



Oregon

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To: Energy Facility Siting Council

From: Kellen Tardaewether, Senior Siting Analyst

Date: August 13, 2024

Subject: Agenda Item G: Boardman to Hemingway Transmission Line, Request for Site Certificate Amendment 2, Council Decision on Requests for Contested Case, and Possible Material Change Hearing and Public Notice of Hearing to Adopt Final Order (ORS 469.370(7)) for the August 22-23, 2024 EFSC Meeting

Attachments:

Attachment 1: Department Evaluation of Contested Case Requests

Attachment 2: Requests for Contested Case

Attachment 3: [Proposed Order on RFA2](#) [hyperlink]

INTRODUCTION

The Boardman to Hemingway Transmission Line Site Certificate authorizes construction and operation of an approximately 270.8-mile 500 kilovolt (kV) transmission line and related or supporting facilities extending across five Oregon counties (Morrow, Umatilla, Baker, Union and Malheur).

In Request for Amendment 2 of the Boardman to Hemingway Transmission Line Site Certificate (RFA2), Idaho Power Company (IPC or certificate holder) seeks approval from the Energy Facility Siting Council (EFSC or Council) to amend the Site Certificate to expand the site boundary and micrositing areas; site facility components in areas not previously evaluated; construct and operate a capacitor substation; increase the width of roads in areas of steep slope; and amend the language of several site certificate conditions.

The Draft Proposed Order (DPO) on RFA was issued by the Oregon Department of Energy (ODOE or the Department) on April 16, 2024. The Proposed Order on RFA2 was issued on June 28, 2024. The deadline for submission of a request for contested case on the Proposed Order was July 29, 2024. Seven requests for contested case were received by the deadline.

The Department provides a detailed analysis of each issue in Attachment 1 of this staff report. As presented Table 1 below and as analyzed in Attachment 1, the Department recommends Council find that none of the issues included in the requests raise a significant issue of fact or law that are reasonably likely to affect the Council's determination on whether the facility, with

the changes proposed by the amendment, meet the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, a contested case is not justified.¹ The Department recommends Council deny all contested case requests and adopt the Proposed Order based on the considerations described in OAR-345-027-0375 and subject to the existing, and recommended new and amended site certificate conditions.²

¹ OAR 345-027-0371(9).

² Scope of Council's Review applicable to Request for Amendment 2 (RFA2):

1. That the portion of the facility within the area added to the site boundary by the amendment complies with all laws and Council standards applicable to an original site certificate application;
2. The amount of the bond or letter of credit required under OAR 345-022-0050 is adequate; and,
3. The facility, with proposed RFA2 changes, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed RFA2 changes.

Table 1: Summary of RFA2 Contested Case Request Evaluation

Contested Case Requestor	Issue Number and Statement Summary ³	Properly Raised: - Within EFSC Jurisdiction - Timely Raised - Sufficiently Specific (Y/N)?	Request Raises a Significant Issue of Fact or Law (Y/N)?
Kevin March	Issue 1: Headwater and ephemeral streams are not accurately documented, will be impacted and are not mitigated under Fish and Wildlife Habitat and Threatened and Endangered Species standards and ODFW’s Fish Passage Law.	Yes	No
Irene Gilbert	Issue 1: RFA2 Proposed Order fails to require a full review of the area added to the site boundary required by OAR 345-027-0375(2).	Yes	No
	Issue 2: Certificate Conditions must require a bond amount that complies with the plain language and conditions of OAR 345-022-0000, OAR 345-027-0375, OAR 345-025-0006 and OAR 345-022-0050.	Yes	No
	Issue 3: RFA2 adds roads without fully evaluating the impacts they will have on resources or requiring timely and complete restoration.	Yes	No
	Issue 4: The Application and Proposed Order fail to document that all council standards have been evaluated for the area added to the site boundary. Issues lacking documentation or a timeline for completion include: Habitat, mitigation, T&E, bat surveys, species specific surveys for all T&E that may be present at the site.	Yes	No
Sam Myers	Issue 1: ODOE has failed to adequately judge the ability of IPC to organize or construct B2H.	Yes – partially.	No
	Issue 2: ODOE failed its mission to support public intervention during the review of the ASC and contested case.	Yes – partially.	No
Stop B2H	Issue 1: The evaluation of RFA2 for the area added to the site boundary fails to comply with OAR 345-027-0375(2)(a) requiring the review to be consistent with requirements for the original Site Certificate.	Yes – partially.	No
	Issue 2: Maps provided to the public for review are out of compliance with the review standards OAR 345-027-0375(2)(a) and OAR 345-015-0190, OAR 345-027-0360 (1)(b)(C),	Yes	No

³ If a contested case request provided a brief issue statement, Table 1 provides that statement. For requests that had a longer statement, summary, or narrative, the Department abbreviated those to fit within this table format. However, verbatim issue statements or narratives are provided in Attachment 1, Evaluation of Contested Case Requests, by Commenter.

Table 1: Summary of RFA2 Contested Case Request Evaluation

Contested Case Requestor	Issue Number and Statement Summary ³	Properly Raised: - Within EFSC Jurisdiction - Timely Raised - Sufficiently Specific (Y/N)?	Request Raises a Significant Issue of Fact or Law (Y/N)?
	and OAR Chapter 345, Division 21; OAR 345-021-0010(1)(c)(A) and (B)5, OAR 345-001-0010(55)(6); and OAR 345-027-0360 (1)(b)(C)(8)		
	Issue 3: RFA2 and the Proposed Order did not evaluate the Protected Area, Glass Hill State Natural Area (SNR) as required under OAR 345-022-0040 as revised in 2022, nor did it apply the avoidance mitigation required in the standard.	Yes	No
	Issue 4: Council should deny the use of a Type C/Amendment Determination Request (ADR) process for RFA2 because the proposed site boundary has not been fully evaluated per OAR 345-027-0375(2)(a). The ADR process/Type C Amendments disregard any public interest by excluding the public, and their due process rights to participate.	Yes – partially.	No
	Issue 5: RFA2 and the Proposed Order fail to comply with the Retirement and Financial Assurance Standards OAR 345-022-0050, 345-027-0375(2)(d), and the Mandatory Conditions under OAR 345-025-0006(8). Retirement and Financial Assurance Standard is one of the Standards whereby the Council cannot apply its balancing determination.	Yes	No
Wendy King	Issue 1: The possible changes in RFA2 will affect our Agriculture operation at Myers Farm. With possible refinement of even access roads, our historical location will be impacted by B2H construction and operational maintenance. Our scenic resource will be impacted.	Yes	No
	Issue 2: Information about the Bartholomew-Myers Farm as a historical resource under OAR 345-022-0090 has not been provided and the resource will be impacted by the approved application for site certificate route.	Yes – partially.	No
	Issue 3: RFA2 is not in compliance with the Wildfire Prevention and Risk Mitigation (OAR 345-022- 0115). RFA2 Ayers Canyon Alternative goes through Butter Creek Wildland Urban Interface.	Yes – partially.	No
Greg Larkin	Issue 1: Ambient noise monitoring procedures are inadequate and non-representative, his residence will be impacted by noise, certificate holder has the burden of noise monitoring, noise mitigation, which is inadequate.	Yes	No

Table 1: Summary of RFA2 Contested Case Request Evaluation

Contested Case Requestor	Issue Number and Statement Summary ³	Properly Raised: - Within EFSC Jurisdiction - Timely Raised - Sufficiently Specific (Y/N)?	Request Raises a Significant Issue of Fact or Law (Y/N)?
Susan Geer	Issue 1: RFA2 proposed changes would introduce invasive plant species and impact the hydrology of Winn Meadows, an important wetland in Glass Hill SNA, protected under OAR 345-022-0040, thereby causing significant adverse impact.	Yes	No
	Issue 2: The Council should also recognize that RFA1 and the Morgan Lake Alternative as approved, together with RFA2 result in Cumulative Effects with significant adverse impact to Glass Hill SNA (Protected Area Standard OAR 345-022-0040). The Council should call for an Amended Route between the Baldy Alternative and Hilgard State Park.	Yes	No
	Issue 3: <i>Pyrrocoma scaberula</i> (rough goldenweed), an extremely rare plant, is now listed as Endangered under OAR 603-073-0070. The approved route should be shifted to avoid the MorganLake/Twin Lake area where it grows.	Yes	No
	Issue 4: Mitigation called for in RFA 2 - Attachment 4 “Draft T and E Plant Mitigation Plan” is NOT a substitute for occurrences of rare plants and their unique undisturbed habitat.	Yes	No
	Issue 5: EFSC erred in approving the Morgan Lake Alternative to go through Glass Hill SNA, and then in allowing additional access roads within Glass Hill SNA under RFA1.	Yes	No
	Issue 6: The Draft Proposed Order for RFA2 continues to mischaracterize the management of Glass Hill SNA, a Protected Area under OAR 345-022-0040, and the managers of the Natural Area were not notified of RFA2.	Yes	No
	Issue 7: General Conditions under the Protected Areas Standard 345-022-0040 should apply to Glass Hill SNA.	Yes	No
	Issue 8: RFA2 proposes changes to General Conditions (Attachment 6-1 Second Amended Site Certificate) under the Threatened and Endangered Species Standard OAR 345-022-0070 which are unacceptable and should be rejected by the Council.	Yes	No
	Issue 9: The Council should reject site boundary expansion and ask Idaho Power to apply for further Amendments instead, if they are needed. Alternatively, expansion should be subject to landowner approval and this should be a condition of the Site Certificate.	Yes	No

NEXT STEPS

Requests for contested case will be evaluated at the August 22-23, 2024 Council meeting. On Thursday August 22, 2024 the Department will provide an introduction of the facility and RFA2 and then begin Council's review of the Contested case requests, recommended to be presented by commenter and each issue. The Council's review of the contested case request will continue on Friday, August 23, 2024, and is recommended to be presented by commenters, by each issue.

Under OAR 345-027-0371(7), before considering whether an issue justifies a contested case proceeding, the Council must determine that the person requesting a contested case commented in person or in writing on the record of the DPO public hearing and properly raised each issue included in their request. To determine that a person properly raised each issue included in their request, the Council must find that:

- The person making the contested case request raised the issue on the record of the DPO public hearing described in OAR 345-027-0367 with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue;
- If the issue was not raised on the record of the DPO, that the commenter identified that the Department did not follow the procedural requirements of OAR 345-027-0367; or
- If the issue was not raised on the record of the DPO, that the commenter identified that the issue is based on material changes presented in the Proposed Order.

Pursuant to OAR 345-027-0371(8), if the Council finds that the person requesting a contested case failed to comment in person or in writing on the record of the DPO public hearing or failed to properly raise any issue, as described above, the Council must deny that person's contested case request. If the Council finds that the person requesting a contested case commented in person or in writing on the record of the DPO public hearing and properly raised one or more issues, the Council's determination of whether an issue justifies a contested case must be limited to those issues the Council finds were properly raised.

After identifying the issues properly raised the Council must determine whether any properly raised issue justifies a contested case proceeding. To determine that an issue justifies a contested case proceeding, **the Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination on whether the facility, with the changes proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.** If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.⁴

The Council must take one of the following actions when determining if issues raised in request(s) justify a contested case proceeding:

⁴ OAR 345-027-0371(9)

1. Hold a Contested Case - If the Council finds that the request identifies one or more properly raised issues that justify a contested case proceeding, the Council must conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-0014 and 345-015-0018 to 345-015-0085. The parties to a contested case proceeding must be limited to those persons who commented on the record of the public hearing and who properly raised issues in their contested case request that the Council found sufficient to justify a contested case, except that the certificate holder is an automatic party to a contested case.⁵ The issues a party to a contested case proceeding may participate on must be limited to those issues that party properly raised in its contested case request that the Council found sufficient to justify a contested case, except that the certificate holder may participate on any issue the Council found sufficient to justify a contested case proceeding.⁶
2. Remand Proposed Order to Department - If the Council finds that the request identifies one or more properly raised issues that an amendment to the proposed order, including modification to conditions, would settle in a manner satisfactory to the Council, the Council may deny the request as to those issues and direct the Department to amend the proposed order and send a notice of the amended proposed order to the same persons who received notice of the proposed order and opportunity to request a contested case.⁷
3. Deny Request for Contested Case - If the Council finds that the request does not identify a properly raised issue that justifies a contested case proceeding, the Council must deny the request. In a written order denying the request, the Council must state the basis for the denial. The Council must then adopt, modify or reject the proposed order based on the considerations described under the Council's Scope of Review in OAR-345-027-0375.⁸

⁵ On this issue, the Oregon Supreme Court ruled that EFSC is expressly authorized to limit the participation of a party as a limited party – i.e., to treat a person as a limited party even if they requested full party status, based on the issues the eligible individual properly raised in their DPO comments, as identified in their petition. *Stop B2H Coalition v. EFSC*, 792 Or 801-804, 815 (2023).

⁶ OAR 345-027-0371(10)(a)

⁷ OAR 345-027-0371(10)(b)

⁸ OAR 345-027-0371(10)(c)

ATTACHMENT 1 DEPARTMENT EVALUATION OF CONTESTED CASE REQUESTS

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The tables provided in the following section are organized by the individual requesting a contested case on the Department’s Proposed Order on RFA2.⁹ The tables identify issue statements (if provided) from the requests for contested case, and summaries or copies of the DPO comments associated with the issue statements. The tables evaluate whether the issues were properly raised on the record of the DPO and if the requests raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case.

⁹ The Attachment 1 Tables to this staff report were derived from Attachment 2 to the Proposed Order which included all DPO comments, certificate holder responses and Department responses and recommendations in the proposed order; the information from these documents has been edited for brevity, nevertheless, previously provided certificate holder and Department responses apply as part of the record, as applicable.

