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January 10, 2023

VIA ELECTRONIC FILING

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Public Utility Commission of Oregon

Attn: Filing Center

201 High Street SE, Suite 100

Salem, OR 97301-3398

Re: Comments of Michael McAllister PCN 5 IDAHO POWER CERTIFICATION OF PUBLIC CONVENIENCE AND NECESSITY

Please add my comments below to OPUC docket PCN 5 IDAHO POWER CERTIFICATION OF PUBLIC CONVENIENCE AND NECESSITY.

I did submit Public Testimony (#13) at the PUC public meeting on November 16, 2022 in La Grande. This written testimony is a follow-up where I specifically respond to, **Idaho Power Company Supplemental notes to the December 8, 2022 Workshop Presentation, Docket No. PCN 5**. Specifically, I address IPC's answers to two of the Staff Topics.

Note: Blue face text is as IPC responds to Staff Topics. Black face text are my response comments.

Staff Topic 7 (Slides 18 – 28)

Please describe the process and criteria that IPC used to select the proposed route for the transmission line and the alternatives described in the CPCN petition. Include a discussion of all other routes considered and rejected.

Boardman to Hemingway has been in permitting for quite some time and has an extensive siting history.

Idaho Power's corridor selection process occurred primarily in four phases:

1. Phase One between 2008 and 2010,
2. Phase Two between 2010 and 2012,
3. Phase Three between 2012 and 2015, and
4. Phase Four in 2016.

To develop its initial proposed route, Idaho Power evaluated both siting constraints and siting opportunities. Data collection and meetings with stakeholders resulted in over 200 datasets and helped establish the level of permitting importance from the stakeholder perspective of each constraint for siting alternative corridors.

Constraints – The constraints were those resources or conditions that potentially limited transmission line siting because of relative sensitivity based on rules and regulations as well as stakeholder input. Some of the key constraints included: agricultural areas, high desert areas, mountainous regions, land use zones, existing developments, historic resources such as the Oregon Trail, and sage grouse habitat.

Opportunities – Siting opportunities were those resources or conditions that could accommodate a transmission line because of their physical characteristics or regulatory designations. Key siting opportunities include the Bureau of Land

Management's ("BLM") Vale District Utility Corridor, the BLM's West-wide Energy Corridor, the Wallowa-Whitman National Forest Utility Corridor, Interstate 84, existing transmission lines, and existing pipelines.

Idaho Power presented its originally proposed corridor in 2008. Because of the level of public interest, corridor suggestions, and opposition to the originally proposed corridor, Idaho Power initiated a process to engage residents, property owners, business leaders, and local officials in siting the project. Through the Community Advisory Process ("CAP"), Idaho Power partnered with communities and other stakeholders from northeast Oregon to southwest Idaho to identify proposed and alternative corridors and station locations for the project.

Project Advisory Teams

Idaho Power's Community Advisory Process took place in 2009 and early 2010. Project Advisory Teams ("PAT") representing five geographic areas were convened for the purpose of identifying, developing, and recommending proposed and alternative corridors for the project.

I was a participant in the Project Advisory Teams ("PAT") process. I was invited to attend the first meeting (December 14, 2009) held at the Best Western Sunridge Inn in Baker City. The final Agenda Item (8:45 p.m.) was Next Steps: 1) Discuss further detailed analysis, 2) Select proposed and alternative routes to submit to BLM.

Staff Topic 8 (Slides 29 and 30)

Explain the difference between the BLM route and EFSC B2H route for which IPC is seeking the CPCN certificate in terms of physical differences, cost differences, utilization/benefits differences, and differences in impacts on private vs. public lands and other environmental attributes including wildlife, vegetation, noise levels for impacted residents, project timeline and any other factors that were considered in comparing these two routes.

Most of this discussion was captured under the routing constraints that were presented under the previous topic.

I do not understand how this could be the case.

The BLM route and the EFSC B2H route are very similar with a few key differences.

