

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

PCN 5

Michael McAllister  
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January 6, 2023

Oregon Public Utility Commission Attn.:  
PCN 5, Administrative Hearings Division  
Public Utility Commission of Oregon  
PO Box 108 Salem, OR 97308-1088

Sent via email to:  
puc.filingcenter@puc.oregon.gov

RE: In the Matter of Idaho Power Utility Company Petition for Certificate of Public Convenience and Necessity, PCN 5,  
Memorandum Issued: December 19, 2022

John Mellgren  
Administrative Law Judge,

Pending before the Supreme Court of the State of Oregon, I am Petitioner, verses Energy Facility Siting Council, Oregon  
Department of Energy, and Idaho Power Company (IPC), Respondents – **S069920**.

In the Memorandum, you state that “I am particularly interested in hearing from the parties on the specific issues on  
appeal and how the issues on appeal may impact the PUC’s review of Idaho Powers petition in this matter, if at all.”

I see the issue in my case on appeal potentially affecting OPUC’s review of the Idaho Power’s petition in several ways. As  
context, one of my issues raised in **OAH Case No. 2019-ABC-02833** was, in effect that, that the BLM’s environmentally  
preferred route pursuant to NEPA in Union County (the Glass Hill Alternative) should have been included in the  
application such that EFSC could review the application, to the maximum extent feasible, consistent with the federal  
agency review under NEPA. This is required by a state law 469.370(13). Compliance with this statute is significant for  
many reasons, including that it incorporates important NEPA analyses into the state process as to non -federal lands. I  
was denied the opportunity to be heard on the merits of my issue relating to compliance with 469.370(13) in the  
contested case. I am now appealing that improper exclusion of the issue from consideration in the contested case at the  
Oregon Supreme Court.

In the Energy Facility Siting Council – **OAR 345-020-0011 (d) Exhibit D states:**

If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a  
transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300,  
identification of at least two proposed corridors, as defined in OAR 345-001-0010, or identification of a single  
proposed corridor with an explanation of why alternate corridors are unlikely to better meet the applicant’s  
needs and satisfy the Councils standards. The applicant must include an explanation of the basis for selecting  
the proposed corridors and, for each proposed corridor, the information described in subsections (e), (g), (i), (k),  
(n), and (p) that is available from existing maps, aerial photographs, and a search of readily available literature.

Exhibit D establishes that a route justification is a prerequisite for an **Application for Site Certificate (ASC)**.

Throughout the EFSC case **OAH Case No. 2019-ABC-02833**, and now in the pending appeal **S069920** at the Supreme Court, it is my contention that IPC's ASC is incomplete because in Union County, IPC's Proposed Mill Creek Route and Morgan Lake Alternative, there is no "explanation of why alternate corridors are unlikely to better meet the applicant's needs and satisfy the Councils standards. The applicant must include an explanation of the basis for selecting the proposed corridors and, for each proposed corridor." In their ASC, IPC chose to eliminate the Bureau of Land Management's (BLM) National Environmental Policy Act (NEPA) "Environmentally Preferred Alternative" in both the Draft and Final EIS prepared over years of multidisciplinary and interagency analysis. The route segment, identified by the BLM as the "Glass Hill Alternative" was chosen through the extensive EIS process and is the federally designated route in the Record of Decision (ROD) for Union County. Not only did IPC exclude this Glass Hill Alternative from its application, but they also misrepresented in the application that the "Glass Hill Alternative Corridor Segment was not carried forward by BLM as the agency preferred route" as Idaho Power's "Basis for Corridor Change."

There are two problems with IPC's ASC when it comes to routing through Union County. First, rather than compare their newly developed Union County routes to the federal "Environmentally Preferred Alternative" – the BLM/NEPA/ROD, they chose to simply ignore it because ODOE/EFSC and IPC claim that their route is on private lands and therefore do not need to comply with the federal ROD. The second flaw was that they identify their Proposed Mill Creek Route as the BLM/NEPA/ROD as the Agency Preferred Alternative. In the ASC, they make a comparative analysis of their Mill Creek Route ("IPC's new BLM NEPA Alternative") to their Morgan Lake Alternative. I see this misrepresentation of routes as proof that the ASC is incomplete, as well as evidence of "fraud, oppression and bad faith, or abuse of power" **Moore Mill & Lbr.Co. v. Foster, 337 P.2d 810 (Or. 1959) Oregon Supreme Court.**

Further evidence of fraud, oppression and bad faith are found in my above-mentioned court record, **OAH Case No. 2019-ABC-02833**, which I am bringing forward to appeal in Case **S069920** at the Supreme Court. The Morgan Lake Alternative (per IPC's application/ASC) was developed by one landowner late in the BLM's NEPA process. He proposed the Morgan Lake Alternative to IPC by letter and this route first appeared in the FEIS, along with the newly created Mill Creek Route, after comments closed in the DEIS. Neither were selected by the BLM. The BLM did not allow for public comment of the FEIS; there was no public notice or opportunity for comment on the two Union County routes. IPC manipulated these two routes (which were not selected during the EIS process), as the only two routes for Union County in their application at ODOE/EFSC; and then they shepherded the Morgan Lake Alternative to final approval for the certificate. The only explanation given by IPC about their creation of the Morgan Lake Alternative is that they were "working with landowners." That single landowner has since sold the property.

In *Moore Mill & Lumber Company v. Foster*, the Oregon Supreme Court is clear "that the condemner has a right to select the route it desires to acquire for a right of way, with which the courts will not interfere except in case of a clear showing of bad faith." Also, the Court is clear that "the owner whose land is under condemnation may always submit evidence showing fraud, bad faith or abuse of discretion."

Idaho Power's creation of the Morgan Lake Alternative and their comparison to their "Agency Preferred" Mill Creek Alternative (not the BLM/NEPA/ROD "Environmentally Preferred Alternative") is clear proof of fraud, bad faith, and abuse of discretion. There are numerous long-term land stewards along the Morgan Lake Route that have been directly impacted by IPC's fraud, bad faith, and abuse of discretion.

I hope that this sharing of thoughts is helpful to you in your oversight of the Public Trust.

Respectfully submitted

Michael McAllister