Observer, May 11, 2011; Editorial, *County Probes Accusation that Planning Chief Deleted e-mails re: Wind Farm*, The [La Grande] Observer, September 11, 2011.³⁰ Concerns that the B2H siting process has been overseen by someone with a history of ethically questionable ties to a developer are amplified because Jenkins sat on the EFSC for almost the entirety of the B2H siting process, from 2012 through 2022, serving his last two years in violation of ORS 469.450(2)(providing that

²⁹ The actual EFSC Chair, Marcy Grail, recused herself on all B2H issues: "Chair Grail stated as she has previously recused herself on all Boardman to Hemingway action items and handed over the running of the meeting for Agenda Items B and to Vice-Chair Howe." 2021-08-27 EFSC-Meeting Minutes-APPROVED. pdf, p. 4 of 15. <https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/2021-08-27-EFSC-Meeting-Minutes-APPROVED.pdf>.

³⁰ The Observer does not have hyperlinks to these articles, but if one types in the title in a search engine, the article appears.

no councilor shall serve more than two four-year terms).^{31,32}

<https://www.oregon.gov/energy/facilities->

[safety/facilities/Documents/General/EFSC-members.pdf](https://www.oregon.gov/energy/facilities-safety/facilities/Documents/General/EFSC-members.pdf). As chair of the

B2H siting process, Jenkins has played a particularly active role in

swaying the Council to make decisions that favor Idaho Power. As an

example, ORS 469.370(13) requires that when a proposed facility has

been reviewed by a federal agency under NEPA, the EFSC is required

by statute to coordinate its review with the NEPA review. Jenkins,

however, referenced his experience to advise the Council to disregard

the statutory requirement: “We can only use the route and alternatives

that are submitted to us by Idaho Power.” November 19-20, 2020, EFSC

³¹ Jenkins remained on the EFSC after the expiration of his second term, purportedly because he was needed so that the EFSC could have a quorum. This argument never made sense, because in December 2021, EFSC changed its rules to allow for a smaller quorum of just four members, yet Jenkins did not resign.

<https://www.oregon.gov/energy/About-Us/Documents/2021-01-07-HB-2064-One-Pager.pdf>; and <https://www.oregon.gov/energy/Get-Involved/rulemakingdocs/2021-12-17-R218-EFSC-2-2021-Tracked-Changes.pdf>

³² Jenkins no longer serves on the EFSC. Having served for nearly the full duration of the B2H siting process, he resigned in early December 2022, almost immediately after the EFSC approved the B2H application. https://www.oregoncapitalinsider.com/news/oregon-insiders-whos-who-in-and-around-state-government/article_3a042794-7727-11ed-b2f5-b354446f7689.html

Council meeting day 2, Audio 2 at 2:32.00-

<https://soundcloud.com/odoe/sets/november-19-20-2020-efsc-meeting> .

IV. ODOE HAS RECEIVED MORE THAN \$4 MILLION FROM IDAHO POWER FOR WORK RELATING TO B2H, CREATING AN ACTUAL CONFLICT OF INTEREST WITHIN THE DEPARTMENT OF ENERGY.

ODOE has in fact received substantial funding directly from Idaho Power Company to fund ODOE's work on the B2H line. Idaho Power has paid ODOE more than \$4,000,000 for salaries and other expenses directly related to ODOE's work on B2H. *Declaration of Fuji Kreider, Ex. 4.* The millions of dollars ODOE has received directly from Idaho Power for expenses relating to the development of Idaho Power's own project has transformed ODOE's conflict of interest from a potential or theoretical conflict into an actual conflict. The fact that the Department receives such a substantial income from industry applicants and project operators gives administrators and employees a tangible and compelling financial reason to choose the industry applicant's interests when weighing the Department's responsibility to assist in siting a facility against the Department's responsibility to protect the public interest by ensuring that Oregon's policies regarding public health and welfare, and environmental protection are enforced.

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V. ODOE HAS REPRESENTED THE INTERESTS OF IDAHO POWER BY USING THE SUBSTANTIAL RESOURCES AVAILABLE TO ODOE TO ELIMINATE EVERY CHALLENGE TO SITING THE B2H LINE.

As a state agency, ODOE has substantial resources at its disposal. ODOE has highly trained, experienced employees assigned to the B2H project. ODOE Response to McAllister Disc. Requests at 3.³³ ODOE also has untold clerical and support staff available to work on the B2H project, *id.*, and ODOE has the resources and ability to retain additional expert assistance and/or witnesses from outside the agency. *Id.* Additionally, through Oregon's Department of Justice, ODOE has legal resources at its disposal to assist and represent the Department in the siting process.

³³ ODOE's Response discloses the credentials of several of its employees assigned to siting the Idaho Power project:

"K. Tardaewether: Education - B.A. International Studies, B.S. Environmental Science, M.A. International Environmental Policy in Energy Analysis; Years of Professional Experience – 15; Years at ODOE – 4.5;

S. Esterson: Education - B.S. Public Affairs and Environmental Management; M.P.A; Years of Professional Experience – 15; Years at ODOE – 6

M. Woods: Education – B.A. Environment, Economics, and Politics; B.A. History; M.S. Environmental Science; Years of Experience – 15; Years at ODOE – 7."

ODOE noted that each of these employees "has collectively evaluated dozens of ASC and Requests for Amendments." *Id.* An additional employee, Wally Adams, assisted ODOE at the January 2022 cross-examination hearings. Proposed Contested Case Order at 15-16.

The Department's resources to advance B2H are virtually infinite, given that ODOE's expenses are reimbursed by Idaho Power. The fact that ODOE has expended more than \$4,000,000 of Idaho Power's money to site the B2H line indicates that ODOE has not hesitated to use Idaho Power's substantial resources to advance the project that Idaho Power has paid ODOE to work on, and to do so on the terms that Idaho Power desires.

A. ODOE has advised EFSC to adopt siting standards which represent the interest of developers and do not protect the public.

The EFSC is responsible for adopting the standards which govern the siting of energy facilities in Oregon.³⁴ Because the EFSC's small group of volunteers lack technical expertise in the complex issues involved in siting an energy facility, EFSC is heavily reliant on ODOE for advice regarding adoption of siting standards, and EFSC has adopted

³⁴ ORS 469.501(1) states,

“The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. * * *.” Additionally, ORS 469.470(2) provides in pertinent part that EFSC shall “ * * * adopt standards and rules to perform the functions vested by law in the council including the adoption of standards and rules for the siting of energy facilities pursuant to ORS 469.501.”

standards, and delayed the adoption of other standards,³⁵ that benefit applicants at the expense of the public.

The standard regarding retirement of facilities and financial assurance, OAR 345-22-0050(2), provides one example. That standard requires merely that the Council find that an applicant has *a reasonable likelihood* of obtaining a bond or letter of credit to cover the cost of retiring an energy project, (emphasis added) – not that the applicant actually *post* a bond. The same standard requires only that a bond be in an undefined, subjective amount “*satisfactory to the Council* to restore the site to a useful, non-hazardous condition.” (Emphasis added). At a time when multiple billion-dollar energy projects have failed nationwide,³⁶ the EFSC’s standard imposes no actual requirement that would protect the Oregon public. ODOE has represented the interests

³⁵ One example of these delayed standards includes the protracted rulemaking process over updating the outdated rules/standards on "Protected, Scenic and Recreational Areas," OAR chapter 345, division 22. The Protected Areas and Scenic Resources Standards were last amended in 2007. The Recreation standard was last amended in 2002. The process for updating these rules began in 2018. <https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/2022-12-16-Item-G-Protected-Areas-Rulemaking-Staff-Report.pdf>

³⁶ See, Gillis, Klas, Nehamas *supra*; Chacin *supra*; Klas *supra*; Nehamas *supra*; Garcia *supra*; Gillispe, Smyth, *supra*; Diaz *supra*; Monroe *supra*; Pischea *supra*; Tobias, *supra*; Amy, *supra*; Long, *supra*.

of industry applicants generally by advising EFSC to adopt siting “standards” which provide no protection to the public whatsoever.

B. ODOE has advocated on behalf of Idaho Power and against the public interest by treating the public as an adversary throughout these siting proceedings.

1. ODOE has represented the interests of Idaho Power by disregarding public input when siting the B2H project.

Oregon law requires ODOE to consider public comments when siting an energy facility. Nearly 700 public comments were received by ODOE in the summer of 2019,³⁷ and 52 individuals petitioned to be parties to the contested case in August 2020, raising 71 issues.

(ODOE’s Response to Petitions for Party Status and Limited Party Status, 2020-09-11, p. 1 and Table 1.)

Acting in its capacity as a state agency, ODOE argued against full party status for every public petitioner, and against nearly every issue the petitioners raised. See, ODOE Second Amended Response to Petitions for Party/Limited Party Status, October 6, 2020, at 5, Table 1, and Attachment 1, Amended ODOE Evaluation of Petitions. ODOE has argued to eliminate issues raised by petitioners appearing on behalf of

³⁷ ODOE - B2HAPPDoc2-1 Proposed Order on ASC w Hyperlink Attachments 2019-07-02, Attachment 2: DPO Comment Index and DPO Comments.
(<https://onedrive.live.com/?authkey=%21AEBE%2Dm62XANUTiQ&cid=026041F18E096594&id=26041F18E096594%215420&parId=26041F18E096594%215419&o=OneUp>)

public entities such as Eastern Oregon University, Oregon-California Trails Association, the Stop B2H Coalition, QWest Corp/CenturyLink, and the Baker County Fire Defense Board. Amended Order on Party Status Authorized Representatives, and Properly Raised issue for the Contested Case at 2-4.

ODOE's most obvious example of disregarding public input occurred in Union County, where Idaho Power disregarded the Bureau of Land Management's "least impactful" NEPA route, and instead proposed two routes which cross on the periphery of the city of La Grande and just 125 feet from a beloved, undeveloped local recreation area and wetlands. ODOE disregarded the groundswell of public comments it received, as well as the obligations imposed on Idaho Power by the NEPA process, and repeatedly advised EFSC that the Council was permitted to assess only the routes that had been proposed by Idaho Power.³⁸ According to ODOE, the EFSC – and by implication,

³⁸ See, e.g., ODOE's Second Amended Response to Petitions for Party/Limited Party Status, October 6, 2020 at 68 (denying EFSC jurisdiction in regard to Geer issue 3), and at 98 (regarding McAllister issue 1). See *also*, Final Order at 47-48 (discussing that the standards adopted by the EFSC:

“do not require the applicant to compare alternative corridors. Nor do they allow the Council to evaluate or consider alternative routes not proposed in the application for site certificate.* * * Therefore, in the application, an applicant may propose any route, and alternative routes for Council's review, regardless of a federal

the state – has neither authority nor jurisdiction, or even the authority to make suggestions, when determining the route of a 300-mile long high-voltage line as it crosses through the state.