In IPC's response to **Staff Topic 8** (above) they provide no explained differences. There are in fact many "key differences" between these two routes, including: topography, elevation, soils type, forested acres, fire risk, fish and wildlife habitats, and scenic values. Of great importance is the fact that the BLM/NEPA/FEIS route was extensively analyzed with public participation and the EFSC B2H Route was not.

Idaho Power has worked to develop an acceptable route through Union County for over a decade.

Since 2009, starting with IPC's PAT process, I have proactively assisted in the development of the "acceptable route" through Union County. The "acceptable route" pursued by IPC's Project Advisory Team since 2009 is the BLM/NEPA/FEIS Glass Hill Alternative. After nine years of pursuing this route with public participation, IPC, without any public notice, presented two new routes in Union County that they claim were developed through the BLM's NEPA process. These two routes were presented to the BLM near the end of the FEIS process in 2016. Neither of the routes packaged in the ASC were evaluated through the NEPA process. Only in IPC's 2017 Supplemental Siting Study (ASC Attachment B 3.2.3.3, IPC's Morgan Lake Alternative, page 9) are these two routes evaluated on a very cursory basis. In this "study", IPC identifies their new Proposed Mill Creek Route as the BLM/NEPA/FEIS Preferred Route (B 3.1-1, page 3, claiming further that the real BLM/NEPA/FEIS Glass Hill Alternative was "not brought forward in the FEIS."

It is Noteworthy here, that in the Energy Facility Siting Council – Chapter 345, Exhibit D

The Applicant must include an explanation of the basis for selecting the proposed corridors and, for each proposed corridor, the information described in (e), (g), (i), (j), (k), (n) and (p) that is available from existing maps aerial photographs, and a search of readily available literature.

This did not happen with the Morgan Lake Route. The BLM DEIS Glass Hill Alternative (“Environmentally Preferred Alternative”) was available literature.

See the ASC, (Exhibit B, Project Description, Table B-6, Proposed and Alternative Corridor Adjustments, page B-40).

BLM released the Draft EIS December 14, 2014 identifying the agency preferred alternative as the same as the environmentally preferred alternative alignment. BLM selected the agency preferred alternative that it believes would fulfill the statutory mission and responsibilities of the agencies while giving consideration to the economic, environmental, technical, and other considerations, and details further in bullet points.

Also, in the ASC (Exhibit B, Project Description, Table B-39, Proposed and Alternative Corridor Adjustments, page B-7) IPC states that the “Glass Hill Alternative was no carried forward by the BLM as the agency preferred route.” I see this as fraudulent.

Early on, Idaho Power considered the Glass Hill Route, along with at least one other route in the vicinity of Morgan Lake. However, the Glass Hill Route was confronted with substantial backlash from the affected landowners and other interested parties, some of which formed the Glass Hill Coalition specifically to challenge that route.

On February 28th, 2015 the Glass Hill Coalition held one meeting at La Grande’s Transportation Center. There, I signed the petition that was circulated – the petition proposing to put the B2H transmission line along the existing 230kv transmission corridor. At the meeting there was no mention of the Morgan Lake Route. Members of the Glass Hill Coalition were against the IPC original Proposed Route down “Cowboy Ridge.” Some members had issues with the Glass Hill Alternative. In view of the Glass Hill Coalitions proposal, the Morgan Lake Route is an even worse variation of IPC’s originally proposed (“Cowboy Ridge”) route. To be clear, the Morgan Lake Alternative was an unknown to the Glass Hill Coalition petition signatories.

The Confederated Tribes of the Umatilla Indian Reservation also expressed disfavor for the Glass Hill Route due to impacts to cultural resources.

I cannot speak to the Tribe’s expressed disfavor; however the literature shows that IPC’s Morgan Lake Route crosses Rock Creek below the confluence with Sheep Creek where the Tribe has a Conservation Easement along the lowest reach of Rock Creek which is identified as critical habitat for smolt Chinook Salmon smolts during the warmer waters in the Grande Ronde River. The BLM/FEIS Glass Hill Alternative crosses Rock Creek seven miles above the mouth of Sheep Creek and this critical habitat area.