II.A Kevin March

Issue Statement from Contested Case Request	RFA 2 DPO Comment Citation/Summary	Issue Properly Raised in Request for Contested Case (Yes/No) with Arguments in Contested Case Request	Request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case. (Yes/No) with Evaluation
Kevin March			
<p><i>Only "Issue Summary" provided in Contested Case Request, no Issue Statement. Issue Summary from Contested Case Request provided below:</i></p> <p>Issue 1:</p> <p>Headwater streams are integral to the total health of streams and rivers and the anadromous and local native fish that depend upon the habitat these streams provide. These headwater streams, including ephemeral and intermittent streams, are highly understudied and undercounted. Data supplied to Idaho Power by ODFW and data from Idaho Power's studies is incorrect and lacking. RFA2 with its more than doubling of access roads and the widening of roads on slopes could and would impact the headwaters of the various watersheds that the Route traverses. These impacts pertain to endangered and threatened species, habitat mitigation and fish passage. As a result, RFA2 does not satisfy the Application For A Site Certificate until the OARs and ORSs I bring up in this letter are satisfied, and SDAM protocols are properly implemented.</p>	<ul style="list-style-type: none"> Ephemeral streams are a critical component of the uplands of a watershed as per OAR 635-415-0005 Ephemeral streams are critical habitat during periods of low flow for our states indigenous fish species, whether they are endangered and threatened anadromous fish, or local native species Ephemeral streams, even when appearing dry, can have subsurface flows and connectivity to downstream waters, which is important in maintaining cold water refugia for our local and anadromous fish species Ephemeral streams are not dirt. They are a vital part of our river systems, and integral to the ecology and habitat of our watersheds Mapping and hydrological analysis of ephemeral streams is poor at best and non-existent at worst, and better mapping techniques are now available. Idaho Power could and should have used these techniques to better assess streams in the watersheds spanned by the Route Access roads, towers, and the equipment associated with their construction in RFA2 could and would destroy many of these streams, severing connectivity to their associated perennial streams and the native fish species sustained by them Idaho Power's maps of streams in the small area I analyzed are inaccurate and brings into question the accuracy of stream analysis on the entire proposed route Idaho Power's "select" analysis of ephemeral, intermittent and perennial streams and wetlands were performed during a multi-year period of drought with many areas "studied" during the driest period of the year and does not give a true picture of morphology and habitat Idaho Power did not follow the guidelines within the SDAM manual, Idaho Power's reference for the study of and clarification/distinction of ephemeral streams, intermittent and perennial streams. RAF2 will not meet the requirements set forth in ORS 509.585 and OAR 635-412- 0020 until a more complete analysis of the ephemeral streams throughout the project is undertaken RAF2 will not meet the requirements set forth in OAR 345-021-0010(1)(p) until a more complete analysis of 	<p>Yes.</p> <p><u>From contested case request:</u></p> <p>Idaho Power states that they used the existing USGS landcover dataset from 20113. What they did not address was that this data is highly inaccurate and woefully lacking.</p> <p>..the obliteration of streams that are unknown and unmapped by both Idaho Power and ODFW by an additional 500 miles of access roads and the widening of access roads within RFA2. That is what my asking for a contested case is about.</p> <p>"Idaho Power included in its analysis ephemeral and intermittent streams"10 and "The Department of State Lands ("DSL") wetland evaluation process utilized to prepare the application to DSL takes into account the Streamflow Duration Assessment Methods ("SDAM") protocols."11 But as I showed in my DPO comment letter to the EFSC, Idaho Power did not analyze ephemeral and intermittent streams. It is unclear if they followed SDAM 12</p> <p>The Division of State Lands states this about Essential Indigenous Anadromous Salmonid Habitat (ESH) in OAR 141-085-0510: "any adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to an ESH stream" This stream fits exactly the definition of ESH. This ESH stream is not mapped by Idaho Power. Whether that incorrect analysis was done by ODFW or Idaho Power is irrelevant. The important point is that it is wrong. This stream has direct connectivity to a perennial stream that has had millions of dollars worth of habitat restoration projects completed by the Umatilla Tribes to improve anadromous fish habitat.</p> <p>This Rock Creek Project encompasses nearly 16 miles of fish habitat on Rock, Little Rock, Sheep, Graves, and Little Graves creeks within the UGC-2 and UGS-16 recovery plan assessment units. UGS-16 has been identified by the BiOp Expert Panel as one of the highest priority geographic units to protect and restore summer steelhead habitat. UGC-2 is identified as having high intrinsic potential for Chinook in the lower reaches of Rock Creek and low to medium intrinsic potential for Chinook within upper stream reaches According to Idaho Power and the ODFW, there is no stream in this location. According to Idaho Power, there is nothing here but dirt.</p>	<p>No, for the reasons provided below:</p> <ol style="list-style-type: none"> As stated in the DPO and Proposed Order, that the road additions and alternatives proposed in RFA2 are additive. The road alternatives provide the certificate holder flexibility to avoid and minimize impacts to resources as well as accommodate landowner preferences. The final design and construction of the facility will not include all the roads approved in the ASC, RFA1, and proposed in RFA2, it will be largely fewer roads. Ephemeral streams are protected under the Clean Water Act through the 1200-C permit. Existing Condition GEN-SP-01 requires that the certificate holder obtain a 1200-C permit. The certificate holder has received a 1200-C permit from DEQ, which includes detailed drawings of the facility, erosion controls and ephemeral streams, among many other datums. The erosion controls under the 1200-C permit require protection of sediment impacts to ephemeral streams. It's not clear whether Mr. March is arguing about the habitat categorization of ephemeral streams or impacts and mitigation. All impacts to habitat, other than agriculture, must be mitigated under the Fish and Wildlife Habitat standard; and, indirect impacts from sediment and erosion will be mitigated through Best Management Practices and monitoring under the 1200-C. Ephemeral streams are evaluated in wetland delineations prepared for DSL. Site Certificate Condition PRE-RF-01 requires that, prior to construction, the certificate holder conduct updated wetland delineation surveys; submit the associated survey reports to Oregon Department of State Lands; and provide evidence to the Department of receipt of concurrence from DSL that the wetlands and waters of the states have been properly delineated to inform extent of removal-fill impacts. The coordinates 45.29983 N, 118.14634 W are located within the structure work area for structure 105/2. The survey identified an emergent (PEM) wetland (UN-W-509) at this site that will be temporarily and permanently disturbed. IPC has filed for a removal/fill permit at this location. DSL's wetland evaluation process utilized to prepare the application to DSL takes into account the Streamflow Duration Assessment Methods ("SDAM") protocols. The survey did not identify an intermittent or perennial stream associated with this wetland. The coordinates 45.31061 N, 118.17275 W represent a location that was surveyed by the certificate holder in 2022 as part of a preconstruction requirement under the site certificate. Site Certificate Condition PRE-RF-01 requires that, prior to construction, the certificate holder conduct updated wetland delineation surveys; submit the associated survey reports to Oregon Department of State Lands; and provide evidence to the Department of receipt of concurrence from DSL that the wetlands and waters of the states have been properly delineated to inform extent of removal-fill impacts. In accordance with this condition, the Department received a copy of a 2022 Wetland Delineation Report submitted to DSL on January 30, 2023. The ephemeral stream identified by Mr. March has been delineated and provided for DSL review, as represented by the delineated stream present in the figure below.

Issue Statement from Contested Case Request	RFA 2 DPO Comment Citation/Summary	Issue Properly Raised in Request for Contested Case (Yes/No) with Arguments in Contested Case Request	Request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case. (Yes/No) with Evaluation
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Kevin March

the fish and habitat within ephemeral streams and their contiguity with intermittent and perennial streams is undertaken

- RAF2 will not meet the requirements set forth in OAR 345-021-0010(1)(q) until a more complete analysis of the fish and habitat within ephemeral streams and their contiguity with intermittent and perennial streams is undertaken
- RAF2 will not meet the requirements set forth in OAR 635-415-000 and OAR 635-415-0005 if ephemeral stream habitat loss for the watersheds within the entire Project are not included in the proposed mitigation measures
- RAF2 will not meet the requirements set forth in OAR 635-412-0035 if access roads are built through streams prior to a Fish Passage analysis
- RAF2 will not sustain Essential Salmonid Habitat as recognized in OAR 635-415-0005 Rock Creek and Sheep Creek (tributaries to the Grande Ronde River) have had a tremendous amount of work done for fish habitat improvement, a project called the Rock Creek Project. "This Rock Creek Project encompasses nearly 16 miles of fish habitat on Rock, Little Rock, Sheep, Graves, and Little Graves creeks within the UGC-2 and UGS-16 recovery plan assessment units. UGS-16 has been identified by the BiOp Expert Panel as one of the highest priority geographic units to protect and restore summer steelhead habitat. Oregon fish passage criteria for OAR 635-412-0035 are not satisfied if ephemeral streams are considered dirt and have not been analyzed. Fish passage criteria are not met if only "select" intermittent streams were studied, and are not satisfied if SDAM forms were not filled out for all intermittent and perennial streams. Fish passage OARs are not satisfied if Idaho Power can have a half mile wide corridor with which to build roads, install powerline towers, and damage habitat while severing connectivity within this extremely important habitat.

This is what I found (on 5/21/2024) near or at a site where a tower is slated to be constructed. FN: Coordinates: 45.29983 N, 118.14634 W. It is rather obviously an amphibian: [photo omitted]. This was found at the same location: [photo omitted] These photos satisfy SDAM's criteria for at least intermittent, if not perennial stream designations. They show

The doubling of the number of access roads in RFA 2 WILL impact this stream. Because it is considered dirt, a new, or many new RFA 2 access roads can be built across it by Idaho Power, severing the stream and destroying connectivity to Sheep and Rock Creek, extremely important tributaries to the Grande Ronde River and destroying this spawning and rearing habitat for endangered and threatened Snake River salmon and steelhead.

Furthermore, the building of access roads, and the widening of access roads on the slopes above the creek in RFA 2 could and would allow sediment from the road building and the roads themselves to damage or destroy the creek. Idaho Power acknowledges this when it states: "Use of existing access roads, soil disturbance adjacent to waterbodies, as well as clearing of riparian vegetation in areas where the transmission line would span waterbodies would, however, contribute to the risk of erosion and sedimentation." Erosion and sedimentation is a death knell for spawning and rearing habitat and for the fish themselves.

The Fish Passage issues I am referring to pertain to waterways exactly like this creek and its impact from RFA 2. They are not about fish passage issues from the original ASC though ODOE did say this in the original ASC: "Note that pursuant to ORS 509.585 and OAR 635-412- 0020, fish passage is required in all waters that currently or historically contained native migratory fish. This includes waters classified as perennial, intermittent, or ephemeral. This is not a fish passage issue because of a crossing; this is a fish passage issue because of the obliteration of streams due to the increase in the number of access roads and the increase in width of roads on slopes in RFA 2.

Idaho Power has inaccurate data and has completely missed at least one stream that is extremely important to the habitat and survival of native and anadromous fish in one small section of the headwaters of the Grande Ronde Watershed. They have also potentially missed many more streams that would impact other riverine systems on the 300 miles of the proposed route by the more than doubling of access roads within the site boundaries and the increasing of the width of access roads on slopes within RFA2.



For these reasons, the Department recommends Council find that the evidence and arguments provided on the record of the DPO and in the contested case request regarding evidence of two streams allegedly not identified by IPC does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards raised in this issue, and thus does not justify a contested case.

Issue Statement from Contested Case Request	RFA 2 DPO Comment Citation/Summary	Issue Properly Raised in Request for Contested Case (Yes/No) with Arguments in Contested Case Request	Request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case. (Yes/No) with Evaluation
Kevin March			
	amphibians and macroinvertebrate damselflies (Calopterygidae). Yet on Idaho Power's maps, there are no streams or wetlands of any kind shown at this location. The water from this location flows directly into Sheep Creek, a stream designated as Essential Salmonid Habitat by DSL, and a stream with resident and listed species present. This next photo (from 5/28/2024) of a pebble snail (Pleuroceridae,) is from a nearby location. FN. Coordinates 45.31061 N, 118.17275 W. Again, Idaho Power apparently has the stream that contains this designated as dirt		

II.B Irene Gilbert

Issue Statement from Contested Case Request	RFA 2 DPO Comment Citation/Summary	Issue Properly Raised in Request for Contested Case (Yes/No) with Arguments in Contested Case Request	Request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case. (Yes/No) with Evaluation
Irene Gilbert			
<p>Issue 1:</p> <p>The Proposed Order for Amendment 2 of the B2H Site Certificate fails to require a full review of the area added to the site boundary required by OAR 345-027-0375(2).</p>	<p>See also: B2HAMD2Doc10-2.6 DPO Public Comment Gilbert I Site Cert Conditions 2024-05-31 For comments on specific site certificate conditions.</p> <p>From: B2HAMD2Doc10-2.3 DPO Public Comment Gilbert I Site Boundary Expansion 2024-05-30: EFSC rules reference the micrositing area and the site boundary to communicate requirements of Council Standards and where they are to occur. The importance and significance of the term "Site Boundary" is documented in the Final Order for the Boardman to Hemingway Transmission Line dated September 27, 2022. In that order, the term is used 213 times regarding the decision to approve the original site certificate for this development.</p> <p>As noted above, changing the evaluation of the area being added to the site to minimize review requirements impacts all future approvals and uses of the area added. Because of this, a site certificate must not be issued to extend the site boundary unless the evaluation of siting standards include the evaluation of the standards in the same manner as is required when an area is included in an original site certificate.</p>	<p>Yes.</p> <p><u>From contested case request:</u></p> <p>OAR 345-022-0000(I)(a) requires the Site Certificate to meet the standards developed under ORS 469.501. In order for Council to issue a site certificate which adds area to the site boundary Council must determine that the area added to the site complies with all laws and Council standards applicable to an original site certificate application. The same requirements that applied to the Original Site Certificate for the B2H Transmission line must be required for the area added to the site boundary as described in the Original Site Certificate for the Boardman to Hemingway Transmission Line. ORS 469.401(2) requires that the council include in the site certificate conditions in the site certificate to ensure compliance with the statutes, standards and rules described in ORS 469.501 and ORD 469.503.</p> <p>Council must implement this statutory framework by adopting findings of fact, conclusions of law and conditions of approval concerning the facilities compliance with the EFSC Standards for Siting Facilities at OAR 345, Divisions 22, 24, 26 and 27. (Final Order on the ASC for the B2H Transmission Line 9/27/22, Page 88)</p>	<p>No, for the reasons provided below:</p> <ol style="list-style-type: none"> 1. The Department does not agree with Ms. Gilbert's apparent interpretation of OAR 345-027-0375(2)(a), which states that for a request for amendment proposing to add new area to the site boundary, Council must determine that the preponderance of evidence on the record supports a conclusion that the portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application. As discussed in the DPO and Proposed Order, this does not mean, as Ms. Gilbert appears to contend when she alleges a "full review" is necessary, that Council must require a certificate holder to provide the <i>same type</i> of evidence or information as it did in its original site certificate application. Rather, Council must conclude the preponderance of evidence supports a conclusion that the expanded site boundary meets Council's standards Consistent with the review described in OAR 345- 027-0375(2)(a), the Proposed Order assesses whether the proposed expanded site boundary meets each of the Council's standards in OAR 345 Division 22 and the applicable standards in Divisions 23 and 24 (i.e., the standards applicable to an original site certificate application for a transmission line facility). 2. Nor does OAR 345-027-0375(2)(a) require the entire 0.5-mile expanded site boundary to be field surveyed to demonstrate compliance with applicable Council standards. The micrositing areas are the areas where facility components would be located, so field surveys, if necessary, would only be needed in those areas. The expanded site boundary is characterized and evaluated using desktop or literature review studies, which Council routinely accepts to evaluate resources covered by its standards. 3. As the certificate holder previously responded, they will be required to obtain approval before moving any part of the facility outside the approved micrositing corridors and into the