2. *ODOE argued that petitioners should be denied standing.*

In total, 52 individuals petitioned for party status. Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case at 2-3. As a state agency and party to the contested cases, ODOE argued that a number of citizen petitioners asserting concerns about the B2H project should be denied standing. See, ODOE's Second Amended Response to Petitions for Party/Limited Party Status, October 6, 2020. ODOE asserted that three petitioners failed to timely file petitions, *id.* at 8, 112-114. ODOE also argued for denial of standing based upon one petitioner's failure to recognize the need to timely file an appeal of the ALJ's denial of limited party status. ODOE Objection to G. Carbiner Request for Party Status for Issue HCA-5. Additionally, ODOE argued that three petitioners had failed to identify an applicable standard, ODOE's Second Amended Response to Petitions

agency's selected route in the ROD for the NEPA review process. Further, the Council may not recommend an alternative route that is not proposed in the application."

for Party/Limited Party Status at 32, 33, 112; and that 45 petitioners failed to show a personal interest or a public interest. *Id.* at 21-121.³⁹

3. *ODOE unilaterally rephrased petitioners' issues so as to eliminate or narrowly define the issues petitioners had raised.*

ODOE filed repeated responses to the petitions for party status.⁴⁰

In those responses, ODOE unilaterally rephrased, reconstrued, and significantly restricted the issues raised by the petitioners to this case.

The case of Susan Geer provides one example.

Geer is a trained botanist and ecologist and an expert in her field, employed by the Wallowa Whitman National Forest, who has lived in eastern Oregon for over 20 years and is intimately familiar with the ecology of the region. Geer submitted two written comments with concerns about native and imperiled plant communities along the proposed B2H route. Declaration of Anne Morrison, Ex. 1 and 2. She questioned the “Noxious Weed Plan” in Idaho Power’s site application;

³⁹ ODOE asserted 26 times that a petitioner failed to show a personal interest, *id.* at 21, 24, 26, 35, 36, 44, 50, 54, 73, 74, 75, 83, 89, 90, 92, 93, 94, 96, 102, 103, 105, 107, 109, 111, 114, 115.

ODOE asserted 19 times that a petitioner failed to show a public interest. *Id.* at 29, 32, 33, 41, 48, 56, 57, 58, 76, 78, 88, 89, 111(x2), 113, 116, 119, 120, 121.

⁴⁰ ODOE Response to Petitions for Party/Limited Party Status, September 22, 2020; ODOE Amended Response to Petitions for Party/Limited Party Status, September 28, 2020, and ODOE Second Amended Response to Petitions for Party/Limited Party Status, October 6, 2020.

Geer noted that Idaho Power's "weed plan" disregarded concerns expressed by county weed management professionals from Morrow, Union, and Umatilla counties; that the plan proposed only annual weed treatments, which in Geer's experience would be inadequate and ineffectual; that while Oregon law imposes on landowners and managers the responsibility to control specified weeds on their property, Idaho Power's plan would exclude Idaho Power from responsibility for controlling entire classes of weeds, including those most aggressive and devastating to native habitat; and would allow the company to request a release from weed management obligations from ODOE at any time; additionally, if Idaho Power's weed control proved unsuccessful after five years, the plan would allow Idaho Power to request a waiver from ODOE regarding further weed control obligations. Morrison Decl., Ex. 1. In her second letter, Geer detailed concerns that Idaho Power's plan ignored Oregon's environmental protection laws by failing to consider Oregon's Climate Plan or the Oregon State Conservation Strategy, or to take into account the state's designated natural areas. Morrison Decl., Ex. 2. Geer also noted that Idaho Power's proposed Morgan Lake route did not comply with statutory requirements to consider the BLM's NEPA route.

Id.

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ODOE recast Geer's concerns as:

"Applicant's Noxious Weed Plan does not comply with ORS Chapter 569 because it does not identify responsibility of applicant for control of most weed species and only requires annual control."

ODOE Second Amended Response to Petitions for Party/Limited Party Status, October 6, 2020, at 61; and as:

"Applicant fails to comply with Threatened and Endangered species standard because it did not evaluate current State-listed T&E plant species (Lists 1 and 2 Climate Vulnerable plants.)"

Id. at 62; and as:

"The Draft Noxious Weed Plan (attachment P1-5) is not sufficient because it appears to relieve applicant of weed monitoring and weed control responsibilities after 5 years, which is not reasonable given that weed control is an issue into perpetuity, and improperly allows for compensatory mitigation if weed control is unsuccessful."

Id. at 63.

As with every other petitioner, ODOE's reframing of Geer's original statements precluded discussion of multiple statutes, administrative rules, and EFSC standards, as well as the multiple state agencies and state environmental protection policies, plans and programs implicated by Geer's original statement. And as with every other petitioner, ODOE's rephrasing of Geer's statements excluded multiple significant issues from being addressed in the contested case, while also successfully constraining the reach of the issues that remained.

Subsequently, ODOE and Idaho Power filed simultaneous motions for summary determination against Geer's issues as restated by ODOE. See, ODOE Motion for Summary Determination of Contested Case Issue TE-1, May 28, 2021; Idaho Power's Motion for Summary Determination of Contested Case Issue TE-1, May 28, 2021. Because Geer's issues had been redefined, Geer's own proposed amended conditions were rejected, (*id.* at 121) and ODOE instead proposed minimal changes to the application conditions. ODOE Rebuttal to Direct Testimony, Evidence, and Response to Proposed Site Certificate Conditions, November 12, 2021, at 27-28, 31-32.

4. ODOE argued that all petitioners should be denied full party status.

ODOE addressed the issue of party status in a manner that further restricted the ability of the public to raise issues of public concern in the siting proceedings. At a time when it appeared to be an unsettled issue, (ODOE Response to Petitions Regarding Limited Party vs. Party Status at 1, FN 1), ODOE argued that all petitioners should be granted limited party status. As with every other petitioner to the contested case, ODOE argued that Geer should be granted limited party status – in Geer's case, preventing her from using information regarding any one of her complex and closely related issues (as restated) in regard to the

other two issues (as restated). ODOE Second Amended Response to Petitions for Party/Limited Party Status, October 6, 2020, at 6-8.

5. *ODOE argued that petitioners failed to raise valid issues.*

ODOE spared no effort to eliminate issues from the contested case by arguing that petitioners had not raised valid issues. ODOE argued 74 times that petitioners' issues were not within EFSC jurisdiction. ODOE Second Amended Response to Petitions for Party/Limited Party Status, October 6, 2020.⁴¹ ODOE argued 43 times that petitioners' issues had not been raised on the record of the Draft Proposed Order.⁴² And the Department argued 73 times that petitioners failed to raise issues with sufficient specificity.⁴³

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⁴¹ ODOE asserted that petitioners' issues were not within EFSC jurisdiction, *id.* at 21, 22, 24, 25, 28, 32(x2), 33(x2), 34(x3), 35, 39, 40, 41, 46, 48, 51, 53, 54, 55, 59, 61, 62, 64, 66, 67, 68, 70, 71, 75, 76, 77(x4), 78(x2), 79(x2), 80, 81, 84, 85(x2), 86, 87(x3), 88, 89(x2), 91(x2), 93, 95, 99, 100(x3), 101, 102, 105, 108, 112, 113(x2), 116(x2), 118, and 122.

⁴² *Id.* at 21, 22, 26, 29, 30, 31, 37(x2), 39, 45, 50, 54, 55, 58, 61, 62, 63, 76, 77 (x4), 78, 79(x2), 85(x2), 86, 87(x2), 91, 93, 95, 97(x2), 101, 102, 103, 105, 108, 109, 118.

⁴³ *Id.* at 21, 22, 24, 25, 28, 32(x2), 33(x2), 34 (x3), 35, 39, 40, 41, 46, 48, 51, 53, 54, 55, 59, 61, 62, 64, 66, 67, 68, 70, 71, 75, 76, 77(x4), 78(x2), 79(x2), 80, 81, 84, 85(x2), 86, 87(x3), 88, 89(x2), 91(x2), 93, 95, 99, 100(x3), 101, 102, 105, 108, 112, 113(x2), 116(x2), 118, 122.

6. *ODOE blocked petitioners' attempts to obtain discovery in the contested case.*

After thirty-six petitioners filed requests for discovery orders in the contested case following the informal discovery period, per OAR 137-003-0025(3), (Proposed Contested Case Order at 3), ODOE exerted its power and resources as a state agency to argue for denial of petitioners' requests for discovery. ODOE's response to Petitioner McAllister's motion for discovery from ODOE is demonstrative.

McAllister's motion included 31 questions and was supplemented with an additional request. Petitioner McAllister's Motion for Discovery Order for ODOE, Issues FW-13, R-2, SP-2, Dated February 19, 2021. McAllister requested such prosaic information as copies of ODOE's communications with landowners near Morgan Lake Park, (*id.* at 3); the documentation relied on by ODOE to determine that the Morgan Lake Alternative complied with EFSC standards, (*id.* at 20); or production of a map which clearly specified, by name, how ODOE identified the three different routes under discussion. (*Id.* at 8, 28). ODOE's 22-page response demonstrates the way in which ODOE has used its Idaho Power-funded legal firepower to muddle and obfuscate, to confuse issues, to prevaricate, and to avoid straightforward responses. In its response to McAllister's request alone, ODOE objected to the petitioner's prosaic discovery requests by denying 20 times that the

petitioner's requested information was relevant, (ODOE Response to Michael McAllister Informal Discovery Request, February 2021 at 4, 5, 6, 7, 8(x2), 9(x2), 10 (x2), 11 (x2), 13, 16, 17(x2), 18, 19(x2), and 21); or by asserting 6 times that the requested information requested had previously been provided somewhere in a list of documents in the voluminous record of the case, (*id.* at 3, 14, 16, 20, 21, 23); or by asserting 7 times that the requested information was or "may be" outside EFSC jurisdiction, (*id.* at 5, 7, 8, 10, 11, 13, 19). It is hardly surprising that ODOE's legal counsel has been able to run circles around untrained, self-represented citizens. The more significant fact is that legally unsavvy and outgunned citizens have been forced to represent public concerns on their own, against a state agency, because the agency charged with protecting those interests has utterly abdicated its obligation to do so.

7. ODOE moved for summary determination against petitioners, and supported/did not oppose Idaho Power's own motions for summary determination.

ODOE continued to work *in tandem* with Idaho Power when the Department filed eight motions for summary determination, to accompany Idaho Power's 34 motions for summary determination on contested case issues. Proposed Contested Case Order at 5, 19. On June 25, 2021, ODOE filed a 41-page response to Idaho Power's

motions for summary determination; ODOE's response formally supported or made no objection in regard to each of Idaho Power's motions. See, ODOE Response to Applicant's Motions for Summary Determination of Limited Party Issues.

