

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

|  |   |
|--|---|
| <b>IN THE MATTER OF IDAHO<br/>POWER COMPANY'S<br/>PETITION FOR CERTIFICATE OF<br/>PUBLIC CONVENIENCE AND<br/>NECESSITY</b> | <b>Docket: PCN 5<br/>Opening Brief<br/>Intervenor: John C. Williams</b> |
|--|---|

**Date: May 15, 2023**

**John C. Williams, Intervenor**

1 **Introduction**

2 I am John C. Williams. I own some 2600 acres of land west of Morgan Lake Park, Tax ID #  
3 03S37E01300, on to which the proposed B2H transmission line is projected. I have granted  
4 access to IPC's contractors for five surveys (archeological, hydrological, wetlands, roads, and  
5 structures) on my property, in agreed to allow access for eight other surveys (Three-Toed  
6 Woodpecker, Northern Goshawk, Rare Plant Inspection, Grey Owl and Flammulated Owl,  
7 Raptor, Noxious Weeds, Geotechnical Drilling or Access, Land Survey, and Appraisal Field  
8 Visit). In my Data Request, I asked IPC to share all data collected on my property and all reports  
9 the contractors have or will submit to IPC.

10

11 The entire project is subject to Section 106 of the NHPA. The Section 106 process has not been  
12 completed. 36 CFR Part 800.1 (c) states, The agency official must complete the section 106  
13 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior  
14 to the issuance of any license." This section goes on to state that, the agency official shall ensure  
15 that the section 106 process is initiated early in the undertaking's planning, so that a broad range  
16 of alternatives may be considered during the planning process for the undertaking.<sup>1</sup>

17 It has been argued that the broad range of alternatives have not been considered in a transparent  
18 way, but that is not an argument that I will focus on in this document.

19 The section 106 regulations, 36CFR Part 800 layout the Federal process for following the  
20 National Historic Preservation Act for Federally permitted projects, projects that are Federally  
21 funded, or occur on Federal lands.

---

<sup>1</sup> John Williams/200/4/Exhibit 203.

1 As part of the section 106 process there are standards that are included in the regulations, like  
2 those in 36 CFR Part 800.11 Documentation standards. This portion of the section 106  
3 regulations gives details on adequacy of documentation of historic properties and steps to  
4 identify and document determinations of historic property's eligibility. 36 CFR Part 800.11 (3)  
5 states, The basis for determining that no historic properties are present or affected. (e) Finding of  
6 no adverse effect or adverse effect. Documentation shall include: (1) A description of the  
7 undertaking, specifying the Federal involvement, and its area of potential effects, including  
8 photographs, maps, and drawings, as necessary; (2) A description of the steps taken to identify  
9 historic properties; (3) A description of the affected historic properties, including information on  
10 the characteristics that qualify them for the National Register; (4) A description of the  
11 undertaking's effects on historic properties; (5) An explanation of why the criteria of adverse  
12 effect were found applicable or inapplicable, including any conditions or future actions to avoid,  
13 minimize or mitigate adverse effects; and (6) Copies or summaries of any views provided by  
14 consulting parties and the public. (f) Memorandum of agreement. When a memorandum of  
15 agreement is filed with the Council, the documentation shall include, any substantive revisions or  
16 additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of  
17 any measures considered to avoid or minimize the undertaking's adverse effects and a summary  
18 of the views of consulting parties and the public.

19 It is my understanding that the identification process is still not complete for the historic  
20 properties on my property. There is a pending request for access to the property to do additional  
21 identification work that is scheduled for May 12-31<sup>st</sup>, 2023. Since there are no archaeological  
22 excavation permits that have been issued for evaluation of archaeological sites on the property, I  
23 have to assume that the work scheduled for May is for archaeological identification work. The

1 steps that follow the identification work for archaeological sites includes work to determine if the  
2 sites are eligible for listing on the National Register of Historic Places. As stated in 36 CFR Part  
3 800.11 (3) this includes determinations of eligibility, finding of effects, and potentially the need  
4 for future actions to avoid, minimize or mitigate adverse effects. If mitigation is needed this may  
5 include archaeological excavation known as data recovery at individual sites. These steps  
6 described are still pending.

7 It has also been brought to my attention that the archaeological fieldwork was using a 30%  
8 design plans for the B2H project. These are the plans that the archaeological contractor was  
9 using during its 2022 field work for this project. Completeness of this process has been what we  
10 should be striving for before IPC is granted its application for certificate of public convenience  
11 and necessity (CPCN).

12 IPC's contractors and others have identified 13 archaeological resources on the property within  
13 the APE and that is just what has been reported and identified at that time. Below is a list of  
14 archaeological work that is likely needed before the required section 106 work is completed per  
15 the professional archeologist that I employed and whom was available for cross-examination.  
16 But IPC chose not to cross<sup>2</sup>. (Williams/101, 102)

- 17 • Completion of the reporting for the 2022 field work.
- 18 • Completion of the 2023 field work, which I assume will include archaeological testing  
19 for determinations of eligibility at individual archaeological sites.
- 20 • Apply for state permits to conduct archaeological testing.
- 21 • Reporting of the findings and recommendations of the 2023 field work.

---

<sup>2</sup> Williams/101 and /102

- 1 • If there will be an adverse effect to any of these sites, additional data recovery in the form  
2 of archaeological excavation may be required at some site locations. This will work will  
3 require a programmatic agreement (PA) between Oregon State Historic Preservation  
4 Office, IPC and the BLM (the lead Federal agency for purposes of the section 106  
5 process) and other consulting parties as defined in the section 106 regulations (36 CFR  
6 800.6).
- 7 • Reporting of any additional data recovery work.
- 8 • Complete the draft of the Historic Properties Management Plan.

9 These are the steps left in the section 106 process that will need to be completed for the whole  
10 project, but also on my property. Coupled with the fact that IPC is still in a design phase that is  
11 far from being considered complete it seems to be premature to start the condemnation process  
12 or issue a certificate on the Williams property.

13 As stated above, given the federal permitting activity that still needs to occur, this docket is  
14 premature and should be paused until more clarity on the lands to be condemned is known. The  
15 application is therefore not in compliance with OAR 860-025-0030(2)(p); nor with OAR 860-  
16 025-0030(2)(c)(A-F) until the access roads (and maps) for my property are clear. They are  
17 currently undetermined.

18

19 **Notice of Correction:** I would like to correct the name and description of an Exhibit I entered  
20 into the confidential record filed on 4/25/2023. In ALJ Mellgren's "Ruling: Testimony and  
21 Exhibits Admitted" (5/10/2023) p. 4, there is an Exhibit "Unlabeled" "John Williams 2022  
22 Confidential Landowner Cultural Survey Reports from Idaho Power (3 files)." This filing is not  
23 a report but rather part of the DR#1 and therefore, should be marked and incorporated into

1 Williams/308; Description: DR#1 Response and two attachments (maps). Due to being served  
2 via U.S. postal service I was not informed in a timely manner to file this on 5/12/2023.

3

4 **I hereby declare under penalty of perjury under the laws of the State of Oregon that I**  
5 **prepared the above Opening Brief for the PCN5 docket, and that to the best of my**  
6 **knowledge and belief, declare the statements, testimony and exhibits to be true and that**  
7 **they were made for use by the Commission as evidence in this proceeding.**

8

9 **Dated this fifteenth (15) day of May, 2023.**

10 **/s/ John C. Williams**

11 **John C. Williams**