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Irene Gilbert			
	<p>OAD 345-027-0357(2) allows ODOE and EFSC to amend a site certificate (Type C amendment) to authorize changes in the locations of facility components without requiring an amendment complying with the requirements of a Type A or Type B public amendment process when the changes will occur within an existing site boundary which has been documented to meet all council standards.</p> <p>The Draft Proposed Order for Amendment 2 of the B2H Site Certificate fails to require a full review of the area added to the site boundary required by OAR 345-027-0375(2)(a) stating that in order for Council to issue a site certificate which adds area to the site boundary Council must determine that the area added to the site complies with all laws ad Council standards applicable to an original site certificate application. Limiting reviews of some siting standards to the micrositing corridors rather than the site boundary fails to meet tis standard. Not all the land being added to the site boundary has been subject to the full evaluation required of a new facility site.</p>		<p>proposed expanded site boundary.¹⁰ The proposed expanded site boundary will not impact any new landowners or result in the siting of facility components in new areas without further analysis. If the Company subsequently seeks to add alternative transmission line or access road locations outside the approved micrositing corridor but within the proposed expanded site boundary, the certificate holder will submit an ADR to the Department. The Company would have to obtain an amendment to the Site Certificate for any modification that could:</p> <ul style="list-style-type: none"> * result in a significant adverse impact to a resource or interest protected by an applicable law or Council standard if Council has not addressed the impact in an earlier order ; * impair the certificate holder's ability to comply with a site certificate condition; or * require a new condition or a change to a condition in the Site Certificate.¹¹ <p>4. Based on the certificate holder representation in response to these concerns raised in DPO comments, New General Standard of Review Condition 12 was provided in the proposed order. The proposed order General Standard of Review section, discusses the expanded site boundary, ADR process, and the certificate holder represented condition, however, there is not a standard that must be met for Council to approve this change, rather a demonstration that the record supports the change.</p> <p>For the above reasons, the Department recommends Council find that this issue does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 2:</p> <p>"Prior to the start of operation, the Site Certificate holder must provide a bond or letter of credit in an amount determined by council under OAR 345-022-0050 to be adequate to restore the site to a useful, nonhazardous condition." Certificate Conditions must require a bond amount that complies with the plain language and conditions of OAR 345- 022-0000, OAR 345-027-0375, OAR 345-025-0006 and OAR 345-022-0050</p>	<p>The council must require a bond amount consistent with the requirements of the rules and EFSC actions prior to and after issuance of the Boardman to Hemingway Transmission Line Site Certificate. This comment is addressing the requirement in the plain language of the mandatory rules requiring a bond or letter of credit adequate to restore the site of the development.</p> <p>The Mandatory condition does not provide for exceptions to the requirements contained in the rule regarding the amount and form of the bond or letter of credit. The Oregon Department of Energy and Energy Facility Siting Council are exceeding their authority by allowing bond amounts that are not consistent with the plain language of the rule or amounts required of other developments prior to and after the issuances of the original and amended site certificates for B2H.</p>	<p>Yes.</p> <p><u>From contested case request:</u></p> <p>Council is required to determine an amount for the bond or letter of credit during their evaluation of the application for amendment. The determination is required to meet the requirements of OAR 345-022-0050 establishing the amount required to restore the site. OAR 345-022-0000(2) states that a balancing determination can only be done when a proposed facility cannot meet the Council standards. OAR 345-022-0000(3) specifically states that the Retirement and Financial assurance standard is not subject to a balancing determination.</p>	<p>No, for the reasons provided below:</p> <ol style="list-style-type: none"> 1. Council previously found that the <i>form</i> of the bond, including the operational phased bonding approach, and the <i>amount</i> of the bond was adequate to restore the site to a useful, nonhazardous condition. 2. The certificate holder has not requested any change to the form / phased bonding approach. The certificate holder has updated the amount of the bond to cover the facilities included as part of RFA 2 and to update the cost estimate to reflect Q1 2024 dollars rather than Q3 2016 dollars. The remainder of the proposed bond conditions are unchanged. 3. In the contested case on the ASC, Ms. Gilbert and other parties challenged the bonding approach, however the Council adopted the Hearing Officer's findings that <ul style="list-style-type: none"> • The certificate holder's proposed financial assurance methodology, i.e., providing a \$1 bond for the first 50 years of facility operation and incrementally increasing the bond/letter of credit on an annual basis after the facility has been in service for 50 years, is a reasonable approach to accounting for the possibility that the facility may eventually be retired. - Further, to address the concerns that limited parties (including Ms. Gilbert) had raised, the Council added a process by which it would periodically review the amount of the bond, and also noted that it had authority at any time to ask for an update and to revisit the bonding amount. Specifically, Retirement and Financial Assurance Condition 5 requires the certificate holder to provide EFSC and ODOE a report every

¹⁰ Draft Proposed Order for RFA 2 at 52-53 (Apr. 16, 2024).

¹¹ OAR 345-027-0350(4).

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Irene Gilbert			
	<p>OAR 345-027-0375 requires the council to determine whether the preponderance of evidence on the record supports the conclusion that the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.</p> <p>The plain language of OAR 345-025-0006(8) requires the bond to be submitted prior to the start of construction in an amount adequate "to restore the site to a useful, non-hazardous condition". OAR 345-025-0006(16) supports the plain language of OAR 345-025-0006(8) by stating that if the developer does not retire the facility according to a final retirement plan approved by Council, the Council may draw upon the bond or letter of credit to restore the site. The council has determined that it will require \$170,276,273 to restore the site. In order to take the actions included in Mandatory condition OAR 345-025-0006(16), the amount of the bond must be equal to the cost the council determined would be required to restore the site.</p>		<p>five years on: (a) the physical condition of the facility; (b) any evolving transmission or electrical technologies that could impact the continued viability of the facility; (c) the facility's performance in the context of the larger Northwest power grid; and (d) the certificate holder's financial condition, including the certificate holder's credit rating at that time. Additionally, under the condition, EFSC may request the report on an off-cycle year if requested. Moreover, the condition allows EFSC to consider whether or not the approach towards the financial assurance instrument remains appropriate and would account for unforeseen shifts in the power grid or the certificate holder's financial condition.</p> <p>4. Additionally, certificate holder estimates that the annual cost of maintaining a bond is approximately \$750,000. Over 50 years and assuming 3% inflation, requiring certificate holder to carry the full amount would add \$84,600,000 to the total Project costs—which is significant, and even more so given the minimal risk of early retirement of the facility.</p> <p>5. No balancing determination is proposed for RFA2 and has never been evaluated under this standard by Council.</p> <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards (including the retirement and financial assurance standard) and therefore, it does not justify a contested case.</p>
<p>Issue 3:</p> <p>The Proposed Site Certificate for Amendment II adds roads without fully evaluating the impacts they will have on resources or requiring timely and complete restoration</p>	<p>The RFA2 B2H Draft Site Certificate fails to include conditions that would require compliance with EFSC standards identified in their document entitled, "Version 2: July 2005 providing Guidance for Oregon Cities and Counties on Siting Energy Developments" Page 19 and 20 of the document identifies conditions for access roads in order to provide for safety of users and to minimize environmental damages to meet and comply with EFSC and Council Rules: Rules which apply to the construction of roads include OAR 345-022-00030 Land Use Rules; ORS 345-022-0110 Public Service Condition providing that the development will not preclude the ability of public and private providers to provide storm water drainage, traffic safety, fire prevention and health care; ORS 345-022-0115 Wildfire.</p> <p>The DPO states that the developer will not be required to restore the natural grade of temporary access roads and includes no timeline for revegetation of the areas once the temporary road is no longer in use. The lack of specific timeframes for restoration to occur means the restoration may not commence until the line is energized.</p>	<p>Yes.</p> <p><u>From contested case request:</u></p> <p>Roads are one of the most significant impacts on wildlife, contaminants are washed off roads and enter waterways, erosion,</p> <p>The addition of roads to the site of the B2H project inserts new hazards and impacts to the development requiring the scope of Council Review to address the requirements of OAR 345-027-0375(2)(c) requiring a determination that the entire facility complies with the applicable laws and council standards that protect a resource or interest that could be affected by the proposed change. The Oregon Department of Energy issued a document entitled "Version 2: July 2005 providing Guidance for Oregon Cities and Counties on Siting Energy Developments." The RFA2 B2H Draft Site Certificate needs to include site certificate conditions that will provide for this compliance." Rules which apply to the construction of roads include OAR 345-022-00030 Land Use Rules; ORS 345-022-0110 Public Service Condition providing that the development will not preclude the ability of public and private providers to provide storm water drainage, traffic safety, fire prevention and health care; ORS 345-022 0115 Wildfire</p>	<p>No, for the reasons provided below:</p> <ol style="list-style-type: none"> 1. Council's rules for its Land Use standard (OAR 345-022-00030) and Public Service standard (OAR 345-022-0110), do not require compliance with the 2005 ODOE Guidance for Oregon Cities and Counties on Siting Energy Developments. As stated therein, ODOE's purpose in promulgating the guidance document was "to engender discussion of the issues that may arise for local governments in planning the development of energy projects." These suggestions to city and county governments are not siting standards. (Further, even if there were standards identified therein, they were not included in the Project Order for the Project and, for that reason, the certificate holder would not be required to demonstrate compliance with such items). 2. , Council's existing standards and conditions already take into account mitigation (including applicable plans), to mitigate potential impacts from facility roads. All construction-related temporary ground disturbance impacts are required to be monitored and stabilized and revegetated in a manner compatible with surrounding uses. See previously approved Soil Protection Condition 1 [GEN-SP-01] and General Standard of Review Condition 9 [OPR-GS-03]. Under Soil Protection Condition 1 [GEN-SP-01], the certificate holder must make any revisions to its Erosion and Sediment Control Plan the Department determines are necessary and implement the revisions (including any stabilization requirements) within 14-days of disturbance. Ms. Gilbert proposes conditions to ensure that temporary roads are restored to their natural grade and revegetated; the previously approved conditions remain adequate to achieve these goals. 3. Contrary to Ms. Gilbert's assertion, the certificate holder has not proposed any temporary roads. All roads proposed for the facility will be permanent paths that will be used during construction. and for the operation, inspection, and maintenance of the transmission line after construction is completed. The permanent access roads will be re-seeded for stabilization. For

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Irene Gilbert			
	<p>Temporary access road condition language recommended by ODOE in the EFSC model ordinance: "Restore the natural grade and revegetate any temporary access roads, equipment staging areas and field office sites used during construction of the energy project." The applicant must specify a "timeline to complete this work." RECOMMENDED SITE CERTIFICATE CONDITION ONE: "Temporary roads will be restored to as close as possible to their natural grade and revegetated commencing within a year of the time they are no longer in use. Restoration will incorporate best management practices to control erosion and runoff from the sites and include monitoring of sites until the area is revegetated and the ground is stabilized."</p> <p>EFSC has recommended that Counties and Cities require the developer to "Construct and maintain access roads for all-weather use to assure adequate, safe and efficient emergency vehicle and maintenance vehicle access to the site. (Model Ordinance Page 20). Recommended site certificate condition two to provide for safety and minimize environmental impacts 'All access roads being Improved or newly constructed as permanent or temporary access will be constructed to best management standards allowing for all weather use by employees and emergency vehicles'"</p>	<p>TEMPORARY ACCESS ROAD CONDITION LANGUAGE RECOMMENDED BY ODOE IN THE EFSC MODEL ORDINANCE AND RECOMMENDED FOR INCLUSION AS A SITE CERTIFICATECONDITION</p> <p>Currently the Proposed order does not require the developer to restore the natural grade of temporary access roads and includes no timeframe for starting revegetation or monitoring when the road is no longer in use.</p> <p>1. "Restore the natural grade and revegetate any temporary access roads, equipment staging areas and field office sites used during construction of the energy project." The applicant must specify a "timeline to complete this work."</p> <p>RECOMMENDED SITE CERTIFICATE CONDITION TWO "Restoration will incorporate best management practices to control erosion and runoff from the sites and include monitoring of sites until the area is revegetated and the ground is stabilized."</p> <p>RECOMMENDED SITE CERTIFICATE CONDITION THREE "Developer will construct and maintain access roads for all-weather use to assure adequate, safe and efficient emergency vehicle and maintenance vehicle access to the site."</p>	<p>these reasons, Ms. Gilbert's proposed site certificate regarding temporary access roads is unnecessary.</p> <p>4. As related or supporting facilities to the facility, access roads that will be constructed or substantially modified for the Project were included in the analysis of potential impacts, which the Council has determined comply with the Council's siting standards, including the Land Use and Public Services Standards.¹² Certificate holder has not identified any temporary access roads; all roads proposed for the facility will be permanent paths that will be used during construction. These access roads are crucial for the operation, inspection, and maintenance of the transmission line after construction is completed. The permanent access roads will be re-seeded for stabilization. For these reasons, Ms. Gilbert's proposed site certificate regarding temporary access roads is unnecessary.</p> <p>5. Emergency access was discussed thoroughly in the Final Order ASC, and one aspect of the certificate holder's Transportation and Traffic Plan seeks to maintain emergency vehicle access to private property. For new access roads, the design of higher-standard roads will conform to the most current edition of AASHTO's Guidelines for Geometric Design of Very Low-Volume Local Roads, for access roads with an anticipated average daily traffic of less than 400 vehicles. Compliance with these requirements will reduce the possibility of impacts to emergency vehicle access.</p> <p>6. Bladed access roads are by their very nature not sufficient to accommodate all-weather use because the roadway surface is not capped with gravel or other material or compacted. As a matter of practice, the certificate holder does not construct all-weather roads to support transmission infrastructure and the certificate holder does not propose that primitive access roads be constructed to accommodate all-weather use for the facility as it is unnecessary for public safety and will result in greater environmental impacts. Most of these access roads are on private land and will be used to access the line after construction, and therefore no emergency access would be required for public traffic and safety. Moreover, contrary to Ms. Gilbert's assertions, requiring that primitive roads be constructed to accommodate all-weather use is more disruptive, will result in greater environmental impacts, and will require additional restoration efforts.</p> <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards (Land Use and Public Services) included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 4:</p> <p>The Application and Proposed Order fail to document that all council standards have been evaluated for the area added to the site and for Site Certificate condition changes to the entire facility.</p>	<p>The design, construction, and operation of the facility in areas added to the site boundary proposed in RFA II are likely to result in significant adverse impacts to wildlife due to noise, increased traffic, electrocution, habitat destruction, nest site abandonment, the lack of complete pre-construction surveys, the lack of post construction monitoring, as well as dust and airborne contaminants from roads and concrete batch plants associated with the proposed Multi-use areas and road</p>	<p>Yes.</p> <p><u>From contested case request:</u></p> <p>This issue raises a significant issue of fact or law that should affect the council's determination that the facility meets the requirements of EFSC rules related to Habitat, Threatened and Endangered Species, Protected Areas to name just a few. Changes which require the OAR 345-027-0375(c) review include the addition of multi-use</p>	<p>No, for the reasons provided below:</p> <p>1. OAR 345-027-0375(2)(a) and (c) do not require, as Ms. Gilbert appears to allege, that when a certificate holder seeks an amendment Council must reevaluate whether previously approved portions of facility comply with Council Standards. Under OAR 345-027-0375(2)(c), for the changes the certificate holder proposes other than the areas added to the site boundary, (e.g. addition of the midline capacitor station, wider temporary roads, and some site certificate conditions changes), the Council must find that the facility, <i>with the proposed change</i>, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change. Council has historically applied this provision by</p>

¹² See, e.g., Final Order on ASC at 296, 627 of 10586 (Sept. 27, 2022).