8. ODOE argued against petitioners' cases on the merits.

Together, ODOE and Idaho Power litigated petitioners' remaining claims on the merits:

a). On October 1, 2021, Idaho Power and ODOE each filed individual Objections to the Limited Parties' Direct Testimony and Exhibits.

b). On November 12, 2021, the Department filed the 125-page ODOE Response to Direct Testimony, Evidence, and Response to Proposed Site Certificate Conditions. One would fully expect Idaho Power to be able to produce expert witnesses and consulting firms as needed to counter petitioners' remaining claims, and the billion-dollar corporation did so. See, *e.g.*, Idaho Power – Rebuttal Testimony of Chris James - Issue FW-7, with supporting exhibits A-H, November 12, 2021. But so too did ODOE produce witnesses to rebut petitioners' arguments and to advance Idaho Power's application. See, *e.g.*, Written Rebuttal Testimony of Tim Butler, Oregon Department of Agriculture, on Behalf of the Oregon Department of Energy, November 10, 2021; Written Rebuttal

Testimony of Sarah Reif on Behalf of the Oregon Department of Energy for Issue-FW-7, November 12, 2021; ODOE Written Rebuttal Testimony of Greg Apke, on Behalf of the Oregon Department of Energy For Issue FW-7.

c). On December 3, 2021, petitioners filed multiple motions to cross-examine the expert witnesses of Idaho Power/ODOE; ODOE responded, requesting that at least one of those requests be denied. See, ODOE Objection to Marches' Request for Cross Examination, December 10, 2021.

d.) On February 28, 2022 – having spent the previous 12 years, working to preclude public participation in the siting process, denying the applicability of pertinent statutes and standards to Idaho Power's application, obfuscating information vital to assessing Idaho Power's application, and eliminating the multitude of public concerns about the B2H project, the Department filed ODOE's Closing Brief. That brief duly asserts, "the Department believes the preponderance of evidence supports a conclusion the proposed facility, subject to the recommended site certificate conditions, complies with the requirements of the EFSC's standards and other applicable laws and rules." ODOE Closing Brief at 222-223.

e). On March 30, 2022, ODOE submitted its Response to Closing Arguments Brief.⁴⁴ One last time, ODOE argued against petitioners' issues, raised pursuant to the very policies that the Department is mandated to implement.

9. In addition to litigating against public petitioners in its capacity as a party to the siting proceedings, ODOE used its position as an advisor to the EFSC to advise EFSC to uphold every one of the ALJ's decisions which were favorable to ODOE/Idaho Power as parties.

a). Thus, on October 6, 2020, ODOE advised the EFSC to uphold the ALJ's rulings denying party status, which were favorable to ODOE/Idaho Power. ODOE Second Amended Response to Petitions for Party/Limited Party Status, October 6, 2020, at 8. ODOE also advised the EFSC to uphold the ALJ's rulings regarding limited party status, and the validity of issues identified by petitioners, all of which were uniformly favorable to ODOE/Idaho Power as parties. *Id.* at 5-6, Attachment at 21-123.

b.) On June 25, 2021, ODOE responded fawningly to Idaho Power's multiple motions for summary determination of petitioners' claims, recommending hand-in-hand with Idaho Power that the EFSC uphold each of the ALJ's rulings on summary determinations. ODOE's

⁴⁴ B2HAPP Contested Case ODOE Response to Closing Arguments 2022-03-30.

Response to Applicant Motions For Summary Determinations of Party Limited Party Status Issues at 1-41.

c.) On November 12, 2021, ODOE advised EFSC to uphold the ALJ's rulings against petitioners' remaining cases on the merits, (ODOE Rebuttals to Direct Testimony and Evidence and Response to Site Certificate Conditions at 16-125) – all of which were uniformly favorable to ODOE/Idaho Power as parties.

d.) On February 28, 2022, ODOE reiterated those arguments in its 222-page Closing Brief.

e.) On July 15, 2020, ODOE recommended in a 31-page filing that the Council find that there were no procedural errors that occurred in the contested case proceeding, and that “the Hearing Officer successfully conducted her duties under OAR 345-015-0023.” ODOE Responses to Procedural and Process Objections.

f.) And on August 24, 2022, ODOE advised that EFSC should deny petitioners additional time to argue their exceptions before the Council, (ODOE Response to Stop B2H Request for Additional and Equal Time at 1-2); that EFSC should deny petitioners the opportunity to respond to site certificate conditions newly proposed by the ALJ to which petitioners had never had the opportunity to respond, (*id.* at 2-4); and that EFSC should deny petitioners time for oral arguments on

exceptions relating to procedural matters to uphold the ALJ's rulings regarding petitioners' procedural exceptions. (*Id.* at 5-8).

ODOE advised EFSC to reject every petitioner's appeal of every decision in the contested case. Throughout the entire siting process, ODOE advocated solely for EFSC to uphold decisions favorable to Idaho Power.

10. ODOE has represented the interests of Idaho Power by failing to object to improper conduct by Idaho Power.

a. ODOE did not object to Idaho Power's *ex parte* contacts

In April, 2021, Idaho Power submitted an extensive and detailed letter directly to EFSC, discussing proposed rulemaking revisions. Notice of *Ex Parte* Communication Pursuant to OAR 137-003-0055(2). ODOE made no protest against Idaho Power's *ex parte* communication with EFSC, despite the fact that those communications stood to affect the pending

b. ODOE refused to address Idaho Power's misrepresentations to landowners.

On March 24, 2020, Idaho Power sent a letter to landowners along the Mill Creek route, one of Idaho Power's two proposed routes along the perimeter of La Grande city limits; B2H contested case; that letter informed the recipients that they no longer needed to remain involved in the siting process because Idaho Power was no longer pursuing the Mill Creek route. Kreider Dec., Ex. 5.

At the same time, Idaho Power continued to designate Mill Creek as its primary route, see, Kreider Dec., Ex. 6.; final Order at 47, line 5-9. In fact, the Mill Creek route is one of two routes ultimately approved in the site certificate. See, Final Order at 47, FN 34. Far from objecting to Idaho Power's duplicity, deceit, and misrepresentations, ODOE deferred to Idaho Power's actions, repeatedly advising that Idaho Power's actions and deceptions were a matter over which EFSC/ODOE had no jurisdiction. Kreider Dec., Ex. 6, Ex. 7.

C. ODOE's abrogation of its mandate to protect the public interest has resulted in EFSC decisions that are, on their face, stunning in their betrayal of the public interest and public trust.

Whether because of corruption, financial mismanagement, unanticipated weather catastrophes, or wildfire, multiple U.S. electric utilities have bankrupted in recent years, often leaving taxpayers liable, sometimes for billions of dollars in resulting costs.⁴⁵ Despite Idaho

⁴⁵ See. e.g., Taylor Telford, Steven Mufson, *PG&E, The Nation's Biggest Utility Company, Files for Bankruptcy after California Wildfires*, January 29, 2019, <https://www.washingtonpost.com/business/2019/01/29/pge-nations-biggest-utility-company-files-bankruptcy-after-california-wildfires/>; Theodore J. Kury, *Many Electric Utilities are Struggling - Will More Go Bankrupt?*, May 3, 2019, <https://theconversation.com/many-electric-utilities-are-struggling-will-more-go-bankrupt-113458>; Andrew Topf, *The 10 Biggest Energy Company Bankruptcies*, Oct 10, 2014, <https://www.businesstimes.com.sg/opinion-features/columns/10-biggest-energy-company-bankruptcies>; Steven Church, *Municipal Electricity Provider in California Files Bankruptcy*, May 25, 2021,

Power's many assurances to the contrary, (See, Final Order at 327-28) Idaho Power is not immune from the same issues or acts of nature confronting other billion-dollar utilities.

Oregon law recognizes the possibility that an energy facility or its developer or operator could fail: OAR 345-022-0050(2) requires that before issuing a site certificate, EFSC must find that an applicant has a reasonable likelihood of obtaining a bond or letter of credit, in a form and amount satisfactory to the Council, to restore the site to a useful, non-hazardous condition.

Here, EFSC accepted Idaho Power's estimate that it would cost \$140,790,000 to restore the B2H site. Final Order on the ASC for the Boardman to Hemingway Transmission Line at 333.⁴⁶ Against this backdrop, ODOE betrayed all pretense of protecting the public welfare when it advised EFSC to accept a \$1.00 (!) bond against the estimated \$140,790,000 cost of retiring the facility, for the period between B2H's in-service date through its 50th year in service.⁴⁷ ODOE's incredible

<https://ampvideo.bnnbloomberg.ca/municipal-utility-in-california-files-bankruptcy-1.1608384>; Energy News, *Liberty Power Bankruptcy - What Now?* April 20, 2021, <https://electricityplans.com/liberty-power>.

⁴⁶ It appears from the Final Order that EFSC determined the cost to retire the site based solely on information provided by Idaho Power. *Id.* at 330-332.

⁴⁷ It is indicative of the extraordinary hold that Idaho Power has had over ODOE and this siting process that Idaho Power *even protested*

recommendation shows how far the Department will go to serve the interests of Idaho Power, even while leaving Oregon taxpayers, ratepayers, and the state itself exposed to extreme financial risk.

Hundreds of everyday Oregon citizens have been pitted against the combined might of a billion-dollar corporation and the agency which has done its bidding. Idaho Power has infinite resources with which to purchase the services of witnesses, consultants, and the largest law firms to battle common citizens who have strived to protect the land where they have chosen to work, play, and live their lives.

Throughout the B2H siting process, ODOE has advocated only on Idaho Power's behalf. ODOE has interacted frequently and freely with the employees of Idaho Power, has strived to accomplish Idaho Power's

the \$1.00 bond as too onerous. The billion-dollar utility actually requested

“that ODOE consider providing an additional option for the form of assurance required. That is, Idaho Power requests that it be allowed to provide a deposit for that same amount, because there are administrative costs associated with obtaining bonds and letters of credit which would far exceed the actual value of the bond and letters of credit.”

“Idaho Power's Comment,” Final Order, Attach. 4, DPO Comment/ Applicant Response, Department Response in Proposed Order Crosswalk Tables at 26. (referencing Recommended Retirement and Financial Assurance Condition 1).

goal of siting this transmission line, and received substantial compensation from Idaho Power for its efforts. The record documents ODOE's relentless efforts to benefit Idaho Power by seeing that the project that Idaho Power desires is constructed, according to the terms Idaho Power desires; ODOE has used a process designed to block public input, while making no true attempt to address the damage the transmission line will cause ODOE has acted without regard for the people whose lives the B2H project will affect, and with an obvious contempt for the laws enacted to protect Oregon's natural resources and its residents. *If* ODOE had sited B2H with the interests of Oregonians in mind, this state agency would not have needed to manipulate every stage of the process to preclude public input and concern about the B2H project. ODOE has betrayed the public trust at every turn.

Amicus believes that petitioners' claim can only be accurately assessed when viewed against the context in which the B2H site certificate was approved.

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VI. CONCLUSION

This Court should reverse the EFSC Final Order and remand this case to EFSC for further proceedings consistent with the court's Opinion.

Respectfully submitted,

s/ Anne Morrison

Anne Morrison, OSB #891510

for *Amicus Curiae* Anne Morrison

Certificate of Compliance with ORAP 5.05(2)

Brief length

I certify that this petition complies with the 14,000 word-count limitation in ORAP 5.05(1)(b)(i)(B) and that the word count of this brief, as described in ORAP 5.05(2)(a), is 10,164 words.

Type size

I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

DATED: December 20, 2022

s/ Anne Morrison
Anne Morrison

Certificate of Filing and Service

I hereby certify that on December 20, 2022, I filed the foregoing Application to Appear as *Amicus Curiae* with the Appellate Court Administrator by electronic filing, using the court's eFiling system.