The Morgan Lake Alternative was developed in response to those concerns, as well as in response to a request made by one of the affected landowners during the federal NEPA process to locate the route closer to the border of their property rather than bisecting it.

I am uncertain how and when the “affected landowner” first presented the IPC’s Morgan Lake Route. I first became aware of it more than a month after the February 28, 2015 Glass Hill Coalition meeting. The first evidence I have is a letter (dated February 27, 2015) from Idaho Power to the affected landowner which states “Thank you for providing an alternative route for the Boardman to Hemingway Transmission Line Project.” Very significantly, this new route makes changes to other affected landowners that did not receive the same consideration. Also, the date of the letter is one day prior to the Glass Hill Coalition meeting, where the same landowner did no sharing of his Morgan Lake Route. Again, to be clear, the Glass Hill Coalition signatories had no knowledge of the Morgan Lake Route which was developed by the landowner that arranged this Glass Hill Coalition meeting.

The Mill Creek Route was also developed during the NEPA process, in response to the Union County's request to site the project in parallel with the existing 230-kv line.

The Mill Creek Route was developed as an outcome of the Glass Hill Coalition signatories. Their interest was in moving the transmission line off Glass Hill, and siting B2H instead on the existing 230-kv line. As a result, the Union County Commissioners appointed the Boardman to Hemingway (B2H) Advisory Committee. At their scheduled meeting July 29, 2016, by unanimous vote, passed a motion for the following – Recommendation on Supplemental Environmental Impact Statement – We recommend that the Union County Board of Commissioners contact the Bureau of Land Management (BLM) to request that the BLM initiate a Supplemental Environmental Impact Statement (EIS). This Supplemental EIS is needed because there are transmission route segments on two routes in Union County that have not yet been analyzed by the BLM through the Draft EIS (DEIS) process. It is imperative that the new segments of routes receive the same scrutiny as all other portions of the proposed B2H route. It is the only way to permit the opportunity to inform the public and allow for public response and testimony. This must be done prior to the release of the Final EIS (FEIS). We further recommend that our Board of Commissioners notify the other counties who could be impacted to inform them of this Union County action and notify our two U.S. Senators.

Only in response to the false choice presented by IPC's Application for Site Certificate (absent the BLM/FEIS/DEIS Glass Hill Alternative) did Union County express a preference for IPC's Morgan Lake Alternative over IPC's Proposed Mill Creek Route.

Based on feedback received from the community, Idaho Power has elected to pursue the Morgan Lake Alternative. This route is out of the viewshed of the Grand Ronde Valley and more rural in nature. The two areas are both Private land and do not impact public vs private land.

The BLM/FEIS/DEIS Glass Hill Alternative is further out of the viewshed of the Grand Ronde Valley, and it is out of the viewshed of the city of La Grande's famed Morgan Lake Park. In 2019 La Grande's Mayor Steve Clements filed, City of La Grande Proclamation, Declaring and Clarifying Opposition to the Boardman to Hemingway Powerline Project. This proclamation, Whereas the Morgan Lake Alternative would adversely impact the view shed of the City's Morgan Lake Park and adversely impact the experience of visitors to this unique Park." The proclamation also states, "we request the application be revised to include the BLM Preferred route as the only route in the vicinity of La Grande.

In Conclusion, I find unacceptable, IPC's response to UPUC **Staff Topic 8 (Slides 29 and 30)**. Furthermore, I find that IPC's responses to demonstrate fraud, oppression, bad faith, and poor discretion.

Submitted by
/s/ Michael McAllister

Attached is reply to:

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,

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
PCN 5

Michael McAllister
60069 Morgan Lake Road
La Grande, OR 97850

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 **OAHC 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 Managements' (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