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<p>Issues lacking documentation or a timeline for completion include: Habitat, mitigation, threatened and endangered species, bat surveys, species specific surveys for all threatened and endangered wildlife that may be present at the site.</p>	<p>changes. Because the amended site certificate includes both adding areas to the site boundary as well as additional changes to the Site Certificate conditions requested by both the developer and the Oregon Department of Energy, the review requirements of both OAR 345-027-0375(2)(a) and (c) must be included in the council Scope of Review. Council must evaluate whether the entire "facility" will continue to comply with Council Standards that protect resources or interests that could be affected by the changes. Direct and indirect impacts of construction of roads, multi-use areas, contact with energized lines and ongoing operations such as keeping corridors clear of vegetation are all land and wildlife disturbing activities.</p> <p>In addition, there is a failure to survey or monitor impacts to the federal mitigation sites adjacent to the Ladd Marsh Wildlife Refuge which are identified as Project Number 20114 entitled "Securing Wildlife Mitigation Sites – Oregon, Ladd Marsh WMA Additions. These areas provide compensation for the Columbia River Dams targeted toward mallard, Canada goose, mink, western meadowlark, spotted sandpiper, yellow warbler, downy woodpecker and California quail. The Project also identifies the following protected and species of concern near the project sites: Bald eagle, peregrine falcon, Bobolink, greater sandhill crane, Swainson's hawk, painted turtle, steelhead and chinook salmon. There is also an Oregon Department of Transportation Mitigation Site adjacent to the LMWA and the Glass Hill Preserve. Ladd Marsh Refuge and established mitigation areas for federal and state projects require compliance with OAR 345-022-0040, 345-022-0070, ORS 345-022-0060, ORS 345-022-0080 and OAR 345-021-0010(l)(t)(A). Idaho Power recognized in their ASC, Page T-14 that Ladd Marsh is "irreplaceable". They stated, "As explained in Attachment T-3 Table T-3-1, Ladd Marsh WA is an important opportunity because of its designation status, high level of use, rareness, and irreplaceable character per OAR 345-021-0010(l)(t)(A)"</p> <p>* * * * *</p> <p>The different habitats, habits, survey requirements for different bird species precludes reliance on generic surveys which fail to focus on indicators of specific species presence. The Oregon Sensitive Species List identifies 22 species of birds that occur in the Blue</p>	<p>areas, additional access roads, and additional traffic in proximity to Ladd Marsh and other protected areas. In addition, there is a failure to survey or monitor impacts to the federal mitigation sites adjacent to the Ladd Marsh Wildlife Refuge identified as Project Number 20114 entitled "Securing Wildlife Mitigation Sites – Oregon, Ladd Marsh WMA Additions. These areas provide compensation for the Columbia River Dams targeted toward mallard, Canada goose, mink, western meadowlark, spotted sandpiper, yellow warbler, downy woodpecker and California quail. The Project also identifies the Bald eagle, peregrine falcon, Bobolink, greater sandhill crane, Swainson's hawk, painted turtle, steelhead and chinook salmon. There is also an Oregon Department of Transportation Mitigation Site adjacent to the LMWA and the Glass Hill Preserve. Ladd Marsh Refuge and established mitigation areas for federal and state projects require compliance with OAR 345-022-0040, 345-022-0070, ORS 345-022-0060, ORS 345-022-0080 and OAR 345-021-0010(l)(t)(A). Idaho Power recognized in their ASC, Page T-14 that Ladd Marsh is "irreplaceable"... The special status of the mitigation site require a full review and surveys due to the requirement that no actions occur to negatively impact mitigation site.</p> <p>The developer must provide detailed pre-construction surveys of the protected areas in Union county as well as the adjacent habitat utilized by species present to establish locations and protective measures for birds, bats and other wildlife utilizing Ladd Marsh and the surrounding protected and forest areas.</p>	<p>first evaluating the impacts of the proposed change; then, the potential significance of impacts from the proposed change are considered in combination with the impacts evaluated in their prior decision (i.e., Final Order). If the impacts of the proposed change would not alter Council's prior approval of the facility, the Council must find that the facility, with proposed changes, continues to meet the standard. The Council does not have the authority to reverse or re-evaluate its prior decision, as it is maintained as a final decision through prior Final Orders.</p> <ol style="list-style-type: none"> 2. The Department does not agree with Ms. Gilbert's apparent interpretation of OAR 345-027-0375(2)(a), which states that for a request for amendment proposing to add new area to the site boundary, Council must determine that the preponderance of evidence on the record supports a conclusion that the portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application. As discussed in the DPO and Proposed Order, this means that the laws and Council standards that would apply to an ASC would be applied to the areas added to the site boundary. The certificate holder must demonstrate that it has submitted information in the record to support the expanded site boundary for the evaluation under applicable Council standards, which are described in RFA2 and the DPO. The entire 0.5-mile expanded site boundary does not need to be field surveyed to demonstrate compliance with applicable Council standards in RFA2. The microsites are the areas where facility components would be located, so field surveys, if necessary, would only be needed in those areas. The expanded site boundary is characterized and evaluated using desktop or literature review studies to meet the preponderance of evidence in the record that the site boundary has been adequately evaluated for resources. This practice is consistent with other EFSC approved energy facilities. The expanded site boundary and microsites were evaluated with appropriate field and desktop studies as presented in RFA2 and in the DPO/proposed order to support the findings of fact and conclusions of law presented in the RFA2 proposed order. 3. State (Oregon Department of Transportation) and federal mitigation sites are not considered protected areas under Council's standard unless they are designated under the rules. Therefore, these areas would not be evaluated under the Council's protected area standard. 4. Ms. Gilbert's contention that "The developer must provide detailed pre-construction surveys of the protected areas in Union county as well as the adjacent habitat utilized by species present to establish locations and protective measures for birds and other wildlife utilizing Ladd Marsh and the surrounding protected and forest areas," misunderstands Council standards. Surveys of protected areas are not required to support a finding of compliance with the Protected Areas standard (see OAR 345-021-0010(L)). Surveys are required under the T&E and F&W habitat standards for the microsites and desktop analysis for the larger analysis area. To the extent there is habitat or T&E species in the larger analysis area, this would be evaluated under T&E and F&W, and any potential impacts would be mitigated based on pre-construction surveys under those standards. 5. As demonstrated by the analysis in RFA 2, the certificate holder has thoroughly analyzed the potential impacts resulting from the facility and demonstrated that, taking into account mitigation, the impacts are not likely to be significant. This included thorough analysis both in the Final Order on ASC and in RFA2 of potential impacts to Ladd Marsh and surrounding wildlife habitat. 6. Certificate holder previous responses state that as demonstrated by the analysis in RFA 2, the certificate holder has thoroughly analyzed the potential impacts resulting from the facility and

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	<p>Mountains or Columbia Plateau Ecoregions which are crossed by the B2H transmission line which are either Sensitive or Sensitive/Critical. The protected areas in Union County provide habitat for many of these species of birds. The developer must provide detailed pre-construction surveys of the protected areas in Union county as well as the adjacent habitat utilized by species present to establish locations and protective measures for birds and other wildlife utilizing Ladd Marsh and the surrounding protected and forest areas. * * * * *</p> <p>Noise impacts have been addressed in relation to corona noise from the transmission line impacts on citizens, however, no evaluation has occurred regarding the impacts related to the construction and use of multi-use areas in close proximity to protected areas and ongoing noise from the transmission line. Ladd Marsh is protected through OAR 635-008-0120.</p> <p>Citizen impacts include noise and safety risks resulting from equipment and vehicles moving in and out of the multi-use areas and restricting citizen access to schools, work, health care facilities, as well as denying them access to recreational opportunities which currently exist for hiking, walking, biking along the roadways being inundated by heavy equipment, large vehicles, and additional traffic.</p> <p>Condition One: Traffic and equipment moving from multi-use areas to locations on the site will not travel across existing roads in areas where roads are located on Ladd Marsh or Ladd Marsh Additions.</p> <p>Condition Two: Developer will complete pre-construction wildlife surveys on areas within the site boundary and areas within one half mile of the site boundary including Protected Areas and adjacent land. (OAR 345-022-0040 and OAR 345-022-0060).</p> <p>Condition Three: Idaho Power will develop a Monitoring Plan including ground surveys for approval of ODFW to determine impact of transmission line</p>		<p>demonstrated that, taking into account mitigation, the impacts are not likely to be significant. This included thorough analysis both in the Final Order on ASC and in RFA2 of potential impacts to Ladd Marsh and surrounding wildlife habitat.</p> <p>7. Potential impacts to Ladd Marsh are discussed in the DPO on RFA 2: "Protected Areas Condition 1 (Condition GEN-PA-01) requires that the certificate holder coordinate construction activities in Ladd Marsh Wildlife Area within ODFW's wildlife area manager, Protected Areas Condition 2 (Condition GEN-PA-02) requires that the final facility design avoid Ladd Marsh. These conditions apply to the certificate holder but are not implicated by the proposed RFA2 micro-siting area additions (no revisions recommended by the Department)."¹³</p> <p>8. Protected areas in Union County, including Ladd Marsh, were analyzed in the DPO/proposed order on RFA2, where the potential noise, traffic, and visual impacts to all protected areas are evaluated. In the Final Order on ASC which is referenced in the DPO/proposed order on RFA2:</p> <ul style="list-style-type: none"> - "Construction of the proposed facility, including approved route and alternative routes, would cause short-term noise impacts to nearby protected areas. Construction activities that would cause noise impacts at protected areas include blasting and rock breaking, implosive devices used during conductor stringing, helicopter operations, and vehicular traffic. The construction activities would progress along the corridor of the proposed transmission line, and no area would be exposed to construction noise for the entire construction period. At a distance of half-mile or less, these areas would experience noise impacts during facility construction. However, noise would attenuate with distance, topography, and vegetative screening so it is possible that the decibel volume represented in Table PA-2 may be lower during actual facility construction. Helicopter use during construction would be audible at nearby protected areas and would cause a short-term impact to users of protected areas at those areas near the helicopter fly-yards and MUAs, and during facility transmission line construction at times of helicopter use. However, construction noise including helicopter use would only occur during facility construction, which is a short-term impact likely only over a period of months at any one location."¹⁴ - The Council determined that temporary impacts are not likely to be significant; this continues to be the recommendation in the DPO/proposed order on RFA2. This position is also consistent with other EFSC -approved energy facilities. <p>9. Ms. Gilbert's proposal not to use existing roads in Ladd Marsh is not supported by any Council standard and would unnecessarily require construction of additional roads as supporting facilities.</p> <p>10. The findings with respect to potential impacts to birds of concern identified by Ms. Gilbert. In the Final Order on ASC continue to be applicable to RFA2, mainly that the certificate holder provided the Avian Protection Plan for the facility, which identifies the permits that would be required from ODFW and the U.S. Fish and Wildlife Service ("USFWS"), which would include requirements to report avian fatalities and communicate with the agencies on retrofit actions the certificate holder proposes to implement in response to collision or electrocution related avian fatalities; and provides an opportunity for ODFW to provide input on retrofit technologies such as ultraviolet light technology, as recommended by ODFW for</p>

¹³ Draft Proposed Order on RFA 2 at 145 (Apr. 16, 2024).

¹⁴ Final Order on ASC at 308 of 10586 (Sept. 27, 2022).

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Irene Gilbert			
	<p>facility on birds. The survey area will be large enough to include most carcasses as determined by ODFW.</p> <p>Condition Four: Idaho Power will assure that their activities during construction and operation of the transmission line do not damage or degrade resources protected under the Ladd Marsh Wildlife Area Management Plan dated 2018.</p>		<p>implementation in areas of Sandhill crane nocturnal migration (e.g., Ladd Marsh Wildlife Area).¹⁵ The Council also required “that the applicant report avian fatalities where the causal factor is assumed to be electrocution or collision and consult on suitable retrofit technologies or other adaptive management strategies to minimize future risks to avian species.”</p> <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards (T&E, F&W and Protected Areas); and therefore, it does not justify a contested case.</p>

II.C Sam Myers

Issue Statement from Contested Case Request	RFA 2 DPO Comment Citation/Summary	Issue Properly Raised in Request for Contested Case* (Yes/No) with Arguments in Contested Case Request	Request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case. (Yes/No) with Evaluation
Sam Myers			
<p>Issue 1:</p> <p>ODOE has failed to adequately judge the ability of IPC to organize or construct B2HI!!</p> <p>IPC has recently fired Tetratec as its survey operative, of the studies we should have seen by now, but are unverifiable, because we have not received them, even so are likely filled with mistakes !! Recent cultural studies by that same group were filled with errors. IPC has been issued many variances for standards of which it could not meet! IPC has overstated its tower engineering standard in verbal statements, which later have been recounted to convey a more minimalistic tone. This issue by itself is cause for an absolute disqualification of IPC as an applicant!!</p> <p>It has come to my realization that ODOE is failing its primary mission statement in order to give IPC whatever they want, in order that they continue in a corrupt and incompetent organizational approach. the size and</p>	<p>The B2H transmission line has already been moved in some areas as landowners requested changes, in those negotiated moves so far if the transmission line moved out of its original site boundary those new areas should be fully studied and vetted to make sure impacts are not made. In this current B2H update it seems they're asking for a blank slate to do whatever they deem necessary. In the update letter we received we take note that IPC will make these changes only when landowners request them or they're “necessary for engineering or construction purposes.” This is way too vague of an explanation and it offers Idaho Power way too much power to move and exert itself out of the site boundary without proper oversight and approval.</p> <p>I would contend that Idaho Power has failed to demonstrate the ability to design transmission lines. Based on my earlier OPUC findings I proved that Idaho Power has not engineered the towers to a level of enhanced reliability standards (data which was ultimately not considered because the OPUC staff was not compelled by my evidence). I have also noticed that a midline capacitor station needs to be added to the project and that some access roads were improperly</p>	<p>Yes – partially. Mr. Myers raises issues and concerns with the certificate holder's coordination and negotiation with landowner, which is out of EFSC jurisdiction. The issues raised with ODOE failing in its mission and taking the responsibility for Idaho Power's work were also not raised in DPO comments, and thus not properly raised.</p> <p>In his DPO comments and contested case request, Mr. Myers raised concerns with the certificate holder's ability to engineer towers, and their competency to organize and build the facility; this aspect of the issue is properly raised, although no facts were provided to support Mr. Myers position on this issue.</p> <p><u>From contested case request:</u></p> <p>additional discovery is required to gather information into the totality of IPC's mistakes and exactly where the ODOE may be covering up those inadequacies or freely allowing IPC to incompletely move through a given standard protocol without proper completion of a standard, which is crucial for a safe, reliable and useful project.</p> <p>ODOE has abandoned its mission statement as it appears on the .gov website!!</p>	<p>No, for the following reasons.</p> <ol style="list-style-type: none"> Mr. Myers' issue statement identifies concerns with cultural studies, specifically that the studies have errors and have required variances. Neither issue statement or DPO comment identified any specific study for which errors have been identified or specific variances that have been requested or granted. <ul style="list-style-type: none"> Cultural studies are being formally reviewed through the federal Section 106 process. The Department understands that the Section 106 process is nearing conclusion for several survey reports, Initial Class III and VAHP, and that final reports are expected to be concurred with by SHPO and the applicable Tribal Governments by October 2024. Non-confidential elements of all survey reports are available for public review upon request. Given the nature of the project, including challenges of negotiating access with landowners of varied range of interest in negotiating outside of a PUC condemnation proceeding, completion of and review of cultural surveys and survey reports will continue for several years. The Site Certificate contains a condition that requires that all areas unsurveyed at the time of ASC or RFA1 review be surveyed prior to construction in the applicable area, and that impacts and necessary mitigation for listed or likely NHRP-eligible resources be included in the final Historic Properties Management Plan, which is based on the outcome of the federal review under the Section 106 process. Mr. Myers issue statement identifies concerns on the certificate holder's organizational expertise based on the amount of unfinished engineering, surveys and community interaction. The issue of unfinished engineering and surveys was addressed by Council in the Final Order on the ASC, Section III.D, Survey Based on Final Design and Site Access. Many resources require field-based surveys, but access limitations for this project have been severe and has

¹⁵ Final Order on ASC at 376 of 10586 (Sept. 27, 2022).