I further hereby certify that on December 20, 2022, I served the foregoing Application to Appear as *Amicus Curiae* upon

Karl Anuta,
Mike Sargetakis
Attorneys for Petitioner Stop B2H Coalition

Jesse A. Buss
Attorney for Petitioner Michael McAllister

Lisa F. Rackner
Sara Kobak
Andrew J. Lee,
Attorneys for respondent Idaho Power Company

Denise G. Fjordbeck,
Patty Rincon
Jordan R. Silk,
Attorneys for Oregon Department of Energy and Energy Facility
Siting Council

I additionally certify that on December 20, 2022 I served a true and correct copy of this Application to Appear as *Amicus Curiae* upon Jocelyn Claire Pease, attorney for respondent Idaho Power Company, by mailing such in an envelope with prepaid first-class postage addressed to:

Jocelyn Claire Pease
McDowell Rackner Gibson PC
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for respondent Idaho Power Company

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Attorney for Petitioner Michael McAllister

DATED: December 20, 2022.

s/ Anne Morrison

Anne Morrison

IN THE SUPREME COURT OF THE STATE OF OREGON

In the matter of the	)	Energy Facility Siting Council
Application for Site)	
Certificate for the	)	OAH Case No. 2019-ABC-
Boardman to Hemingway	)	02833
Transmission Line)	
	)	Supreme Court No. S069919
STOP B2H COALITION,)	
<i>Petitioner</i>	)	DECLARATION OF ANNE
	)	MORRISON, <i>AMICUS CURIAE</i> ,
v.	)	IN SUPPORT OF
	)	PETITIONER'S PETITION FOR
OREGON DEP'T OF	)	EXPEDITED REVIEW
ENERGY, OREGON)	
ENERGY FACILITY)	
SITING COUNCIL, and)	
IDAHO POWER)	
COMPANY)	
<i>Respondents</i>)	
)	

1. I am an attorney and the *amicus* herein. I have personal knowledge of the matters set forth in this declaration.

2. Exhibit 1 is the August 22, 2019 letter/comment on the Draft Proposal Order, written by botanist Susan Geer to ODOE Senior Siting Analyst Kellen Tardaewether and discussing Geer's concerns regarding Idaho Power Company's "Noxious Weed Plan," (DPO Attachment 1-5). Ms. Geer has provided this comment to me as submitted in the record of the case; however, because I do not have access to the record I am unable to provide the record citation.

3. Exhibit 2 is the August 22, 2019 letter/comment on the Draft Proposal Order, written by botanist Susan Geer to ODOE Senior Siting Analyst Kellen Tardaewether and discussing Geer's concerns regarding Idaho Power's Amended application for Site Certificate and failure to comply with legal requirements pertaining to the protection and preservation of rare and native plants. Ms. Geer has provided this comment to me as submitted in the record of the case; however, because I do not have access to the record I am unable to provide the record citation.

4. Exhibit 3 is a March 1, 2021 letter from EFSC Chair Marcy Grail to Oregon's Joint Committee on Ways and Means and the Subcommittee on Natural Resources, discussing EFSC's role as sole decision maker regarding energy facilities, EFSC's warm relationship with and reliance on ODOE staff, and requesting legislative funding on behalf of ODOE. This document is available on the Oregon Legislature's website at

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/9946>.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17th day of December 2022 in La Grande, Oregon.

s/ Anne Morrison
Anne Morrison

August 22, 2019

Energy Facilities Siting Council
c/o Kellen Tardaewether, Senior Siting Analyst
Oregon Department of Energy
Via email B2H.DPOComments@Oregon.gov

Subject: Idaho Power Amended Application for the Boardman to Hemingway Transmission Project dated 9/28/2018; Draft Proposed Order dated 5/22/2019

Dear Chair Beyeler and Members of the Council;

I am a Botanist/Ecologist who has worked in eastern Oregon for over 20 years; although employed by Wallowa Whitman National Forest, I write to you today as a Union County citizen and landowner. I have reviewed Idaho Power Company's (IPC's) amended Application and offer the following comments for the consideration by the council in their decision on the pending Application for Site Certificate.

With regards to Exhibit P, IPC's "Noxious Weed Plan" (DPO Attachment P 1-5) is vastly inadequate and presents a threat to Oregon's native plant communities/wildlife habitat, promotes risk from wildfire, and presents a public menace. Oregon statute 569.180 (Noxious weeds as public nuisance policy) states, "In recognition of the imminent and continuous threat to natural resources...noxious weeds are declared to be a public nuisance and shall be detected, controlled and, where feasible, eradicated on all lands in this state." Chapter 569 of Oregon law covers weed control https://www.oregonlegislature.gov/bills_laws/ors/ors569.html including obligation of land occupant:

569.390 Owner or occupant to eradicate weeds. Each person, firm or corporation owning or occupying land within the district shall destroy or prevent the seeding on such land of any noxious weed within the meaning of ORS 569.360 to 569.495 in accordance with the declaration of the county court and by the use of the best means at hand and within a time declared reasonable and set by the court, except that no weed declared noxious shall be permitted to produce seed.

Excellent comments were provided in "B2H Noxious Weed Plan Comments" by a large group of weed professionals, submitted by Brian Clapp of Union County. The document states, "The County Weed Supervisors of Morrow, Umatilla, and Union counties met with the Oregon Dept. of Ag and Tri-County CWMA on August 22, 2017 to go over the B2H Attachment P1-5 Noxious Weed Plan. In conjunction with comments from previous meetings with Malheur and Baker county weed supervisors, the following list of concerns was developed..." IPC's Noxious Weed Plan of 2018 (Attachment P1-5) does NOT include the suggestions made by the weed managers.

The foremost finding by weed managers in 2017 was that IPC illegally excludes themselves from responsibility for the FULL list of weeds. In 2018, IPC's Weed Plan still only obligates IPC to control weeds in Class A and Class T lists. It is widely recognized that these weed "Classes" are determined according to agricultural priorities, not according to which weeds are the biggest threats to natural areas. Treating only Class A and T, a shorter list of weeds which are not very common, is especially devastating for natural areas, i.e. the vast majority of the proposed B2H routes. Any invasive plant can devastate an area- regardless of which "list" it is on. In fact, Class B and C weeds are generally the worst weeds and tend to be those which are spreading most aggressively and to more areas, thus threatening and ultimately devastating the most native habitat. The Weed Managers state, "Every landowner and

land manager is responsible for the control of ALL state and county listed noxious weeds on their property/ ROW. Whether the weeds have been here for 50 years or don't show up till the 20th year of Operation, IPC will be held responsible for the control of noxious weeds in the areas they manage-the same as everyone else." IPC has offered nothing in response.

As an example of serious weeds that would be excluded according to IPC, two of the worst weeds which occur in Union County, *Leucantheum vulgare* (ox eye daisy) and *Rosa rubiginosa* (sweet briar rose) are NOT included in Table 1 of the Weed Plan "Designated Noxious Weeds". These species are listed in Union County Class B <http://union-county.org/wp-content/uploads/2017/04/Union-County-Weed-List-2019-and-cost-share-Ad.pdf>. Other "Class B" list weeds include sulphur cinquefoil, whitetop, diffuse and spotted knapweed – all among the very worst noxious weeds, present in the proposed areas of disturbance and certain to spread to currently intact native plant communities, should B2H construction proceed. These weeds, which are even now devastating thousands of acres of native plant communities, would not be treated under IPC's Weed Plan – and neither would any of the other dozens of species on Class B and C lists, not to mention new invasives, which take some time to be added to a list. Union County Class "B" list alone includes 24 noxious weeds. Other landowners are required to follow County and State laws and control ALL noxious weeds. Why should Idaho Power be exempt?

Weed Surveys provided in Exhibit P-1 part 2a and b are misleading; many species which would NOT be controlled by IPC under their "Weed Plan" were included in the surveys. Surveys were done between 3-8 years ago, a very long time in terms of weed spread! Surveys done so long ago using an outdated list and in such an artificially limited area are not acceptable.

In addition to exempting themselves from the full list of weeds, IPC's Post Construction treatments is otherwise ridiculously limited and unacceptable. In fact I could not believe the State Weed Program would sign off on it. Perhaps they did not. No comments were provided in DPO Attachment 3, "Reviewing Agency Comments". Here is an excerpt from the IPC Plan (Monitoring 6.1):

As stated above, noxious weed monitoring and control will occur during the first 5-year period. When it is determined that an area of the Project has successfully controlled noxious weeds at any point during the first 5 years of control and monitoring, IPC will request concurrence from ODOE. If ODOE concurs, IPC will conclude that it has no further obligation to monitor and control noxious weeds in that area of the Project. If control of noxious weeds is deemed unsuccessful after 5 years of monitoring and noxious weed control actions, IPC will coordinate with ODOE regarding appropriate steps forward. At this point, IPC may suggest additional noxious weed control techniques or strategies, or may request a waiver from further noxious weed obligations at these sites.

Anyone who has tried to control weeds will realize that by treating weeds only once per year, many will be missed and weeds will spread. Further, noxious weeds cannot be "successfully controlled" in 5 years. My observations of disturbed areas on both public and private lands show that weed treatment and monitoring must continue in *perpetuity* to keep those areas weed free. An Alberta study by Cole et. al. in 2007 concluded, "Eradication attempts usually involve mechanical removal to prevent seed spread, followed by a systemic, residual herbicide treatment well beyond the infestation site. The key to the extirpation of these invasive plants is the on-going locating, marking, monitoring and managing by the municipalities, agricultural field men and land owners..." The treatment that IPC proposes fail in all ways; they are neither "on-going" nor do they extend "well beyond the infestation site". If there is any marking, monitoring and managing, IPC will be long gone and leaving that burden to residents and

County and State. It seems ludicrous that IPC be allowed to appeal to ODOE after 5 years to claim areas of the "Project" had "successfully controlled weeds"- and then be exempted from further responsibility-- while invasives return as soon as herbicide treatments cease.

In the same unreasonable vein, the Plan further states, "if control of noxious weeds is deemed unsuccessful...IPC will coordinate with ODOE regarding appropriate steps forward," including "request a waiver from further noxious weed obligations". Essentially IPC comes by once per year for 5 years at most, inevitably fails in weed control, and is ultimately not responsible. Landowners and County are burdened with more weed control, and our ever-shrinking valuable native plant communities are compromised or eliminated, leaving native animals without habitat.

IPC's Plan further states they are not responsible for "areas outside of the right of way (ROW)". Weed sites immediately outside areas of potential disturbance are nearly certain to but would not be recorded or treated! Noxious weeds spread quickly, often exploding exponentially in a single season. IPC is proposing a HUGE area of disturbance; their responsibility should not be limited to the ROW.

As IPC has proposed only annual treatments, one can surmise they would use primarily residual herbicides. Residual herbicides may seem like the answer to the dilemma of weeds constantly in seed production. Herbicides such as aminopyralid and imazapic have become the herbicides of choice for many species. I have been using these herbicides for years now and have found they prevent germination for up to 3 years following application in eastern Oregon. This means germination of native plants as well as weeds. Bare spots are created where weeds once were. Revegetation by anything at all is prevented. After 2-3 years when the soil born chemical is reduced, weeds pioneer the site. In addition, native plants next to the weeds can die as a result of root uptake of the herbicide even though they were not sprayed directly. When using aminopyralid, willows, aspen, conifers (especially larch) and desirable native forbs in certain families are often killed in this way. Successful revegetation very unlikely. Since IPC is proposing to treat weeds for only 5 years, it is very likely a couple of treatments using residual herbicides would suppress weeds for that time, only to explode on the – now bare—areas once occupied by valuable native plants.