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Sam Myers			
<p>complexity of the RFA 2, signals that the applicant has been incompetent in its ability to organize the project. At the Energy Facility Siting Council meeting on Thursday May 30., 2024 Kellen was basically unable to clarify and explain the scope and complexities for the Amendment. This verifies the problem!! It is not a normal state of affairs to have such a huge amount of unfinished engineering along with surveys and community interaction as incomplete as we experience!! What seems to be happening now is that the ODOE will not admit that it has now taken some of the responsibility for the work that IPC should be responsible for!! This transfer of work to the ODOE is not correct and reveals the incompetence of IPC.</p>	<p>designed. These issues demonstrate IPC's lack of ability to design. It also points out they seem to have a lack of technical expertise to know specifications used in all facets of the design and construction of a transmission line. * * *</p> <p>Further on the subject of Idaho Powers selection of contractors; they chose contractors to conduct B2H site surveys that provided inaccurate results which had to be re-surveyed by different contractors. I'm concerned that Idaho Power hired powerline contractors that offered the lowest bid or chose them because other contractors have passed on the opportunity due to the design or route?</p>	<p>The ODOE has entertained this massive amendment that we simply do not adequately understand, at best the ADR's as explained in the amendment are now being used as a scapegoat, or a fix-all in this process. This should raise serious questions about the real use of the ADR. IPC is totally to blame for putting the unorganized project into a half-baked unintelligible amendment in order to fix all the project's unorganized problems!! It is all because IPC has no businesses seeking to cooperate a project of this size!! it cannot even keep its own service district vegetation plan current!!!</p>	<p>been continuously obtained, although still not yet complete, since approval was obtained by EFSC and BLM. The challenge of obtaining access on an ongoing basis, and the certificate holder's interest in siting facility components in a manner that minimizes impacts to landowners while also balancing the geotechnical and resource results of those surveys, creates challenges in timing and design. The Department's compliance program for this project is being led by the Siting Division's Senior Policy Advisor, Sarah Esterson, and a team of individuals from the Department's environmental consultant, Haley-Aldrich. Survey and geotechnical investigation reports are and have been reviewed by qualified subject matter experts to ensure that ongoing review for compliance is completed. All survey conditions require review by the Department and relevant reviewing agency.</p> <ol style="list-style-type: none"> Certificate holder previous responses state that they strongly disagree with Mr. Myers' characterization of the facility design. The facility is over 300 miles long and crosses widely diverse regions within the state. As with any large-scale project, modifications are likely as the certificate holder comes closer to construction, and some features may even require modification after construction has begun if unanticipated resources or site challenges are discovered once on-site. Given the scale and complexity of the Project, modifications as the design approaches finalization should be expected. As Mr. Myers acknowledges, his engineering concerns were raised in the OPUC proceedings and the certificate holder addressed Mr. Myers' allegations. Regarding Mr. Myers' alleged engineering flaws, the OPUC concluded: "Regarding the engineering behind B2H towers and transmission lines, we conclude that the record does not support a finding that Idaho Power's engineering is flawed. On the record before us, we find that Idaho Power selected a tower design that has been thoroughly studied and meets or exceeds all applicable and relevant standards. Indeed, the selected lattice towers are used throughout the Pacific Northwest and exceed tower design requirements, including for minimum loading criteria. The BPA lattice towers have wind loading of 120 miles per hour while the wire has wind loading of 100 miles per hour. With that wind loading, the MRI, which refers to how often a weather event is likely to occur, is between 700 and 10,000 years, while the NESC design requirement is for an MRI of greater than 50 years. While intervenors assert these wind loading calculations are flawed, we disagree." <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 2:</p> <p>One of the ways that the ODOE has failed its mission is how they have made it a general view to never stand up for a contested case intervenor or someone like myself who endured the contented case process, while mostly being stonewalled by the department. subsequently failed its mission to be supportive of the public's intervention. In Sept of 2022, I traveled</p>	<p>Idaho Power currently has a wildfire mitigation plan on file at OPUC this current plan is frankly unacceptable and leaves out significant cropland impacts from fire. It is an exceedingly underdeveloped plan. We are concerned that the RFA-2 is not in compliance with the new Wildfire prevention and risk mitigation standard. Much work needs to be done to reconcile this new Wildfire standard. I am confused about how that is going to happen. Proper Wildfire Policy seems much more Paramount in this process than granting more</p>	<p>Yes – partially. The Department interprets Mr. Myers issue to be partially specific to the adequacy of the certificate holder's Wildfire Mitigation Plan and whether it adequately incorporates and accounts for Morrow County's designation of areas within the project area as "Wildland Urban Interfaces."</p> <p>For the other elements addressed in his issue statement, the issue appears to be a complaint about the DPO hearings and proceedings for the ASC. Mr. Myers did not raise these concerns on the record of the DPO for RFA2, therefore, they are not properly raised. Even if</p>	<p>No, for the following reasons.</p> <ol style="list-style-type: none"> Review of local designations, such as wildland-urban interfaces, is part of the certificate holder's Wildfire Mitigation Plan (WMP). The WMP, as provided in the Final Order on Amendment 1 Attachment 7-16, includes the certificate holder's Wildland Fire Preparedness and Prevention Plan (Appendix A of the WMP) which is an additional plan developed to provide guidance to Idaho Power employees and contractors. In this plan, Section 4. Prevention - Practices of Field Personnel, conditions of the surrounding area, including any designated wildland-urban interfaces, are to be evaluated as part of site conditions. In the Final Order on Amendment 1, the Council adopted Wildfire Prevention and Risk Mitigation Condition 1 (GEN-WMP-01) requiring that, prior to and during operations, the

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Sam Myers			
<p>to La Grande Oregon to give a 3 minute testimony to the Siting Council, I was finally called upon to give my 3 minute testimony as to my concerns about B2H. My testimony is on record and I believe it was very specific as to my concerns about fire analysis in our area. I used the National Weather Service's own data on Red Flag issuances as evidence about our high fire level and the lack of proper recognition by IPC. After I finished testifying the council had a question or 2 for me and it seemed to be finished. having no idea about what was about to happen with me being gone!! It was not until a year later did I learn that the lawyer for IPC literally trashed my comments and convinced the council that I had said something entirely different. This was deeply disturbing to me and frankly calls for a Judicial Review at the minimum!! Where was any questioning from someone about what just happened in the meeting??!! Where was the Dept of Justice?? Where was the ODOE?? Why did everyone in the room let this legal maneuver happen without intervening?? I had zero justice, I had my testimony slandered by some lawyer, for IPC's gain!! no one cared about my concerns, where were any credible instincts from the ODOE?? my only conclusion was that they sold out their own mission for anything helping IPC!!</p> <p>This is why the ODOE have failed at this process and failed their own mission statement and can not be trusted in this process. IPC AS WELL, REVEALED THAT THEY WILL RESORT TO ANY LEGAL MANEUVERING NECESSARY TO GET THE PROJECT GRANTED !!!</p>	<p>authority to Idaho Power without proper; review, transparency and regulation.</p> <p>Morrow County authorities have designated this Butter Creek area as 'Wildland Urban interface', unfortunately the current B2H route traverses directly through this Urban interface Zone and remains in close proximity making it highly impacting for many homes and Farms, any relocation or revisions need to be fully scrutinized in this area because of those heightened impacts.</p> <p>I would also like to note that this is my opinion; Idaho Power seems to have a history of shedding its responsibility in a number of aspects having to do with B2H. Idaho Power shed its responsibility to negotiate with landowners for a right of entry on to landowners property for surveying purposes; rather than make the effort to create Right of Entry documents for landowners they subpoenaed landowners to court proceedings to force access onto private property.</p> <p>It is extremely disappointing to me that Idaho Power continues to get away with distorting the facts to the public while it seeks to maximize its own profits by creating a legal Short Circuit in the process. Idaho Power has a poor record of public involvement a poor record of land owner negotiation, we have heard of local examples where Idaho Power distorted the facts in an effort to expedite the process it's too bad that Idaho Power can not be held more accountable and frankly needs to be held more accountable, not less in each step along the way to constructing B2H</p>	<p>his contentions about the proceedings on the ASC were raised on the record for RFA2, this is out of the scope of RFA2, and a contested case proceeding would not be appropriate or provide any remedy. Council cannot remand or reverse the proceedings and its decision on the ASC.¹⁶ Mr. Myers also takes issue with how the certificate holder conducts its landowner negotiations, which is outside of EFSC jurisdiction.</p> <p><u>From contested case request:</u></p> <p>ODOE has proven that they abandoned their mission to the public by allowing IPC to especially run the permitting show however they choose!! giving variances and allowing incomplete engineering references to stand until a problem surfaces in which IPC is much to incompetent to realize early on!! This lack of proper organization is problematic and is dangerous!!</p> <p>IPC has given itself over to poor quality control and a constant misrepresentation of the product quality!! extremely poor customer relations. The least cost mentality has made IPC the most non-negotiating applicant of its kind. I have never had a real negotiation, at best it has been a one-sided conversation about what they will do, but never listening to what we would prefer!! Council, do not grant this amendment.</p>	<p>certificate holder verify that its Operational Wildfire Mitigation Plan includes an evaluation of fire-risks and applies the requirements of its Public Safety Power Shutoff Plan within all five counties for which the project is located, not limited to the certificate holder's service territory.</p>

II.D Stop B2H

¹⁶ OAR 345-027-0371(5) "Only those persons, including the site certificate holder, who commented in person or in writing on the record of the public hearing described in OAR 345-027-0367 may request a contested case proceeding on the proposed order for an amendment to the site certificate. To properly raise an issue in a request for a contested case proceeding on the proposed order for an amendment, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing...If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the Council may not grant a contested case proceeding for that issue. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support that person's position on the issue." Emphasis added.

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Stop B2H			
<p>Issue 1:</p> <p>The evaluation of RFA2 for the area added to the site boundary fails to comply with OAR 345-027-0375(2)(a) requiring the review to be consistent with requirements for the original Site Certificate.</p>	<p>The December 20,2023 decision memo does not interpret the OAR's cited correctly therefore the Written Approval of Revised Analysis Areas under OAR 345-027-0360 is incorrect and invalid. Authorization to change a site boundary is not allowed under 345-027-0360(3) nor ORS 469.300(22).</p> <p>ODOE cites authority to make changes in 345-027-0360(3). This section states, "(3) For any Council standard that requires evaluation of impacts within an analysis area, the analysis area is the larger of either the study areas, as defined in OAR 345-001-0010 (Definitions)(59), or the analysis areas described in the project order for the application for site certificate, unless otherwise approved in writing by the Department following a pre-amendment conference.'</p> <p>The first section discusses the analysis area in relation to the study area. The study area is further defined by OAR 345-001-0010 (Definitions)(59) which states, "the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary." It goes on to list distances from the site boundary for particular resources. The last item states, "unless otherwise approved in writing by the Department following a pre-amendment conference." No preconference approval has been offered to justify a site boundary expansion. Therefore, this decision memo has no basis of fact to support the department's decision to authorize the applicant to extend the site boundary or micrositing area by ¼ mile either side of the centerline (half-mile total width increase).</p> <p>Additionally, the ODOE memo of 12/20/202313 approving the changes, states that the changing definitions of site boundary and micrositing corridors has been used in the past on wind projects. The B2H is a 300-mile linear facility consuming about 96,000 acres of very varied climate and terrain. Applying EFSC standards to a nearly 300-mile, 96,000-acre linear facility is very different than applying them to a stationary facility like a wind or solar farm. No examples of the circumstances or decision memos have been offered to justify the metrics of the comparison between wind farms and a 300-mile 500 kv</p>	<p>Yes – partially. The issue in the contested case request appears to be centered around the Department's ability to approve modified analysis area for an amendment and the letter the Department issued under OAR 345-027-0360 which approved modified analysis areas. In its DPO comments Stop B2H states, "as RFA 2 moves forward, the public needs to be at the table to ensure the process complies with all laws and Council standards applicable to an original site certificate application (OAR 345-027-0375(2)(a)," However, this is the only statement similar to the phased issue statement in the contested case request. The DPO comments do not make arguments or provide facts to support a position that the area added to the site boundary fails to comply with OAR 345-027-0375(2)(a) requiring the review to be consistent with requirements for the original Site Certificate. The Department focuses its evaluation and recommendations on this issue based on the arguments around the issue, which is associated with the letter approving analysis areas. For responses to Issues associated with the expanded site boundaries noncompliance with OAR 345- 027-0375(2)(a) because RFA2 is not consistent with requirements for the original Site Certificate, please see recommendations in this document under Irene Gilbert Issue 1.</p> <p>Reference to "Adjusted to ISO conditions" as defined in ORS 469.503 (Requirements for approval of energy facility site certificate)(2)(e) in contested case request were not raised in DPO, nevertheless, to the extent the Department understands Stop B2H's contentions in reference to this statute/rule, they do not apply to this facility.</p> <p><u>From contested case request:</u></p> <p>a. For a request for amendment proposing to add new area to the site boundary, Council must determine that the preponderance of evidence on the record supports a conclusion that the portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application; "laws and Council standards applicable to an original site certificate application," means that the laws and Council standards that would apply to an ASC would be applied to the areas added to the site boundary, which is presented in the DPO.</p> <p>b. Authorization to change a site boundary is not allowed under 345-027-0360(3) nor ORS 469.300(22). These rules may be used to change the "Analysis Areas." Analysis areas were changed in December 2023 staff memo, 12/20/23.3 Also per: ORS 469.330(3): "After the preapplication conference, the department shall issue a project order establishing the statutes,</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> STOP appears to misunderstand two things: first, what OAR 345-027-0375(2)(a) requires and second, the significance of the Department's December 20, 2023 letter establishing the analysis areas for RFA2. <ul style="list-style-type: none"> OAR 345-027-0375(2)(a) does not require the review of an amendment "to be consistent with" the requirements of the original Site Certificate. Given their framing of the issue, it appears STOP may believe this rule requires that review of an amendment apply the same analysis area distances as in the review of an original site certificate. If that is the case, they are mistaken. The rule requires Council determine that a preponderance of evidence demonstrates "the portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application." It does not require application of the same analysis area distances. It appears STOP may also believe the December 20, 2023 letter authorized IPC to expand the site boundary as requested in RFA2. STOP alleges "b) Authorization to change a site boundary is not allowed under 345-027-0360(3) [addressing analysis areas] nor ORS 469.300(22)" [definition of "project order"]. The DPO and the Proposed Order describe in Section III.A.1.a., <i>RFA2 Proposed Site Boundary Expansion and Micrositing Area Definition</i>, the rules governing the changes to the site boundary and the associated information requirements that must be provided to support the Council's evaluation of the expanded site boundary. As previously described, the certificate holder's request to separate the application of the definitions of site boundary and micrositing area (OAR 345-001-0010(31) and OAR 345-001-0010(21), respectively) does not have an associated Council standard or statute to be evaluated against. Rather, the certificate holder must demonstrate that it has submitted the necessary information to the record to support the expanded site boundary for the evaluation under applicable Council standards, which are described in RFA2 and the DPO. Under OAR 345-001-0010(31), Council is obligated to review a facility within a proposed site boundary, as proposed by the applicant or certificate holder, and does not otherwise have criteria or requirements that would grant Council the legal ability to deny a proposed site boundary unless specifically related to compliance with a Council standard or other applicable law or regulation. RFA2 Section 8.0 and Table 8-1 provide a crosswalk table that supports the certificate holder's evaluation of the analysis areas approved by the Department. Where the certificate holder had site access it conducted the necessary surveys for the proposed RFA2 micrositing areas, and provided that data with RFA2. Adequate evaluation of most Council standards may be met with desktop studies or a literature review; however, several Council standards require field surveys in combination with a literature review, this is presented in RFA2 and also evaluated in the DPO/proposed order. The letter dated December 20, 2023 was issued under OAR 345-027-0360(3) which states, "For any Council standard that requires evaluation of impacts within an analysis area, the analysis area is the larger of either the study areas, as defined in OAR 345-001-0010(59), or the analysis areas described in the project order for the application for site certificate, <u>unless otherwise</u>

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Stop B2H			
	<p>transmission line. STOP urges Council to acquire and review these precedent setting wind farm examples and explain how these names/terms have changed for wind farms and evaluate those conditions on a linear facility.</p> <p>As RFA 2 moves forward, the public needs to be at the table to ensure the process complies with all laws and Council standards applicable to an original site certificate application (OAR 345-027-0375(2)(a).</p>	<p>administrative rules, council standards, local ordinances, application requirements and study requirements for the site certificate application.”</p> <p>c. “Evaluation of Analysis Areas” is also a requirement of OAR 345-022-0000, General Standards, which requires compliance with all rules promulgated under ORS 469.501, that would include ALL EFSC standards.</p> <p>d. The December 20, 2023 staff memo, is the approval letter for the expanded study and analysis areas, which identify areas to be evaluated within and extending from the site boundary. This authorizing letter:</p> <ul style="list-style-type: none"> - does not clearly state the standards, rules, or laws to legally verify staff or Council authority to make the changes. - does not approve the request by the applicant to expand the site boundary to ½ mile. No OAR is cited to justify the ability to and authority of staff to authorize this significant change. - does not distinguish micrositing areas/corridors approved in the ASC and RFA1 and proposed in pRFA2 from the expanded site boundary, in the same manner allowed for many certificate holders, whereby the site boundary extends beyond areas fully evaluated for facility infrastructure siting (micrositing corridors/areas). <p>D. does not cite OAR’s that authorize these actions ... OAR 345-001-0010(1) states “Adjusted to ISO conditions” as defined in ORS 469.503 (Requirements for approval of energy facility site certificate)(2)(e). ORS 469.503(2)(e)(AN) is about carbon dioxide emission, baseload gas plant, Carbon dioxide equivalent, Fossil-fueled power plant, etc and NOT study areas designated in OAR 345-001-0010(35). OAR 345-001-0010(35) defines a Natural gas-fired facility. This authorization letter is not valid as it does not site the OAR’s in some sections for its authority, redefines critical definition with no new definitions, and cites OAR’s that have nothing to do with the authority being claimed to have to make these changes. Therefore, everything in this letter is invalid and a contest case is required to get to the bottom of what exactly is the department doing and what is the rational, departmental history and rational for similar decisions and current authority to make these decisions</p>	<p><u>approved in writing by the Department following a pre-amendment conference.</u>” [Emphasis added.] The December 20 letter identifies the rules it was issued under and describes the reasons for the changes. DPO and Proposed Order Section II.C.1., <i>Request for Amendment and Revised Analysis Areas</i>, also describes in detail the review of RFA2 and when the certificate holder proposed the expanded site boundary, the analysis area approval letter, and the rules and reasons for changing the analysis areas.</p> <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 2:</p> <p>The maps provided to the public for review are out of compliance with the review standards mentioned under Issue 1: OAR 345-027-0375(2)(a) and: OAR 345-015-0190, OAR</p>	<p>The company is also gaming the public and public officials by not providing adequate maps from which a person could meaningfully participate and for landowners to even understand what is happening on their land!</p>	<p>Yes.</p> <p><u>From contested case request:</u></p> <p>a. Maps are inadequate and therefore out of compliance with OAR 345, Div 21.10 ODOE states that compliance with this</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. Stop B2H provides citations related to Division 21 mapping/information requirements, definitions, and other information that describes the facility or change in the facility from the amendment. OAR 345-027-0360(C) states that a pRFA must include “The specific location of the proposed change, and any updated maps and/or geospatial data layers relevant to the proposed change..”

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<p>345-027-0360 (1)(b)(C), and OAR Chapter 345, Division 21. Specifically in Division 21, OAR 345-021-0010(1)(c)(A) and (B)5, OAR345-001-0010(55)6, and the Application for site certificate Exhibit C Sections 2.0 and 3.07. Additionally, they are non-compliant with OAR 345-027-0360 (1)(b)(C)8: “the specific location of the proposed change, and any updated maps and/or geospatial data layers relevant to the proposed change;”[emphasis added] as well as subsection (c) “References to any specific Division 21 information that maybe required for the Department to make its findings.” The detail and specifics within the map sets provided in the PO are inadequate, as described in detail in our DPO comments, making the evaluation of RFA2 by the department either impossible or grossly superficial, denying the public of any meaningful review and opportunity to engage with specific specificity. Hence the evaluation of RFA2 is incomplete and inadequate to meet compliance standards of review.</p>	<p>The maps supplied in RFA 2 do not show all areas that will be disturbed as required in this OAR. Private, county, state, and federal roads that will be used in constructing the B2H, that are outside the site boundary, are not shown on the maps provided. These communities that support the construction of B2H will be temporarily disturbed during construction and those disruptions are not clearly noted. In Union County, a person can no longer call the Public Works Director to ask what permits IPC has filed for. We now need to initiate a Freedom of Information (FOI) request to get that information. STOP wants the public to know the impacts on their neighborhood and lands but we/they cannot get that information, or at least not quickly. Thus, the applicant is non-compliant with this section of the rule and the maps should be re-done and distributed to the public for comments before this RFA is considered by Council. Inside the site boundary the same situation is occurring.</p> <p>RFA 2 does not state the correct increase in the number of the acres being added to the site boundary. The approved site boundary is approximately 24,000 acres and now, an estimated total of 96,000 of acres are proposed (see Attachment 1). Yet, in the DPO, Table 2: RFA2 Proposed Transmission Line Route, Access Road, and Work Area Additions” pp. 31-33 of 855, the total addition stated is only 4,000 acres approximately. This is grossly misleading because the amendment seeks a site boundary addition—not a micrositing addition as the table is apparently displaying.</p> <p>OAR 345-001-0010(55) as sited in the Application for site certificate Exhibit C 2.0 and 3.0 and the Second Amended Project Order, Section III(c) states, “shall indicate the “site boundary” as defined in OAR 345-001-0010(55).</p> <p>OAR 345-001-0010(55) does not define site boundary therefore this section and any parts of the RFA 2 (and all prior amendments, the site certificate, site conditions, and ASC) that rely on this definition are invalid;</p> <p>The roads on the maps in Figure 4-1 RFA 2 Proposed Micrositing Area Additions, except I-84, are not labeled</p>	<p>Division is not required; however, the above cited rules, under Issue 1, state differently. Division 21 includes the required contents for applications. In addition, the OAR 345-015-0190 Determination of Completeness requires (within most of its sub-sections) compliance with Division 21 rules; and OAR 345-027-0360 (1)(c) requires references to Division 21.</p> <p>b. Multiple and repeated requests for better maps of the RFA2 areas were requested by STOP, as described in our DPO comments, without resolution. In the past, these maps and layers were provided by staff to STOP and the public. This time we were told that they are not available or required. Idaho Power also refused to provide them.</p> <p>c. “OAR 345-022-0359(1) states that, prior to submitting a preliminary request for amendment to the site certificate as described in OAR 345-027-0360, the certificate holder may request a preamendment conference with the Department to discuss the scope, timing, and applicable laws and Council standards associated with the request for amendment.” Yet, under subsection (2) “A pre-amendment conference request must be in writing and must include a description of the proposed change and, if applicable, maps or geospatial data layers representing the location of the proposed change.” [emphasis added.] Stop B2H and other interested parties have been requesting this level of detail in the maps for RFA2 (see the DPO comments pp. 10-15). These map layers are clearly “applicable” to any evaluation, as “specific specificity” is required for a thorough review; therefore, given the rule stated above, these maps should have been requested of the developer by the department and provided to the public for this review and evaluation.</p>	<ol style="list-style-type: none"> The GIS data submitted by certificate holder is consistent with the GIS data requested and received for all EFSC energy facilities. There is not an applicable rule that requires the submission of specific types of GIS, KMZ, KML, etc. formats that may be used with varying types of software. The Department is unaware what Stop B2H's contention is in this comment, “Multiple and repeated requests for better maps of the RFA2 areas were requested by STOP, as described in our DPO comments, without resolution. <u>In the past, these maps and layers were provided by staff to STOP and the public.</u> This time we were told that they are not available or required. Idaho Power also refused to provide them.” The only GIS data the Department has received currently and in the past is the outline of the site boundary/ RFA2 micrositing areas, the same information that is provided by other applicants and certificate holders and is available on the Department's Online Mapping Tool; and this is in the information that the Department has provided Stop B2H in the past and present for RFA2. The Department uses this site boundary/micrositing area in its online mapping tool (ORESAs) to fact check with RFA maps based on publicly available GIS data sets and layers. The Department does not receive separate data layers from certificate holders, and if it did, that would be a public record and provided upon request. OAR 345-027-0375 (Scope for Review for Amendments) and OAR 345-022-0000 (General Standard of Review), requires that Council find that the preponderance of evidence supports the applicable findings under reach rule. Preponderance of the evidence means “Proof by a preponderance of the evidence means “that the facts asserted are more probably true than false.”¹⁷ Under OAR 345-021-0100(2), the applicant (certificate holder) has the burden of proving, by a preponderance of the evidence in the decision record, that the facility complies with all applicable statutes, administrative rules and applicable local government ordinances. In other words, it is the certificate holder's responsibility to provide information to the record to support the RFA2 and to demonstrate the preponderance of evidence in the record supports Council consideration under its Scope of Review for amendments, which was provided in RFA2 and evaluated in the DPO and proposed order for RFA2. All of the maps provided in RFA2, individually or in combination, comply with the applicable requirements designated in OARs, this includes the identification of roads appropriate scaling. The Department reviews multiple mapsets provided in RFA2 to draft its findings of facts, recommendations, and site certificate conditions under applicable Council standards. References to these findings are provided in the Department's evaluation in the DPO and Proposed Order. The level of detail Stop B2H is indicating is necessary for the public and landowner review is not required by rule. Importantly, a complete RFA (or ASC) does not mean the RFA or ASC complies with the Council standards, that is provided in findings of fact and recommendations in the DPO.¹⁸ Certificate holder previous response indicates that STOP B2H's concerns regarding certificate holder's mapping do not allege noncompliance with any Council requirement. First, STOP B2H asserts that various roads that certificate holder's personnel may use are not located within the site boundary. This is to be expected; the site boundary includes only the facility and its related or supporting facilities. Only new roads and existing roads that will be substantially

¹⁷ Riley Hill Gen. Contractor, Inc. v. Tandy Corp., 303 Or. 390, 402, 737 P.2d 595 (1987).

¹⁸ OAR 345-027-0363(5) A request for amendment is complete when the Department finds that the certificate holder has submitted information adequate for the Council to make findings or impose conditions on all applicable laws and Council standards.**

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	<p>in the Union County section. On map 39 between blue and orange outlined and non-outlined road sections segments starting with UN-*** and 2/*** are well labeled. Glass Hill Road, the only county road in the area, is not on the map so is not labeled. Logically it would be a major support road to get materials to the construction sites but it is not on the map. Therefore, it is difficult to know the impacts of the B2H on these roads. Many of the other maps in Union County exhibit the same lack of detail.</p>		<p>modified are considered related or supporting facilities.¹⁹ All other existing roads are not part of the facility site and are correctly not included within the site boundary.</p> <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 3:</p> <p>RFA2 and the PO did not evaluate the Protected Area, Glass Hill State Natural Area (SNR) as required under OAR 345-022-0040 as revised in 2022, nor did it apply the avoidance mitigation required in the standard. RFA2 is non-compliant with OAR 345-022-0040</p>	<p>The EFSC rules on Protected Areas were amended in 2022, finally allowing the acknowledgement of protected areas designated after 2007. The new rule is in effect -- and it has been in effect well before the pRFA2 application was deemed "complete" (even before it was received). Regardless, Idaho Power has been aware of this protected area for a long time. Therefore, IPC and the recommended DPO is out of compliance with OAR 345-022-0040-Protected Areas standard. The specific area out of compliance is also called the Glass Hill State Natural Area of Union County.</p> <p>There may be other protected areas of out compliance as well, considering that there are 88 protected areas within the "analysis areas of ASC, RFA1, and RFA2."³⁴ For example, in "Table 23: Protected Areas within Analysis Area for ASC Approved Routes, Approved Micrositing Area Additions, Proposed RFA2 Micrositing Area Additions"³⁵ includes legend-type footnotes on p. 156: #3 states: "Potential impacts from approved routes in Final Order on ASC not evaluated for protected area." (emphasis included). Therefore, once deeper analysis is available, there may be more noncompliance issues that surface and amendments needed.</p> <p>The Glass Hill Preserve (aka Glass Hill State Natural Area), is being crossed by the B2H line in a very sensitive area on two sides of Winn Meadow, a high</p>	<p>Yes.</p> <p><u>From contested case request:</u></p> <p>a. Protected Areas, specifically Glass Hill State Natural Area (SNR) has not been adequately evaluated because the department claims: that it has already been approved, that there are no components within the SNA boundary, and that it's applicability under the protected area standard has been litigated. However, as STOP commented in the DPO and as facts in the record show: a) the new analysis areas mandate that a distance of 19.75 miles from the proposed site boundary be evaluated for impacts to protected areas; b) this distance clearly encompasses the new Glass Hill SNA, which according to OAR 345-022-0040 must be avoided; c) no balancing authority is permitted under 345-022-0000(3)(f); and d) RFA2 is noncompliant with this provision since this is a new amendment request and it must be evaluated using the laws and rules in effect at the time the application was deemed complete¹², which was presumably be sometime in April 2024. The protected area standard was updated/amended in 2022 (approved by Council in 2021.).</p> <p>b. Things have changed and new amendments must comply: the new rules for protected areas (above); and newly identified and listed T&E plant species have become known to exist in the protected area and vicinity and must be evaluated with these new facts. Council's Scope of Review requires that the</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. There are not any RFA2 facility components or micrositing areas that cross Glass Hill or any otherprotected area (and the expanded site boundary does not cross the boundaries of Glass Hill). 2. The applicant did not propose and the Department didn't draft findings or recommendations for the balancing authority under 345-022-0000(3)(f), under the protected areas standard or any other standard in the RFA2 DPO/Proposed Order. 3. The protected area standard effective in December 2022 is applicable to RFA2. It was first applicable to RFA1 and remains applicable to RFA2 because the Glass Hill SNA is within the analysis area and is evaluated as such,.. To the extent STOP is alleging the Department did not analyze the impact the proposed RFA2 changes would have on the Glass Hill SNA, they are mistaken. The evaluation of indirect impacts to protected areas considers impacts from water use, traffic, noise, and visual impacts. The Department has analyzed the impacts of the proposed changes on protected areas, including the Glass Hill SNA. While the Proposed Order does not separately analyze the impacts on each of the 80+ protected areas in the analysis area, it does explicitly address the noise impacts and visual impacts at the Glass Hill SNA (see, e.g., Proposed Order pp. 150-151 and 161): 4. To the extent STOP is alleging Council must reassess <i>previously approved</i> components on the Glass Hill SNA, they are mistaken. When considering requests for amendment, Council assesses whether <i>proposed changes</i> comply with Council's standards.²⁰ . <p>- At the time of Council's 2022 approval of the ASC, the Glass Hill SNA was not protected under the Protected Areas standard because it had not been designated as an SNA and the standard, at that time, applied to areas designated as protected as of May 11, 2007. The Council approved the Morgan Lake alternative to cross a part of what is now designated as the Glass Hill SNA. Under ORS 469.401(2), the site certificate or amended site certificate shall require both parties to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate. As such, Council approval of the ASC was done so with the</p>

¹⁹ ORS 469.300(24).