In summary, IPC's Noxious Weed Plan does not comply with Chapter 569 of Oregon law. IPC denies responsibility for control of most weed species, denies responsibility for weed control after 5 years, controls weeds only annually, and even allows them a waiver when control has failed. EFSC should reject the Weed Plan and Application. As a condition of re-applying, IPC should be required to post a bond to secure weed management for the lifetime of the project, which they claim is 45 years. Much is at stake, and there is no going back when thousands of acres of native plant communities are lost to invasives.

Sincerely,

Susan Geer
906 Penn Ave.
La Grande OR 97850
susanmgeer@gmail.com
541-963-0477

August 22, 2019

**Energy Facilities Siting Council
C/o Kellen Tardaewether, Senior Siting Analyst
Oregon Department of Energy
B2H.DPOComments@Oregon.gov**

Subject: Idaho Power Amended Application for the Boardman to Hemingway Transmission Project dated 9/28/2018; Draft Proposed Order dated 5/22/2019

Dear Chair Beyeler and Members of the Council;

In my previous letter I wrote to you outlining problems with Idaho Power's Noxious Weed Plan, part of their amended Application for Site Certificate. Here I offer comments on the implications for rare plants and State-listed priority unprotected plant communities, should IPC's Amended Application be accepted.

First of all, I was dismayed to learn that Oregon Department of Agriculture Rare Plant program did not provide comments (DPO Attachment 3, Reviewing Agency Comments). Upon contacting Oregon's Rare Plant Co-coordinator, I learned that no funding was provided to him for that task! It is a tremendous oversight and disservice to Oregon's rare plants, to have no State involvement in an application with such HUGE potential impacts to Oregon's rare plants and habitats.

The Threatened and Endangered Species Standard at Oregon Administrative Rule (OAR) 345-022-0070 provides:

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under [Oregon Revised Statute (ORS)] 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:

(a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or

(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species

Furthermore, Site Certificate applicant requirements OAR 345-021-0010(1)(q) requires Exhibit Q include the following:

(A) Based on appropriate literature and field study, identification of all threatened or endangered species listed under ORS 496.172(2), ORS 564.105(2) that may be affected by the proposed facility.

(B) For each species identified under (A), a description of the nature, extent, locations and timing of its occurrence in the analysis area and how the facility might adversely affect it.

(C) For each species identified under (A), a description of measures proposed by the applicant, if any, to avoid or reduce adverse impact.

(D) For each plant species identified under (A), a description of how the proposed facility, including any mitigation measures, complies with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3).

(E) For each plant species identified under paragraph (A), if the Oregon Department of Agriculture has not adopted a protection and conservation program under ORS 564.105(3), a description of significant potential impacts of the proposed facility on the continued existence of the species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

(F) concerns only animals

(G) *The applicant's proposed monitoring program, if any, for impacts to threatened and endangered species.*

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To say that IPC meets these requirements is a stretch of the imagination!

First of all, an incomplete and outdated plant list was used in surveys. Exhibit P, Attachment P1-2 Revised Final Biological Survey Workplan, 3.2.1 "Agency Survey Requirements" states that ODA "requires that state-listed threatened and endangered species, which appear on ORNHIC List 1 and have the potential to occur in the project area, be considered for survey...Regardless of land ownership, suitable habitat for sensitive plants will be identified during the pre-survey vegetation mapping phase and refined during the species-specific surveys. Appendix C-2 provides information on sensitive species with the potential to occur within the project area."

In fact, the State entity which maintains the state list is ORBIC, not ORNHIC. Appendix C-2 is undated and contains only 8 of the 64 State T & E plants listed by ODA in 2019 (<https://inr.oregonstate.edu/orbic/rare-species/ranking-documentation/vascular-plant-ranks>). The likely conclusion is that most current State T & E plant species were not included in surveys. Also, strangely, neither OR/WA BLM, nor USFS Region 6, which jointly participate in ISSSP (Interagency special status/sensitive species program <https://www.fs.fed.us/r6/sfpnw/issssp/agency-policy/>) are mentioned at all! Instead, Idaho State BLM program plants are listed in Attachment P1-2, Appendix C-2. ISSSP list was updated in 2015 and again in 2018; apparently none of those revisions were acknowledged by IPC in their surveys.

Exhibit Q part 3.4.2.3 "Summary of Potential Adverse Effects to Plants" finally mentions using 2016 **agency data** "BLM (2016), ORBIC (2016a), IDFG (2016), and USFS (2016) databases, along with field survey data results (see Exhibit P1, Attachment P1-7A, Biological Surveys Summary Report), were combined in GIS to generate species occurrence information". These references to 2016 lists appear to have only been added **post-survey** and hardly make up for the fact that IPC sponsored surveys themselves did not use proper or updated plant lists.

While I realize this a review of State mandates, not federal ones, all agencies purport to co-operate with each other in the effort to manage rare species to avoid further listing. Failing to use updated plant lists reflects negatively on IPC, and failure to survey for ISSSP species reflects negatively on both IPC and the State of Oregon. It is incredible to me that the BLM and USFS have signed off on this (2018 Record of Decision). I believe this is a gross oversight. **It is imperative EFSC halt this faulty process immediately and require ODA Rare Plant Program involvement and comments and surveys for ISSSP list plants!**

Secondly, in contrast to the wording in (OAR) 345-022-0070, **no** State listed plants have a conservation program in place. Undoubtedly, this is because the State has not yet developed the programs. IPC does not propose any either. In addition, no critical habitat is named for any of the species. The State has apparently not found time or funding for ODA to address this; IPC does the bare minimum and does not provide any conservation program or critical habitat either. To add insult to injury, IPC does not propose **any** monitoring programs (as suggested) for impacts to T&E species!

Even with inadequate plant lists and little access to private lands, 5 State listed T&E plant species (DPO Exhibit Q) were found in surveys of the B2H "analysis area". IPC claims "only" two of these rare species (Mulford's milkvetch and Snake River goldenweed) will suffer "direct impacts", by blading with heavy equipment. IPC claims that, "Avoidance and minimization measures ...described in Section 3.5.4" will "mitigate" impacts. Upon reading 3.5.4 we find that this consists of "minimum buffer of 33 feet

between the disturbance and the edge of the T&E occurrence". Habitat for these plants will be completely fragmented and a buffer of 33 – or even a few hundred--feet will not stop invasion by noxious weeds. OAR 345-022-0070 says *the design, construction and operation of the proposed facility*, - following their "Noxious Weed Plan" IPC stops treating weeds after 5 years, leaving T&E plants to be overwhelmed! T&E species will suffer irreparable damage under B2H. The Oregon Conservation Strategy rightly recognizes, "Invasive species are the second-largest contributing factor causing native species to become at-risk of extinction in the United States."

To delve further into rare plants slated for damage by B2H, *Trifolium douglasii* is a USFWS "Species of Concern" <https://www.fws.gov/oregonfwo/Documents/OregonSpeciesStateList.pdf> yet not even considered in IPC's 3.5 "Avoidance to Minimize Impacts". Although List 1 under ORBIC's latest ranking <https://inr.oregonstate.edu/orbic/rare-species/ranking-documentation/vascular-plant-ranks> it is not shown as State listed Threatened or Endangered, so is ignored by IPC. Species of Concern are "Taxa whose conservation status is of concern to the U.S. Fish and Wildlife Service (many previously known as Category 2 candidates), but for which further information is still needed." Douglas clover has a global rank of G2 "*Imperiled because of rarity or because other factors demonstrably make it very vulnerable to extinction (extirpation), typically with 6-20 occurrences*". DPO Exhibit P Part 2b Appendix 3A and 3B Figure 9 of 23 shows Douglas clover directly on the Morgan Lake alternative! This is not even taking into account private lands where access was not granted for survey, contains additional occurrences of Douglas clover. The Morgan Lake/ Glass Hill area is THE main place where this rare plant grows in Oregon, and B2H is set to permanently alter and compromise its main habitat with weeds!

State List 1 and 2 species NOT specifically included on the Threatened and Endangered list were not required by OARs and thus were not addressed at all by IPC. It seems wrong to completely exclude species which are only a step away from listing at the highest level. In fact, in these times, any rare species which shows a Moderate or higher "Climate Vulnerability" as determined by ORBIC <https://inr.oregonstate.edu/orbic/rare-species/ranking-documentation/vascular-plant-ranks> should absolutely be considered in any Application. The fact that it was not runs counter to the Oregon Climate Plan. Speaking of Oregon and State Goals, IPC's Application made no mention at all of the Oregon Conservation Strategy! Both of these omissions are critical and unacceptable!

Even more disturbing was the exclusion of the State Natural Areas Plan <https://inr.oregonstate.edu/orbic/natural-areas-program>.

A look at the list of unprotected plant associations according to the Natural Areas Plan reveals that many are located in the B2H "analysis area". Since I am most familiar with the Glass Hill area, I can point to Ponderosa pine/bluebunch wheatgrass, Ponderosa pine/Idaho fescue, Douglas fir/oceanspray, Mountain alder-snowberry riparian, and Western larch – mixed conifer forest as being plant communities slated for destruction under B2H in the Blue Mountains Ecoregion which are currently listed as "unprotected" by the Natural Areas program, and thus listed as top-priority in the Natural Areas Plan.

In conclusion, the ODA Rare Plant program was excluded from comments, and is apparently so underfunded they have not been able to provide essential conservation plans, critical habitat, or monitoring plans. Idaho Power surveys are outdated and used an incomplete list. ISSSSP lists were not included. Mitigation measures provided by IPC for State T&E species are pathetic. A Federal Species of Concern was not even considered in the Application. State List 1 and 2 species and Climate Vulnerable species were not considered. The Oregon Climate Plan and Oregon Conservation Strategy were ignored

and completely excluded. The State Natural Areas Plan and unprotected plant community types was not even discussed.

Considering all of these crucial exclusions and problems meeting Oregon laws, plans, and goals, EFSC must deny IPC's Application.

Sincerely,

Susan Geer
906 Penn Ave.
La Grande OR 97850
susanmgeer@gmail.com



ENERGY FACILITY SITING COUNCIL

■ Marcy Grail, Chair ■ Kent Howe Vice-Chair ■ Hanley Jenkins II ■ Mary Winters ■ Cindy Condon ■ Jordan Truitt

March 1, 2021

Co-Chair Kathleen Taylor
Co-Chair Jeff Reardon
Members of the Joint Committee on Ways and Means Subcommittee on Natural Resources
900 Court St. NE
Salem, OR 97301

RE: Department of Energy Budget

Dear Co-Chair Reardon, Co-Chair Taylor and Members of the Committee:

My name is Marcy Grail, and I am an Assistant Business Manager for the Internal Brotherhood of Electrical Workers (IBEW) Local 125. IBEW Local 125 has approximately 3,300 members who work in the Pacific Northwest's electric utility industry. We represent members working in the utility, outside construction, and line clearance tree trimming sectors of the electric utility industry. I have also served as one of seven members of the governor appointed and senate confirmed Energy Facility Siting Council (EFSC) since 2016 and am currently the chair.