²⁰ OAR 345-027-0375. (2) *To issue an amended site certificate, the Council must determine that the preponderance of evidence on the record supports the following conclusions:*

(a) For a request for amendment proposing to add new area to the site boundary, **the portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application;**

(c) For a request for amendment not described above, the facility, **with the proposed change**, complies with the applicable laws or Council standards that protect a resource or interest **that could be affected by the proposed change;**

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	<p>mountain wetland with <i>Trifolium douglasii</i> Federal species of Concern that is a candidate for State listing. The rule does not allow a transmission crossing in a protected area unless: an existing transmission line is within 500 feet, which is not the case here; or if there is no viable alternative, which there are. ODOE and EFSC may claim that this issue has already been litigated; but things have changed. First, the rule! The back story on the rule and rulemaking process, when IPC attorneys communicated in an exparte manner, during the parallel contested case process, is complicated. However, it is resolved with the amended rule on protected areas--and IPC knows very well about the area. Fast-forward to present, IPC will say that if RFA2 is not approved, they will revert back to the old route/version (the site certificate). This veers on blackmail and should not be allowed.</p> <p>Second, the Glass Hill Preserve landowners and Whitetail Forest, LLC have presented alternatives specifically for the area. And more recently, in an attempt to prevent serious damages, particularly to the Winn Meadow wetland and its hydrological conditions/features, as well as Federal Species of Concern/State Candidate plant species, they have been in verbal and email communication with Joe Stippel (IPC Project Manager) to find a resolution without impacting neighboring landowners.</p>	<p>evaluation must apply the applicable laws and standards in effect on the date the application for amendment is complete.</p> <p>c. The PO does not evaluate this specific protected area for its values and resources, such as T&E species water resources, and other; nor is it being evaluated as a protected area (which it is!), meaning that avoidance must occur as the new rule demands. Rather, the PO simply states that there are no new resources within the specific footprint of the new site boundary or that it has already been litigated. This is non-compliant because it is an important protected resource, without any existing transmission line, that must be avoided. Furthermore, the resources (e.g.: wetlands and T&E plants) are still being discussed, evaluated and negotiated with land owners and managers. Therefore, the Glass Hill SNA should have special analysis of its own, and possibly its own amendment for micro-siting.</p> <p>d. "Table 23: Protected Areas within Analysis Area for ASC Approved Routes, Approved Micrositing Area Additions, Proposed RFA2 Micrositing Area Additions" includes legend-type footnotes on p. 156 pdf: #3 states: "Potential impacts from approved routes in Final Order on ASC not evaluated for protected area." (emphasis included). Therefore, IPC's response that STOP's comments were speculation is not true. Seven protected areas in the RFA2 project expansion have not been evaluated and deserve further analysis since they were not evaluated; and the Glass Hill SNA is one of these that has not been evaluated.</p>	<p>protected area rules in place at that time just as the upcoming final decision by Council on RFA2 will apply the rule as effective at the time of that decision.</p> <ul style="list-style-type: none"> - OAR 345-027-0375(2)(a) does not allow Council to reconsider previously approved facility components or routes as evaluated by Council in its Final Order on ASC and RFA1 that are not requested to be changed in RFA2. Council does not have the authority to reverse or re-evaluate its prior decision, as it is maintained as a final decision through prior Final Orders. 5. Stop B2H's comment about the footnote in Table 23: Protected Areas Evaluated, misunderstands the footnote. Footnote No. 3 is associated with the protected areas in that table because of the location of the ASC, RFA1, or RFA2 route segment or facility component or the protected areas status as a protected area. For instance, Glass Hill has the No 3 next to it for the ASC, because it was not a protected area at that time. Some protected areas have a No. 2 and No. 3 next to is where No. 2 indicates the resources is outside of the analysis area, and therefore No. 3 was not evaluated in the ASC. 6. STOP B2H's assertion that the DPO fails to assess compliance with the Protected Areas Standard because of potential impacts to the Glass Hill State Natural Area is incorrect. RFA2 does not propose any additional facilities within the Glass Hill State Natural Area, and the proposed expanded site boundary has not been extended into the Glass Hill State Natural Area. While a segment of the Project's micrositing area is located within the Glass Hill State Natural Area, this segment was part of the Company's ASC and was approved in the Final Order. 7. STOP B2H argues without evidence that there may be additional protected areas that have not been analyzed. STOP B2H has not provided any factual support for this assertion, and it should be given no weight. <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council's Protected Area standard and therefore, it does not justify a contested case.</p>
<p>Issue 4:</p> <p>Council should deny the use of a Type C/ADR process for this situation (RFA2) because the proposed site boundary has not been fully evaluated per OAR 345-027-0375(2)(a), and this type of amendment process is predicated upon there being a fully reviewed site, prior to the request. The application of the ADR process/Type C Amendments contemplated under RFA2 disregards any public interest by excluding the public, and their due process rights to participate.</p>	<p>The company is trying to strategically position themselves (gaming the EFSC rules) to either cut corners or violate landowners (and the public's) due process rights in the future (addressed under Issues 1 and 2). STOP believes its intent is to speed up sensitive negotiations with landowners, in order to cut corners and the landowner out of the process. The applicant using Type B or C Amendments, without public input, will range freely working with an agency charged to hurry up and site these facilities quicker. The landowner need not know about changes on their land. The public must have a seat at the table to moderate</p>	<p>Yes – partially. Matters of landowner negotiations and land acquisition are outside of EFSC jurisdiction.</p> <p><u>From contested case request:</u></p> <p>a. Council is not protecting the public interest in applying an ADR process in the future without making additional improvements to the New General Site Conditions, GEN-GS-07: Proposed Order Section III.A.1.a recommends New General Standard of Review Condition 12 (GEN-GS-07), which would adopt the certificate holder representation to provide a landowner consent letter with any future ADR for changes on private property. (PO p 439, Attachment 2 p 66) Council could</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. The purpose of New General Standard of Review Condition 12 (GEN-GS-07) in the Proposed Order is to allow IPC, in response to landowner requests, to relocate Project components within the proposed amended site boundary, <i>possibly</i> without having to amend the site certificate. Under the condition, IPC could relocate a component if the owner(s) of land impacted by the change provide written consent to the changes <i>and</i> the Department determines an amendment is not needed, pursuant to the criteria in 345-027-0357. 2. STOP B2H's proposal to require public notice and allow public comment on every change would undermine one of the purposes of RFA2 and this condition - to allow IPC to proceed with minor changes without unnecessary delay. Under the proposed condition and amendment rules, if IPC proposes a change that triggers one of the "three could's" they will have to get an amendment.²¹ Depending on the type of amendment, there may be an opportunity for public comment.

²¹ OAR 345-027-0350: Except for changes allowed under OAR 345-027-0353, an amendment to a site certificate is required to: ***

(4) Design, construct, or operate a facility in a manner different from the description in the site certificate, if the proposed change:

(a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard;

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	<p>the utility's lust for profit and an agencies pressure to move faster. * * * * *</p> <p>Unfortunately, there are many areas in the site boundary that greatly exceed the .5 mile with discretion limits. In the map below the site boundary is 1.45 miles wide. Combining the .5 mile for the approved and alternate routes gives 1 mile. That is still about ½ beyond the combined limit. If google earth pro was used to fly down the B2H line at altitude the excess taking of the site boundary would be clear. Remember, IPC was fine with site certificate boundaries for over a decade. The suggestion is that this extra distance is needed to accommodate landowners.</p> <p>Finally, and possibly the most significant problem if RFA2 if approved as proposed, is the future uncertainty it opens. All decision power is vested in the company and the department--while the public, local governments, and private landowners, can be cut-out completely. The reason this may occur is because this amendment will allow an ADR or Type C Amendment process, which could violate due process rights, particularly of the landowners; but the counties, cities, and public, as well. * * * * *</p> <p>ADR process runs so quickly and administratively that the public and local officials will never know in time. Landowners may not even know it's happening on their property – yet the state and developer could decide. This is Not right!</p>	<p>remedy the public interests and authorize additional improvements to the proposed Condition GEN-GS-07. For example, an improved Notice would comply with other rules of the Council and a comment period would be internally consistent with Council rules.</p> <p>b. The new Site Condition proposed in the PO, GEN-GS-07 is a welcome improvement from the DPO; however, it only protects the landowner and not the public. STOP recommended improved site conditions in our DPO comments (pp. 7-9). We suggested that all areas outside the original site boundary comply with OAR 345-027-0357(2) and be subject to Type A Amendment process.</p> <ul style="list-style-type: none"> - The public is not noticed in an ADR process; there is only a web posting. The public has particular interests in protected areas (e.g.: Ladd Marsh and Glass Hill), recreation areas (e.g.: Morgan Lake Park and NHOTIC), and fish and wildlife habitats (e.g.: wetlands and ephemeral streams). Therefore, the public must be noticed, at a minimum, in addition to the land owners/managers - the public should be afforded a comment period since their interests are at stake. The ADR process is very time limited; direct and/or electronic mailings should occur, in alignment with OAR 345-015-0014 notice for contested cases and OAR 345- 027-0371 (the Type A process) which all notice people in a timely manner with adequate descriptions, process steps and appeal rights. We suggested a 60-day comment period however a 30-day period would be an acceptable compromise. <p>Simply have a "posting" as notice and no opportunity for comment, isn't fair to the public and violates their rights under ORS 183.415, "persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to the actions</p>	<p>3. STOP contends that not requiring public notice and an opportunity to comment on every change to a facility component violates the public's rights under ORS 183.415. That is not correct. That statute governs notices that agencies must provide when holding a contested case. It does not govern EFSC's process for issuing site certificate amendments or the Department's evaluation of an ADR.</p> <p>4. Division 27 amendment rules apply to all certificate holders and to various types of changes in a facility, site certificates, or changes that may require an amendment. Division 27 also allows for certificate holders to submit an ADR and identifies the necessary contents in an ADR and the standard that ADRs are reviewed under. To add procedural requirements that are not included in Division 27, which applies to all approved facilities and certificate holders, is outside the scope of RFA2 and would most appropriately be managed with rulemaking, as to not prejudice one certificate holder or type of facility.</p> <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards; and therefore, it does not justify a contested case.</p>
<p>Issue 5:</p> <p>RFA2 and the PO fail to comply with the Retirement and Financial Assurance Standards OAR345-022-0050, 345-027-0375(2)(d), and the Mandatory Conditions under OAR 345-025-0006(8). The fiscal risks have changed and the duration is not for the life of the project. Retirement and Financial Assurance Standard is one of the Standards whereby the Council cannot apply its balancing determination.</p>	<p>The bond or letter of credit required under OAR 345-022-0050 (Retirement and Financial Assurance Standard) and OAR 345-025-0006(8) (Mandatory Site Conditions) is not adequate given the increased financial risks of the partners and the company (discussed below under Issue 5). During the first contested case, Council made it clear that they wanted to be able to review the Bond issue from time to time and as may be necessary, given any changing circumstances. This is a good time to review the fiscal stability and risk of the project between the partners.</p>	<p>Yes.</p>	<p>No, for the reasons provided below (same responses provided to Irene Gilbert Issue 2):</p> <ol style="list-style-type: none"> 1. Council previously found that the <i>form</i> of the bond, including the operational phased bonding approach, and the <i>amount</i> of the bond was adequate to restore the site to a useful, nonhazardous condition. 2. The certificate holder has not requested any change to the form / phased bonding approach. The certificate holder has updated the amount of the bond to cover the facilities included as part of RFA 2 and to update the cost estimate to reflect Q1 2024 dollars rather than Q3 2016 dollars. The remainder of the proposed bond conditions are unchanged. 3. Certificate holder previously responded that there is no change to the bonding approach that is being proposed in connection with RFA 2 other than updating the amount of the bond to include the facilities included as part of RFA 2 and to update the cost estimate to reflect Q1

(b) Could impair the certificate holder's ability to comply with a site certificate condition; or
(c) Could require a new condition or a change to a condition in the site certificate.

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Stop B2H			
	<p>The updated cost estimate to retire the facility, with proposed RFA2 changes, is \$170,276,273 (in Q1 2024 dollars). An increase of approximately \$30 million since the original Site Certificate. The issue of an adequate bond or letter of credit continues to be raised as a significant issue in the B2H project siting because non-compliance with this standard puts the entire State of Oregon, taxpayers and rate payers at risk. This is why it is also one of the Standards whereby the Council cannot apply its balancing determination. Council must comply with OAR 345-027-0375(2)(d) which requires a review of the requirements of OAR 345-022-0050.</p> <p>There are also Mandatory Conditions for all Site certificates. OAR 345-025-0006(8) states that this assurance: bond or letter of credit, must be maintained for the life of the project. While Council may adjust some of the conditions, such as varying amounts for construction vs. operational periods, STOP believes that it is imperative that Council review this issue more frequently than every five years (per current Condition 5). We also urge Council to seek advice of an independent expert on the matter routinely.</p> <p>In the Final Order and original Site Certificate, Council chose to follow Idaho Power's suggested method/mechanism for meeting the bond requirements (see Conditions 4 and 5). STOP continues to contend that this method is not protective of Oregonians; and ODOE and the Council will claim that this issue has been litigated already. However, clear from the deliberations of Council during the "exceptions hearings," Council expressed concerns as well. After the very lengthy hearing and discussions, Council decided that they would: "[R]etain the authority to adjust the bond or letter of credit amount up to the full amount at any time under the terms of the site certificate. Further, as directed by Council, the condition requires that the 5-year report be presented to Council and include an evaluation and recommendation, based on review of report results, by the Department and, if appropriate, a third-party consultant. The condition allows the Council to consider whether or not the approach towards the financial assurance instrument remains appropriate and would</p>		<p>2024 dollars rather than Q3 2016 dollars. The remainder of the proposed bond conditions are unchanged. In the contested case on the ASC, Ms. Gilbert and other parties challenged the bonding approach, however the Council adopted the Hearing Officer's findings that:</p> <ul style="list-style-type: none"> • Idaho Power's proposed financial assurance methodology, i.e., providing a \$1 bond for the first 50 years of facility operation and incrementally increasing the bond/letter of credit on an annual basis after the facility has been in service for 50 years, is a reasonable approach to accounting for the possibility that the facility may eventually be retired. <ul style="list-style-type: none"> - Further, to address the concerns that limited parties (including Ms. Gilbert) had raised, the Council added a process by which it would periodically review the amount of the bond, and also noted that it had authority at any time to ask for an update and to revisit the bonding amount. Specifically, Retirement and Financial Assurance Condition 5 requires Idaho Power to provide EFSC and ODOE a report every five years on: (a) the physical condition of the facility; (b) any evolving transmission or electrical technologies that could impact the continued viability of the facility; (c) the facility's performance in the context of the larger Northwest power grid; and (d) the certificate holder's financial condition, including the certificate holder's credit rating at that time. Additionally, under the condition, EFSC may request the report on an off-cycle year if requested. Moreover, the condition allows EFSC to consider whether or not the approach towards the financial assurance instrument remains appropriate and would account for unforeseen shifts in the power grid or the Idaho Power's financial condition. <p>4. The certificate holder estimates that the annual cost of maintaining a bond is approximately \$750,000. Over 50 years and assuming 3% inflation, requiring certificate holder to carry the full amount would add \$84,600,000 to the total Project costs—which is significant, and even more so given the minimal risk of early retirement of the facility.</p> <p>5. No balancing determination is proposed for RFA2 and has never been evaluated under this standard by Council.</p> <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards (retirement and financial assurance and therefore, it does not justify a contested case.</p>

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Stop B2H			
	account for unforeseen shifts in the power grid or the certificate holder's financial condition."		