EFSC is charged with the review and decision making on large-scale energy projects that are key to the generation and transmission of energy to Oregonians, such as solar PV, wind, and high voltage transmission lines. Because these are large infrastructure projects, they can be extremely complex which often generates significant support and opposition. While EFSC is the sole decisionmaker on these projects, we are volunteers and therefore necessarily rely on the staff at the Oregon Department of Energy (ODOE). Staff completes the needed work with applicants, state agencies, local governments, tribal governments and members of the public to provide us the information and support necessary to be an independent decision-making body.

During the time that I have been on EFSC, I have witnessed an ODOE staff dedicated to a timely, fair, inclusive, and transparent review process. They proactively engage all interested stakeholders to ensure all relevant information is included in the record so they can be confident in their recommendations to us whether each proposed project meets all applicable standards and any impacts are minimized or mitigated. Despite the controversial nature of some of these projects and the charged positions of the different stakeholders that can result, ODOE staff ensures that all comments and positions are equally evaluated and presented to EFSC.

The work of EFSC is critical to Oregonians. It would be beyond challenging for EFSC members to fulfill their duties without the same level of continued and thorough support which has been provided by ODOE staff. In my role as chair, I have an even better view of staff's contribution to the successful execution of our duties. In summary, I respectfully request that you join me in support the ODOE budget and encourage your approval of it. Thank you for your consideration.

Sincerely,



Marcy Grail
Chair
Oregon Energy Facilities Siting Council

IN THE SUPREME COURT OF THE STATE OF OREGON

In the matter of the	)	Energy Facility Siting Council
Application for Site)	
Certificate for the	)	OAH Case No. 2019-ABC-
Boardman to Hemingway	)	02833
Transmission Line)	
	)	Supreme Court No. S069919
STOP B2H COALITION,)	
<i>Petitioner</i>	)	DECLARATION OF FUJI
	)	KREIDER IN SUPPORT OF
v.	)	AMICUS CURIAE BRIEF IN
	)	SUPPORT OF PETITIONER'S
OREGON DEP'T OF	)	PETITION FOR EXPEDITED
ENERGY, OREGON	)	REVIEW
ENERGY FACILITY)	
SITING COUNCIL, and)	
IDAHO POWER)	
COMPANY)	
<i>Respondents</i>)	

1. My name is Carol Fuji Kreider (Fuji Kreider). I have knowledge of the matters set forth in this declaration.

2. I am the Secretary/Treasurer of Petitioner Stop B2H Coalition. I manage the records and finances of the board of directors for the organization, incorporated in the State of Oregon in Aug 28, 2017 and designated by the IRS as a 501(c)(3) as a public benefit nonprofit on September 19, 2017. We are a 100% volunteer organization, with contracted attorneys to help us with this case. In my role I serve not only an administrative function but also as leadership: providing guidance and

assistance to all of our members as they navigated and participated in the Oregon Department of Energy/Energy Facilities Siting Council decision making processes in the matter of the Boardman to Hemingway transmission project. Hence, this required me to engage in email exchanges with ODOE staff and other actors involved in the process to gather information as the board or other volunteers needed.

3. Attached as Exhibit 4 is an email exchange dated August 4, 2022 between ODOE Senior Siting Analyst Kellen Tardaewether and me, discussing the \$4.14 million in reimbursement funds paid by Idaho Power Company to ODOE for work related to siting the B2H transmission line between 2013 and August 2022.

4. Attached as Exhibit 5 is a March 24, 2020 letter from Idaho Power Company to landowners, including me, along IPC's proposed Mill Creek Route, (name redacted) stating that because Idaho Power would be pursuing the Morgan Lake Route in place of the Mill Creek Route, property owners near the Mill Creek Route "don't need to take any further action."

5. Attached as Exhibit 6 is an August 4, 2020 email exchange between ODOE Senior Siting Analyst Kellen Tardaewether and Jim and Fuji Kreider in which Tardaewether acknowledges IPC's March 24 letter

and states, "IPC may publicly announce what it likes about which route it intends to construct and operate," while clarifying that IPC had never removed the Mill Creek Route from its application.

6. Attached as Exhibit 7 is a November 3, 2020 email exchange between Tardeawether and Fuji and Jim Kreider in which Tardeawether affirms that "Idaho Power has not removed any routes" from the application, "so all of them continue to be under review," and that "Idaho Power may represent their preferences for routes to the public and as a company and that does not impact the EFSC review."

7. Attached as Exhibit 8 is a February 24, 2022 email exchange between ODOE Assistant Director for Siting Todd Cornett and Jim Kreider, cc:ed to me, in which Kreider complains that IPC is obtaining court orders to enter private property despite the fact that the IPC application has not been approved, and Cornett responds that IPC is not acting under EFSC authority to enter onto private land, therefore, IPC's actions are "outside EFSC's authority."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17th day of Dec. 2022 in La Grande, Oregon.

s/Fuji Kreider
Fuji Kreider

Fuji Kreider

From: TARDAEWETHER Kellen * ODOE [Kellen.TARDAEWETHER@energy.oregon.gov]
Sent: Thursday, August 4, 2022 2:37 PM
To: Fuji Kreider
Subject: RE: Some questions-- again!

Hi Fuji!

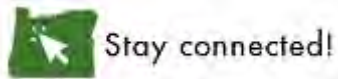
- It sounds like Jesse is going to send an email to the parties and limited parties next week with some logistical info for the upcoming EFSC meeting to review the proposed order, PCCO, and exceptions. Any formal direction should come from Jesse, I'm just trying to help convey items that I believe will happen to help you but if there is any deviation from what this says and what Jesse says, his directions will be maintained. The meeting will have in-person, call-in and webinar connection abilities, same with all EFSC meetings and this information will be included in the Agenda for the meeting. There will be an opportunity for limited parties to submit recordings if they cannot attend and his email should have more info about how to do that. It also looks like parties and limited parties will have an opportunity to provide oral testimony for each issue where an exception was properly filed and Jesse's email may have more info on that as well.
- The Department executes a Cost Reimbursement Agreement (CRA) with every applicant who submits an application for site certificate and that CRA is what we bill towards for staff and DOJ work reviewing an application, drafting orders, attending meetings, etc. If we have a consultant assist us with reviewing the application, their time is billed toward the CRA, same with reviewing agencies who spend time reviewing and submit invoices may also be reimbursed under the CRA. The CRA executed with IPC has been amended (added to) several times over the years (since 2013) because the duration and complexity of the ASC review and when it was "on pause" during the NEPA review. The total CRA value since 2013 is \$4.14 million. If you want a more detailed distribution of costs, I'll need to know more specifically what you're looking for. Since the EFSC process is *process* driven, there are always upswings in work and therefore billing as well as periods where there is less billing because there is less work.
- I've passed your comments about signage and parking along to those doing logistics for the meeting. It sounds like there will be parking info provided via email and links to the map below, I believe.

Hope this all helps and let me know what other questions you have!

Kellen



Kellen Tardaewether
 Senior Siting Analyst
 550 Capitol St. NE Salem, OR 97301
 C: 503-586-6551
 P (In Oregon): 800-221-8035



Stay connected!

From: Fuji Kreider <fkreider@campblackdog.org>
Sent: Monday, August 1, 2022 6:05 PM
To: 'Fuji Kreider' <fkreider@campblackdog.org>; TARDAEWETHER Kellen * ODOE <Kellen.TARDAEWETHER@energy.oregon.gov>
Subject: RE: Some questions-- again!

Oops, one more: And, if a petitioner can't zoom-in (e.g.: Matt Cooper has a family gig for ashes to be spread ... the whole week on the coast in an RV park).... What to do? He is thinking about video-taping his testimony (depending on what Jesse says is the procedure, time, etc.) and sending it to be played (as if he was present on the webex/zoom).

Sorry I spaced-out that question below.... -Fuji

From: Fuji Kreider [<mailto:fkreider@campblackdog.org>]

Sent: Monday, August 1, 2022 6:01 PM

To: 'TARDAEWETHER Kellen * ODOE'

Cc: Fuji Kreider-CBD

Subject: Some questions-- again!

Hi Kellen,

Hope you are keeping cool—albeit, it seems that the heat wave is over—this one anyway. I have two or three questions for you:

1. I remember you or maybe it was Max or Todd, telling us that IPC pays ODOE around \$40K per month for the work on processing the ASC, etc... Is this correct; and/or can you tell me how much (doesn't have to be exact)? Please let me know if I need a public records request for this info. If so, I'll do one—please tell me how quickly this can be processed and format/forms or link? Thanks. In the past the number/amount was shared, but I can't find that. We're a bit curious as to how much of their \$200 million permitting costs have been for ODOE vs, OPUC/IRP, NEPA case, etc. You get the idea. I don't expect you to know all of that—just the ODOE costs are enough. Thanks!
2. The EFSC special hearing for exceptions in the contested case is on EOU campus. Parking is \$2 per day unless folks park at the stadium (a bit of a walk for some). Anyway, I just wanted to give you guys a heads up – and also request/hope that there will be signage or something, for folks to follow how to get to the meeting/hearing. The Gilbert Center is fairly new (formerly Ackerman School Auditorium) and many in the community do not know where it is. Probably you could ask EOU (as part of your rental fees) to allow parking at the Gilbert parking lot for free? And/or ask them to put up the signage for you guys (& community).

We're looking forward to getting more information from Jesse Ratcliff—ASAP--on the procedures and what to prepare and expect. There isn't much time – and for some they are already telling us that they won't be in town, so, we'll need zoom (or webex) protocols, etc. for those that will need to zoom in.... If there is anyone else that we should be asking about things like this, please advise. Thanks Kellen!

Take care,
Fuji

March 24, 2020

Route Update: Boardman to Hemingway Transmission Line



I'm writing to update you on the Boardman to Hemingway transmission line. Until now, we have considered two routes for the line in Union County: the Mill Creek Route and the Morgan Lake Alternative. We're now focused on building the Morgan Lake Alternative. Please see the back side of this letter for a map of both routes.

As you may recall, in 2016, a committee of Union County residents asked the U.S. Bureau of Land Management to consider a route that parallels the existing transmission line along the hillside west of La Grande. That led to the Mill Creek Route, which would be visible from town.

With help from local landowners, Idaho Power developed the Morgan Lake Alternative. This route would run behind the ridge southwest of Morgan Lake Park, out of the city's view. To further reduce visibility near the park, strategic sections would use shorter, H-frame structures instead of lattice towers.

We've also committed to helping improve recreation at Morgan Lake Park. The community can choose the improvements. Idaho Power and our fellow project participants will help pay for them.

Over the past two years, the community has shown a preference for the Morgan Lake Alternative. That's why we are pursuing it instead of the Mill Creek Route.

Since your property is near the Mill Creek Route, you don't need to take any further action. If you have any questions, please contact me at 208-388-2483 or mstokes@idahopower.com.

Sincerely,



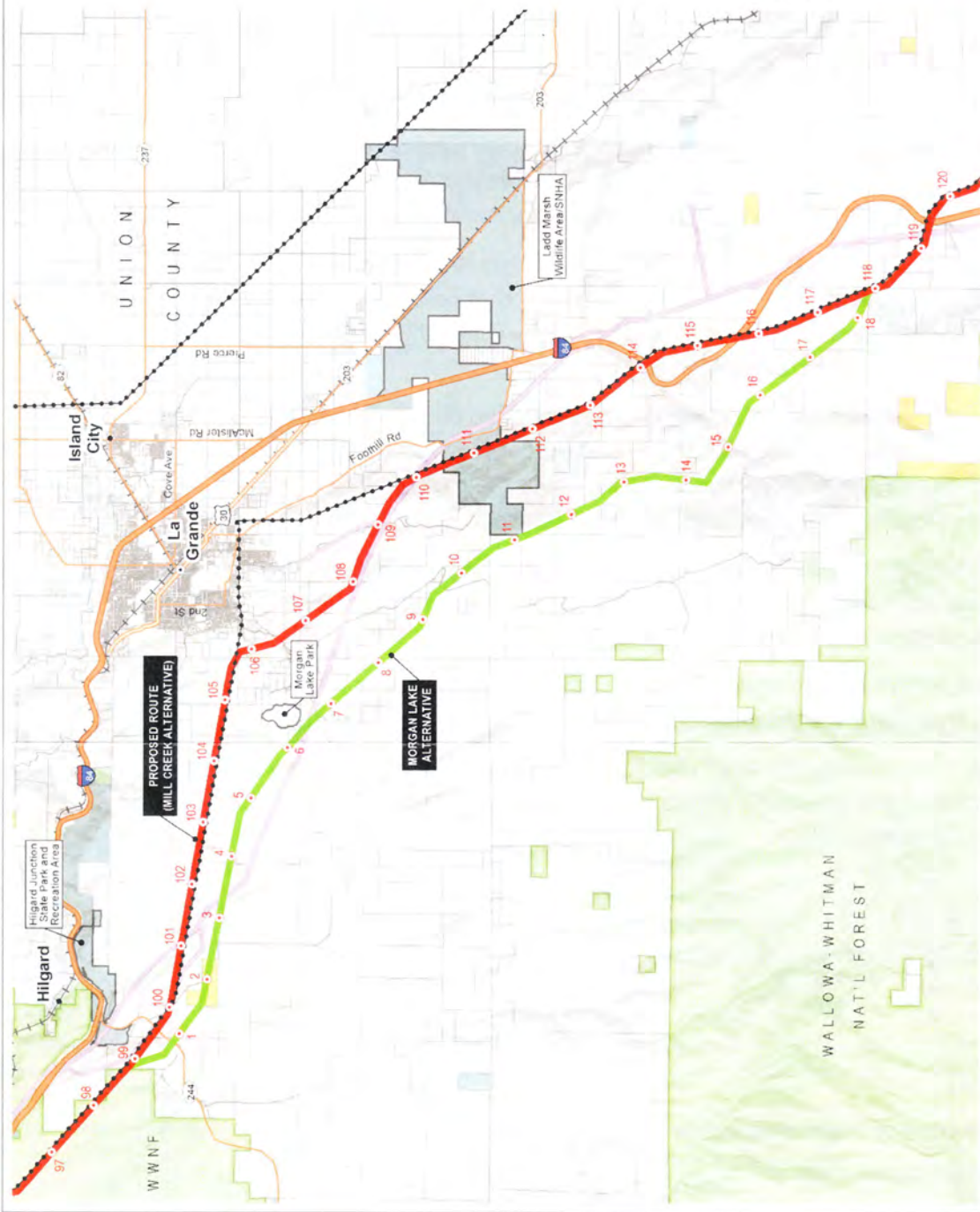
M. Mark Stokes, P.E.
Idaho Power Engineering Project Leader
mstokes@idahopower.com

208-388-2323, or
1-800-488-6151
(outside the Treasure Valley)

1221 W. Idaho St. (83702)
P.O. Box 70
Boise, ID 83707

Boardman to Hemingway
Transmission Project

Route Alternatives
La Grande Area
Union County



- Project Features**
- Proposed Route
 - Abandonment
 - Mile Marker
 - Land Status
 - Bureau of Land Management
 - Forest Service
 - Private
 - State or Local
 - State Parks and Recreation or Wildlife
- Other Features**
- Interstate
 - Highways
 - Major Roads
 - Railroad
 - Existing Transmission Line
 - Existing Pipeline
 - Parcels

SCALE
No warranty is made in the accuracy of parcel boundaries or correct numbering.

SOURCE:
BENTON COUNTY, OR. AERIAL PHOTOGRAPHY
USFS, 1:50,000 maps



From: TARDAEWETHER Kellen * ODOE
[Kellen.Tardaewether@oregon.gov]
Sent: Tuesday, August 4, 2020 8:10 AM
To: jim kreider
Cc: Fuji Kreider
Subject: RE: Question about primary and secondary routes in Union county
in the PO

Good morning Jim and Fuji!

Sorry I missed the call. I'm not getting my voicemails forwarded for some reason and have tried having folks in the office help, obviously it isn't working so thank you for pointing it out and I'll try something different.

I know that most folks are familiar with the routes named from the NEPA review done by the BLM. Indeed, even IPC in its letter you attached is using a name of the route from the NEPA review and one from the EFSC review...which is confusing. The routes in the application under review by EFSC in the vicinity of La Grande in Union County are the proposed route and the Morgan Lake alternative. Regardless of the naming of the routes (proposed vs alternative- in your email you refer to it as preferred and secondary), EFSC reviews both routes the same against the applicable Council standards, etc. If Council approves both routes then the applicant would select which routes it prefers and comply with any conditions of approval for the selected route. I believe the proposed route (EFSC review) is the same as the Mill Creek Route (NEPA review).

I understand that IPC has sent out these letters. IPC may publicly announce what it likes about which route it intends to construct and operate. However, IPC has left both routes in the application under review, therefore the proposed order continues to review, and recommends approval (with conditions) of both routes. If the B2H proposed facility is approved by EFSC and IPC wishes to modify any routes, they would need to go through the EFSC amendment process or submit an amendment determination request (ADR). However, that does not appear to be what's happening. It appears that IPC is publicly announcing which route it would select if approved by EFSC, the Morgan Lake alternative and not the proposed route. Regardless, and as

mentioned, both routes will be reviewed by EFSC and if approved, IPC may select either route. Hope this helps!

Kellen

Kellen Tardaewether
Senior Siting Analyst
550 Capitol St. NE Salem,
OR 97301
P: 503-373-0214

C: 503-586-6551
P (In Oregon): 800-221-
8035

From: jim kreider <jkreider@campblackdog.org>
Sent: Monday, August 3, 2020 3:31 PM
To: TARDAEWETHER Kellen * ODOE <Kellen.Tardaewether@oregon.gov>
Cc: Fuji Kreider <fkreider@campblackdog.org>
Subject: Question about primary and secondary routes in Union county in the PO

Kellen -- FYI - just tried to call you at the office and mobile numbers your mailbox is full ;-(

In reality I was tired of typing stuff and just wanted to talk about what's in this email and to ramble a bit - lucky you were out and the mailbox was full ;-)

Since you are primary keeper of all things related to this project I have a question that I would like clarification on. In my and others looking through the PO it appears that the Mill Creek route is the preferred route and Morgan Lake is the secondary. Is that a fact?

The reason I ask is we've had several people so far tell us that they didn't need to participate in the contested case process because they got a letter from Idaho Power saying they are pursuing the Morgan Lake Route instead of the Mill Creek Route. The first paragraph says ...

I'm writing to update you on the Boardman to Hemingway transmission line. Until now, we have considered two routes for the line in Union County: the Mill Creek Route and the Morgan Lake Alternative, We're now focused on building the Morgan Lake Alternative. Please see the back side of this letter for a map of both routes.

and the 2nd to last paragraph ...

Over the past two years, the community has shown a preference for the Morgan Lake Alternative. That's why we are pursuing it instead of the Mill Creek Route.

If there is no mention, suggestion, or hint of the route change in the PO as described in the attached letter what would one call the action of sending such a letter by Idaho Power to a landowner on the Mill Creek Route? Before I write to IPC I felt I needed to check with you to do diligence by checking the facts I think are true to be sure they are true. True confessions -- I'll never read every page of every document and attachment but think I know someone who might have.

Thanks -- jim

From: TARDAEWETHER Kellen * ODOE
[Kellen.Tardaewether@oregon.gov]
Sent: Tuesday, November 3, 2020 11:00 AM
To: Fuji Kreider
Cc: 'Jim Kreider'
Subject: RE: quick question...

I think it's best when discussing the state EFSC review, to use the terms for the routes proposed in the application for site certificate (ASC). So, in Union County, there is the proposed route and Morgan Lake alternative. That said, as you are aware, EFSC will review all routes and if all routes meet the applicable EFSC standards, the route(s) will be approved and Idaho Power will have the option to select which routes they want to construct and operate subject to the applicable site certificate conditions. The routes not selected will simply not be constructed therefore there will not be applicable site certificate conditions. The applicant does not need to amend it's site certificate to "remove" routes not constructed...again, if approved. Hope this helps,

Kellen



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Stay connected!

From: Fuji Kreider <fkreider@campblackdog.org>
Sent: Tuesday, November 3, 2020 9:57 AM
To: TARDAEWETHER Kellen * ODOE <Kellen.Tardaewether@oregon.gov>
Cc: 'Jim Kreider' <jkreider@campblackdog.org>; 'Fuji Kreider' <fkreider@campblackdog.org>
Subject: RE: quick question...

Hi again—"quick fingers"! ;-)

So basically, in Union County, the ASC route IS what we call the Mill Creek route; and the Morgan Lake is considered an "alternative." And, at this point, they are both in play. If they chose to remove or withdraw the Mill Creek route and go with the alternative, what would that do to the application and the process? It wouldn't be an amendment, right? An "amendment" would only come *after* a cite certificate was already issued, right?

Happy to know that Kaplan is already walking! Wow, time flies... I don't know about you, but during these days of covid, some things seem to be flying bye... and other things seem to be taking forever!

Fuji

From: TARDAEWETHER Kellen * ODOE [<mailto:Kellen.Tardaewether@oregon.gov>]
Sent: Tuesday, November 3, 2020 9:50 AM
To: Fuji Kreider
Cc: 'Jim Kreider'
Subject: RE: quick question...

Hi Fuji and Jim!

Kaplan is doing amazing and started walking and will start talking soon too. It's all very exciting!

As we have discussed and I've provided a written explanation before, the routes as proposed in the application for site certificate (ASC) are what EFSC is reviewing. The proposed route and alternative routes, including the Morgan Lake alternative are proposed in the application for site certificate so all are being reviewed by EFSC. Please note that there is not a Mill Creek Route proposed in the ASC and that is a term derived from the NEPA review. Idaho Power has not removed any routes from the ASC, so all of them continue to be under review. Idaho Power may represent their preferences for routes to the public and as a company and that does not impact the EFSC review. As I understand the letter they previously sent, it was to inform interested persons of their intended route, so people that have concerns about either or both routes have advance notice of their intended route selection, if approved by EFSC. Hope this helps,

Kellen



Kellen Tardaewether
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Stay connected!

From: Fuji Kreider <fkreider@campblackdog.org>
Sent: Tuesday, November 3, 2020 9:29 AM
To: TARDAEWETHER Kellen * ODOE <Kellen.Tardaewether@oregon.gov>
Cc: 'Fuji Kreider' <fkreider@campblackdog.org>; 'Jim Kreider' <jkreider@campblackdog.org>
Subject: quick question...

Hi Kellen,

Hope you and Kaplan are well and hangin' in there during these crazy times... ;-)

I think we've asked you this before, but my memory?...

Idaho Power is still saying that they are not pursuing the Mill Creek route in Union County. Is this true? I think we told you about the letter that Mark Stokes sent to folks along the Mill Creek route that we "don't need to take any further action." Can you clarify what the status of the Mill Creek route is, because to our understanding it is still being considered in the EFSC process—and it's even the preferred route in Union County. Thanks a lot, Kellen.

Hope the day – and week – brings all of us some much needed joy/relief?!

All the best,

Fuji

Subject:Re: Precondemnation circuit court proceedings that I'd like to bring to the council's attention

Date:Thu, 24 Feb 2022 12:42:28 -0800

From:jim kreider <jkreider@campblackdog.org>

To:CORNETT Todd * ODOE <Todd.CORNETT@energy.oregon.gov>

CC:Fuji Kreider <fkreider@campblackdog.org>

Thanks Todd - I'm not sure you can understand my frustration. It has been amplified by ODOE/EFSC hiding behind rules to avoid a dialog on IPC's actions rather than dealing with the issue in front of them.

When I worked for the state as a director it was my job to make the rules work to get a job done and the human element was front and center. Rules could often be adapted to the situation to allow for timely resolution.

EFSC has sure bent, aka interpreted, rules to get the answers they wanted as demonstrated by the recent supreme court rulings against ODOE. Now they don't want to know about the reality, pain, and suffering they have created. This is the kind of government we all love to hate.

Could you please show me the ORS's and OAR's you are using to say ODOE/EFSC does not have any authority over IPC's actions for what they are doing. Having condemnation authority is not an issue in this situation since that is not occurring.

Page 47 lines 31-35 of the Proposed Order state the council can impose conditions on the applicant. Those lines read, "The Council can impose conditions requiring the applicant to conduct the necessary surveys prior to construction (pre-construction surveys) and submit survey results to applicable reviewing agencies and the Department for review and approval." Request that the council tell IPC that the "over the fence" methodology as provided is how they are to proceed and all court cases need to be dropped if they wish to proceed.

Thank you -- jim

On 2/22/2022 7:55 AM, CORNETT Todd * ODOE wrote:

Hi Jim,

I can appreciate the frustration of this situation because of how this issue is generally connected to Idaho Power's site certificate application with EFSC. As you point out, the Project Order articulates a way that Idaho Power can conduct literature surveys, desk top surveys and over the fence surveys in some circumstances in order for their application to be complete and reviewed by ODOE and EFSC. For those circumstances ODOE and EFSC are not requiring physical access to properties. It is important to note that the reason ODOE and EFSC are not requiring physical access to properties is because EFSC does not have any authority to force a landowner to allow Idaho Power or any other applicant on their property. Therefore, whatever statutes, rules or authority Idaho Power is using in their precondemnation efforts does not come from EFSC. And as such, EFSC simply does not have any authority to step in on this matter.

In your last sentence you indicate that you are willing to explain this in greater detail at the next Council meeting. The agenda is already set for this Friday's meeting so there will not be an opportunity to add it to that agenda. If you wish to request this issue be added to a future Council meeting per the rule below, please provide me with the following:

- Description of the agenda item
- Who will be presenting
- Anticipated amount of time of your presentation

345-011-0035: Requests to Place Items on the Agenda

(1) Any person may request formal Council action on a particular subject (an "action item") by submitting a written request to the Department of Energy. With the concurrence of the chair, the Council Secretary shall place the requested matter on the agenda for discussion at the next meeting occurring at least 14 days after the request is received by the Department. The Council shall treat the matter as an information item at that meeting and may take final action on the matter if a majority of the members present agree that the request is so substantial and of such immediate concern that the Council should not defer action until a future meeting. Normally, however, the Council will defer action on the matter until a future meeting.

(2) Any person may request Council discussion of an information item by submitting a written request to the Department. With the concurrence of the chair, the Council Secretary shall place the requested matter on the agenda for discussion at the next meeting occurring at least 14 days after the request is received by the Department.

(3) The provisions of section (1) do not apply to petitions requesting the Council to initiate a rulemaking proceeding, as described in OAR 137-001-0070, or petitions requesting the Council to issue a declaratory ruling, as described in OAR 137-002-0010.

Regards,

Todd



Todd Cornett

Assistant Director for Siting
550 Capitol St. NE | Salem,
OR 97301

P: 503-378-8328

P (In Oregon):

800-221-8035

todd.cornett@energy.oregon.gov



Stay connected!

From: jim kreider <jkreider@campblackdog.org>

Sent: Thursday, February 17, 2022 5:04 PM

To: CORNETT Todd * ODOE <Todd.CORNETT@energy.oregon.gov>

Cc: Fuji Kreider <fkreider@campblackdog.org>

Subject: Precondemnation circuit court proceedings that I'd like to bring to the council's attention

Greetings Todd,

As I mentioned at the last EFSC meeting I wanted to bring Idaho Powers Precondemnation proceeding to the council's attention. I would appreciate your forwarding this information to them.

Idaho Power has begun serving precondemnation circuit court papers on landowners that refuse IPC entry to their property to conduct surveys. In an email to Senator Findley from Christy Splitt, ODOE Government Relations Coordinator, it says, "While pre-construction surveys associated *with an approved site certificate* are under EFSC's jurisdiction, for the Boardman to Hemingway project pre-construction surveys are not required to occur now since the project is currently under review and a final decision has not yet been made." If pre-construction surveys are not required to occur now how is Idaho Power able to bully landowners by doing this. They do not have permission to build it – period.

This is especially aggravating because in the proposed order ODOE lays out an "over the fence" process to survey land when refused permission from the landowner. Additionally the email from Christy Splitt says, "... the Energy Facility Siting Council do not have authority to step in." It is further stated, "The pre-condemnation proceedings that are described in the email and attached letter are not within EFSC's jurisdiction since EFSC does not have any eminent domain authority. Therefore, ODOE/EFSC has no authority to order Idaho Power to cease these activities as requested in the attached letter."

EFSC does not need eminent domain authority. This was anticipated! EFSC has the proposed order with a thoughtful "over the fence" process laid out. Please explain to us why EFSC does not have authority over its own process?

I hope after reading the attached materials you will understand why the public does not understand why EFSC is throwing landowners under the Idaho Power bus and creating additional financial and psychological challenges. Idaho Power can wait and do the surveys when to time period to do them opens.

I am more than happy to visit with you at your next meeting to explain this in greater details if needed.

Thank you for your consideration,

Jim Kreider

Idaho Power Timeline

For more than 16 years, Idaho Power has been unwavering in its insistence that the B2H project, haphazardly designed to address an unproven energy shortage, is needed to provide for Idaho's purported power needs.

TIMELINE FOR B2H PROJECT to OPUC:

- 2006 first IRP with the B2H presented to OPUC
- 2008 President Obama names B2H one of the seven fast track transmission projects, designed "to speed economic recovery by creating thousands of jobs."
- 2008 Idaho Power files its first plans for Preliminary Site Certificate Application.
- 2010 Idaho Power files new plans for Site Certification Application
- 2011 President Obama's Pilot Project Rapid Response Team arrives in Idaho to help move the project along. Idaho Power plans to have rights of way approved between 2012 – 2014.
- 2013 Five years after its first submission, Idaho Power submits its Preliminary Site Certificate Application to EFSC.
- 2018 Another five years later, Idaho Power's Site Application is accepted by ODOE as complete.
- 2020 Twelve years after its first filing, ODOE Proposed Order on B2H Site Certificate is completed.
- 2021 Idaho Power unrealistically "expects to finalize permitting." In the meantime:
 - 2021 Idaho Power is on the 6th extension for signing MOU with BPA and Pacific Corps. All indications are that BPA will be leaving the partnership. Pacific Corps does not list B2H in its IRP five-year plan.
- 2022 ODOE Energy Facility Siting Council granted Contested Case standing to 36 individuals on 76 errors, omissions and discrepancies in Idaho Power's B2H Application for Site Certificate. ALJ's calendar for contested case hearings continues until July 2022.

Note this report from OPUC Staff "This [2029] IRP cycle was highly unusual. When the Company requested its first amendment in July 2019, it was uncertain how long it would take, but the Company eventually filed an Amended IRP on January 31, 2020. At that time, Staff was aware of co-participant risks, but the Company continued to reassure Staff in the Amended IRP and its Reply Comments that all three parties were financially committed.⁹⁵ The Company submitted two additional updates—one that was

shorter and only involved a few updated pages, and finally the Second STOP B2H Coalition Application for Rehearing or Reconsideration of Order No. 21-184 3 A mended IRP on October 2, 2020. It was not until July 1, 2020, that the Commission received a concrete update about a change in partnership, about four months before the Company filed its final iteration of the IRP.⁹⁶ Because of the unusual nature of this IRP cycle, introducing significant updates to data and assumptions late into the process, and across four different iterations did not seem practicable, and would have introduced further confusion into an already convoluted IRP cycle. The downside to this approach is that because Idaho Power has held certain assumptions constant, Staff is concerned that the Preferred Portfolio may not provide an accurate reflection of current costs and risks to Idaho Power customers. These are valid concerns, and Staff reiterates its previous recommendation that the Company's Final Comments should defend its preferred portfolio and provide any material updates to concerns Staff has raised in these comments." (STOP B2H Coalition Application for Rehearing or Reconsideration of Order No. 21-184, pp. 2-3)

This is far from industry best practices. The delays in Idaho Power's construction of the B2H have resulted from Idaho Power's hasty filings, indecisive partnerships and misguided choice of routes. As I commented at an EFSC public meeting in October 2018, "If the B2H application were an airplane, "it would have crashed long ago."

In the meantime, what has happened to the other six "fast track" transmission projects on President Obama's list?

Gateway West, Wyoming/Idaho, several segments are complete & in service.

Susquehanna to Roseland, New Jersey/Pennsylvania, complete and in service, May 2015.

Hampton-Rochester La Crosse Line, Minnesota/Wisconsin, complete and in service, April 2016.

Trans-West Express, under construction, April 2019 site approval.

1-5 Corridor Reinforcement Transmission Line cancelled by BPA in May 2017: *[doubling costs] prompted us to take a hard look at all of our transmission practices and analytics, including a fresh look at load (electrical demand) forecasts, generation changes and market dynamics.*

SunZia Southwest Transmission Project, New Mexico/Arizona.

Arizona regulators approved the project in 2018;

New Mexico regulators rejected the project in 2018 based on uncertainties about the route and withdrawal of partners, among other issues.

Obviously the initial glow of Presidential "fast track designation" has faded. **Idaho Power faces the same issues that caused cancellation of the SunZia Southwest Transmission Project.**

Legal challenges to Idaho Power's chosen routes will delay the B2H until July 2026 or later.

The Company's has failed to accomplish a signed MOU with its initial partners and has made plans to assume BPA's partnership.

Every transmission project is deemed essential until the day it is cancelled.

Idaho Power initially claimed a 2016 completion date was essential. It wasn't. Idaho Power's claim for "need" has always been tenuous; power usage has been flat for ten years. The Company's newest claims to deliver Green Energy are equally questionable. It's notable that the Idaho PUC staff has recently voiced substantial concerns about whether the B2H is the least cost/least risk option available.