II.E Wendy King

Issue Statement from Contested Case Request	RFA 2 DPO Comment Citation/Summary	Issue Properly Raised in Request for Contested Case* (Yes/No) with Arguments in Contested Case Request	Request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case. (Yes/No) with Evaluation
Wendy King			
<p>Issue 1:</p> <p>The possible changes in RFA-2 will affect our Agriculture operation at Myers Farm. With possible refinement of even access roads, our historical location will be impacted by B2H construction and operational maintenance. Our scenic resource will be impacted. Please see Exhibit 3. Will RFA-2 facilitate consideration of future requests Outside EFSC jurisdiction?</p>	<p>The B2H approved route north of our homestead is already an eye-sore in the viewshed of our historical farm. If B2H were to be relocated closer to our homestead, we would contest.</p> <p>If this is allowed without adequate studies it may impose significant changes to our accepted farm practices and significantly increase the cost of accepted farm practices like aerial chemical application and movement of products from field to storage and market. By allowing the expanded site boundary, Idaho Power may justify moving the line through yet more fields and disregard the usual constraints of siting along the edges of fields, existing roadways, or natural boundaries, (rather than through existing fields) because they only have to show they did so generally. The ORS 215.275 does not require the complete avoidance or elimination of impacts to accepted farm practices.</p> <p>Without knowing where the transmission may ultimately land, (through the certificateholders' use of ADR's) and the possibility that our family may not be given opportunity to contest a route change that adversely affects our enjoyment of our property and our agriculture practices..</p>	<p>Yes. Ms. King's issue statement includes the statement of "The possible changes in RFA-2 will affect our Agriculture operation at Myers Farm," and in her DPO comments she raises concerns with impacts to accepted farm practices. In her issue statement, she asserts that "our historical location will be impacted" and "our scenic resource will be impacted;" in her DPO comments, she identified concerns of visual impacts from the facility to their historical farm. These portions of the Issue statement are properly raised. However, the remaining contents of the request, as summarized below, were not raised in DPO comments. Specially the commentary of alternative routes, OPUC proceedings, and issues with Wheatridge East are not properly raised.</p> <p>Issue in contested case request references Exhibit 3 in the request, however Exhibit 3 was not provided in the comments on the record of the DPO.²² Council cannot consider Exhibit 1 in its review of the request.</p> <p><u>From contested case request:</u></p> <p>IPC references the OPUC conclusion of the original ASC route. This reference is not taking into consideration the RFA-2 Amended route at Ayers Canyon nor does it take into account the newly realigned and approved transmission corridor for WheatRidge East RFA-1.</p> <p>The Myers Family requests the newly approved amendments to the multiple facilities in Morrow County and their opportunities for B2H be referred back to OPUC to allow determination that alternate routes be revisited for better safety, feasibility and co-located financial savings. In spite of IPC reiterating the fact that this issue is outside EFSC jurisdiction, they note that an alternate proposed</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> Ms. King's issue statement identifies concerns of RFA2 changes and its impacts to the Myers Farm agricultural operation. To address agricultural practices and necessary mitigation, including landowner compensation, Council imposes Land Use Condition 14 (GEN-LU-01) requiring that, prior to construction, the certificate holder finalize the Agricultural Assessment and Mitigation Plan, as provided in Attachment K-1 of the Final Order on the ASC; and implement the monitoring and mitigation requirements through construction and operation. There were no specific issues raised on the adequacy of this plan in Ms. King's DPO comments or issue statement. The Department continues to recommend that Council find that this plan ensures adequate and proper evaluation of all farm impacts associated with the final design/location of the facility and all related or supporting facilities, and mitigation. Ms. King's issue statement identifies concerns of RFA2 changes and its visual impacts to their historical location. Visual impacts to historic, aboveground resources are evaluated in the EFSC process. If the facility results in visual impacts to the Myers Farm, it will be evaluated and mitigated under Historic, Cultural and Archeological Resources Condition 1 (GEN-HC-01). Ms. King's issue statement identifies concerns of RFA2 changes to their property as a scenic resource. In order to be a scenic resource protected under the Council's Scenic Resource standard, the resource must be identified as significant or important in a land management plan. Ms. King has not provided any evidence that the Myers Farm or property has been designated as an important or significant resource within in a land management plan. <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>

²² OAR 345-027-0367(3)(f)(D) A person's failure to raise an issue in person or in writing on the record of the public hearing precludes the Council's consideration of whether to grant that person's subsequent contested case request; and OAR 345-027-0367(3)(f)(G), The Council will not accept or consider any further public comment on the request for amendment or on the draft proposed order after the close of the record of the public hearing.

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Wendy King			
		route through WheatRidge would impact other landowners and in particular, reference a landowner public comment in the OPUC docket 5 that was allowed to be referenced after the close of the record. That very comment was in fact, referring to a route that was not the final suggested alternative proposed by the Myers Family. Somehow, a public commenter has more influence of opposing a dismissed alternate route than our family opposition which will experience multiple impacts of supposed constraints for proper siting. Will the approval of the Proposed Site boundary facilitate consideration of our future request? The Myers family is willing to meet with Idaho Power for consultation of micrositing.	
<p>Issue 2:</p> <p>Historic, Cultural and Archaeological Resources OAR • 345-022-0090 The Bartholomew-Myers Farm is a historical resource. It was adopted into the Century Farm and Ranch Program (CFR1093) and is NRHP Eligible (Criterion A). The original CFR application, completed in 2005 IPC incorrectly labeled our Farm as the CFR (Thomson Myers Farm). The farm they refer to is in Umatilla County 6.86 miles away from the proposed route. Please see Exhibit 1 While we have asked for information pertaining to our farm in the Confidential Attachment S-10 Intensive level survey- visual assessment of historic properties report in Exhibit S of the original B2H application in our RFA-2 public comment on May 30, 2024. None has been received. A second request was made through Kellen Tardaewether by phone on July 17, 2024 and clarified by phone on July 18, 2024. Ms Tardaewether confirmed by email on July 22, 2024 that she made a request for the information through Joe Stipple who in turn</p>	<p>Historic, Cultural and Archaeological Resources OAR • 345-022-0090. The Bartholomew-Myers Farm is a historical resource. It was adopted into the Century Farm and Ranch Program (CFR1093) and is NRHP Eligible (Criterion A). The original CFR application, completed in 2005 reflects: "While farming challenges remain, all of those on the farm enjoy the beautiful countryside and respect the great heritage that we have on the Bartholomew-Myers Farm." The B2H approved route north of our homestead is already an eye-sore in the viewshed of our historical farm. If B2H were to be relocated closer to our homestead, we would contest. We formally request access to the Confidential Attachment S-10 Intensive level survey-visual assessment of historic properties report in Exhibit S of the original B2H application as it includes information about our property, how it was studied, and how line relocation might impact the results.</p>	<p>Yes – partially.</p> <p>Ms. King raised concerns with the previously approved ASC routes potential impacts to the Bartholomew-Myers Farm as a historical resource under OAR 345-022-0090. However, the comments regarding Wheatridge East RFA1 were not raised on the record of the DPO and therefore, are not properly raised.</p> <p>Issue in contested case request references Exhibit 1 in the request, however Exhibit 1 was not provided in the comments on the record of the DPO. Council cannot consider Exhibit 1 in its review of the request.²³</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. CFR 1093 (Thomson Myers Farm or Bartholomew-Myers Farm) is a historical resource evaluated in the review of the ASC and in the Final Order on ASC. The previously approved route in this area is not part of RFA2, therefore, this is out of the Scope of Review for RFA2. 2. Certificate holder previously indicated that it is aware of the designation of the Bartholomew-Myers Farm as a Century Farm eligible for listing on the National Register of Historic Places ("NRHP") under Criterion A and fully assessed potential impacts to Mr. Myers' farm and analyzed potential impacts to the farm as a historic resource in the ASC at EFSC.²⁴ According to Table S-2 (Cultural Resources in the Analysis Area) of ASC Exhibit, CFR 1093 (Thomson Myers Farm) is in the Visual Assessment Analysis Area and no adverse direct or visual impacts to CFR 1093 as a historic resource are anticipated.²⁵ EFSC ultimately concluded that the Project, taking into account mitigation, is not likely to result in significant adverse impacts to any historic resources.²⁶ 3. As described in the Final Order on ASC and RFA1, because the facility is subject to Section 106, the Council found that under ORS 469.370(13), for facilities that are subject to review by a federal agency under NEPA, such as the approved facility, the Council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. Council concurred with the certificate holder's preliminary recommendations for eligibility and mitigation resources potentially impacted by the facility, and found that, to align with the federal Section 106 review, final eligibility determinations for listing on the NRHP shall be provided prior to construction of the facility.²⁷ Final eligibility determinations and findings of effect (impact assessment) must be submitted to the Department under Historic, Cultural and Archeological Resources Condition 2, as part of the final HPMP and Appendix A.1 Tables. In the DPO, the Department recommended to amend Historic, Cultural and Archeological Resources Condition 2²⁸, based on updated mitigation

²³ OAR 345-027-0367(3)(f)(D) and OAR 345-027-0367(3)(f)(G).

²⁴ Idaho Power's ASC, Exhibit S at S-166 (Sept. 28, 2018) (CFR 1093); see also CFR1093, Century Farm & Ranch Viewer, <https://ocfrp.library.oregonstate.edu/node/30476> (last visited June 5, 2024).

²⁵ Idaho Power's ASC, Exhibit S at S-31 (Sept. 28, 2018) (CFR 1093).

²⁶ Final Order on ASC at 547 of 10586 (Sept. 27, 2022).

²⁷ From the Oregon Supreme Court's Decision regarding the specificity of mitigation for certain types of resources, "EFSC's final order contains specific information identifying the resources that will be impacted, the extent of those impacts, and how those impacts will be mitigated.....final order prescribes in Table HCA-4b the specific types of mitigation that EFSC required for this project... The final order also requires Idaho Power to demonstrate that any mitigation efforts required by federal "section 106 review" are sufficient to meet the state law standards articulated in Table HCA-4b..." B2HAPPDoc7 Supreme Court Decision Stop B2H Coalition v. Dept, of Energy 2023-03-09, page 811.

²⁸ Recommended Amended Historic, Cultural and Archeological Resources Condition 2 was not the subject of any DPO comments and was not modified in the Proposed Order.

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Wendy King			
<p>said they will mail it this week. None has been received as of July 26, 2024. Because Sam Myers was not given Full Party Status in the contested cases for the original B2H EFSC litigation, he was unable to participate within the Historical Resources or Scenic Resources of the EFSC Standards. Wendy Myers, family member of Myers farm, requests a contested case on the basis of these standards because they were not available for the Myers family to view and verify. Additionally, the 103 determination of Myers farm studied by Tetra Tech or WheatRidge East RFA-1, was reviewed by the Myers family and found to be incorrect and had multiple errors. If Tetra Tech was the surveyor of the scenic and historical components of B2H, we believe they are incorrect as well.</p>			<p>information and details in Property-Specific Mitigation and Monitoring Plans (PSMMPs), which were generated as part of the Section 106 review and are being finalized in consultation with parties to the Programmatic Agreement.</p> <p>4. As of the date of this staff report, the certificate holder has indicated its intent to provide Ms. King with excerpts or a summary of the findings associated with CFR 1093 from the Attachment S-10 (Intensive Level Survey – Visual Assessment of Historic Properties Report), omitting any information that may be subject to confidentiality laws, however, the Department is not aware if this information has been provided. Any update on this matter, although outside of the review of RFA2, will be provided to Council at the August 22-23 EFSC meeting.</p> <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standard (Historic, Cultural and Archeological Resources) included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 3:</p> <p>Our family has concerns that RFA-2 is not in compliance with the new: Wildfire Prevention and Risk Mitigation (OAR 345-022- 0115). RFA-2 Ayers Canyon Alternative goes through Butter Creek Wildland Urban Interface.</p>	<p>Even though Idaho Power has a Wildfire Mitigation Plan on file at OPUC in UM 2209, our family has concerns that RFA-2 is not in compliance with the new: Wildfire Prevention and Risk Mitigation standard 345-022-0115 (a)(D). Because the line is routed through the Butter Creek Wildland Urban Interface, any line relocation within that zone will potentially impose elevated risk. Myers farm is within the Butter Creek Wildland Urban Interface as identified in the Morrow County Community Wildfire Protection Plan 2018-2019 Update.</p>	<p>Yes – partially. Comments on the DPO are provided in the adjacent left column and states that Council's Wildfire Prevention and Risk Mitigation standard is not met because Ms. King's family farm is located with the Butter Creek Wildland Urban Interface (WUI). The contested case request, however, adds arguments and citations that were not made on the record of the DPO. These therefore are not properly raised. (Exhibit 2 - see evaluation in right column, Fire Potential Index in IPC's 2024 WMP, Preventive Safety Power Shutoff in WMP, proposed condition that Wildfire Risk studies be produced for landowner review and include an opportunity for comment & collaboration, Wildfire Mitigation Plan by the Citizens Utility Board)</p> <p>Issue in contested case request references Exhibit 2 in the request, however, Exhibit 2 and other citations were not provided in the comments on the record of the DPO. Council cannot consider Exhibit 2 and other citations in its review of the request.²⁹</p> <p><u>From contested case request:</u> In the WMP OPUC docket UM 2209 IPC consistently argues with the Independent Evaluator and results.</p> <p>In IPC confession, there is no consideration within the WMP for Butter Creek Wildland Urban Interface. Please see Exhibit 2. How is Wildfire Risk in Morrow County "thoroughly litigated" in the CPCN before the OPUC when the Interface was never mentioned or</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. Review of local designations, such as wildland-urban interfaces, is part of the certificate holder's Wildfire Mitigation Plan (WMP). The WMP, as provided in the Final Order on Amendment 1 Attachment 7-16, includes the certificate holder's Wildland Fire Preparedness and Prevention Plan (Appendix A of the WMP) which is an additional plan developed to provide guidance to Idaho Power employees and contractors. In this plan, Section 4. Prevention - Practices of Field Personnel, conditions of the surrounding area, including any designated wildland-urban interfaces, are to be evaluated as part of site conditions. 2. In the Final Order on Amendment 1, the Council adopted Wildfire Prevention and Risk Mitigation Condition 1 (GEN-WMP-01) requiring that, prior to and during operations, the certificate holder verify that its Operational Wildfire Mitigation Plan includes an evaluation of fire-risks and applies the requirements of its Public Safety Power Shutoff Plan within all five counties for which the project is located, not limited to the certificate holder's service territory. 3. As described in the DPO and in the Proposed order, as well as by the certificate holder in its responses to DPO comments, utility Wildfire Mitigation Plans at the OPUC undergo rigorous annual review by the OPUC's Safety Staff and are closely analyzed by an OPUC-contracted independent evaluator. The Wildfire Mitigation Plans are updated annually. Because they undergo annual review, utilities continuously update Wildfire Mitigation Plans to take into account fire risk zones based on the applicable criteria in the Wildfire Mitigation Plans and to include new risk mitigation strategies and technologies. 4. The certificate holder must comply with the OPUC's Minimum Vegetation Clearance Requirements, which require which will require the certificate holder to maintain vegetation clearances from the Project of at least 10 feet under reasonably anticipated operational conditions.³⁰ The OPUC annually evaluates the vegetation management programs across the

²⁹ OAR 345-027-0367(3)(f)(D).

³⁰ OAR 860-024-0016(4)(a).

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Wendy King			
		<p>considered? When facts have changed or emerged that “thorough” litigation was based upon must we continue to rely on the inaccurate or absent facts and those decisions? Does the EFSC allow IPC to discredit the importance of the Butter Creek Wildland Urban Interface? The OPUC could not have known when they issued the CPCN that B2H would involve new land and how can a certificate apply when it wasn’t based on the new amendments? I believe the RFA-2 (if approved) must be referred back to the OPUC for acceptance.</p> <p>New information about the data input for Fire Potential Index (Risk= Probability x Consequence) in the IPC 2024 Wildfire Mitigation Plan adds an element of consequence called, “Acres Burned.” Through multiple attempts to OPUC Heide Caswell, I have yet to receive an explanation of this new added consequence. It is probable that this element is grounds for concern for agriculture croplands directly beneath the proposed and amended routes. It provides criteria for an alternate route that would be co-located with other energy facilities which would combine forces for wildfire prevention and risk mitigation.</p> <p>While all utility WMP’s are changing to determine risk and develop mitigation, the proposed transmission line route does not truly take into consideration the increased fire risk locations because they state that they will conduct Preventive Safety Power Shutoff. If they did heed the new changes in FPI, it might warrant a relocation of the line to prevent unnecessary PSPS that will potentially adversely affect people that require electricity to sustain life and organize wildfire response. Why place a transmission line in a location that is continually “Risky?”</p> <p>IPC PO response: “Idaho Power strongly urges the Council to avoid any additional requirements that may potentially conflict with the OPUC-approved WMP or otherwise create confusion about which requirements should apply.” IPC knows it will be more work and will additionally expose elevated fire potential. IPC will predictably request an exception but I implore the council to recognize two facts: 1) IPC is amending the original site certificate by adding alternate routes which means changes exist within the baseline and seasonal wildfire risk. 2) IPC has added changes to their WMP and must reconsider High-fire consequence areas that include timber/agriculture resources including the acreage of cropland at Myers farm in Morrow county including wildlife habitat. Finally,</p>	<p>state for the investor-owned electric utilities, including Idaho Power, for compliance with these regulations. Additionally, on a 3-year cycle, the OPUC inspects vegetation as part of the National Electrical Safety Code (“NESC”) inspection for consumer-owned utilities. NESC is a minimum standard in Oregon for installation, operation, and maintenance of electric utility and communication lines.</p> <p>5. The OPUC also specifically considered Wendy King and Sam Myers’ arguments regarding wildfire-related concerns on the Myers property, and concluded that the risk of ignition associated with B2H is low:</p> <p>The evidence in the record makes us conclude that Idaho Power has shown there is a low probability of fire ignition from the operation of the B2H transmission line and that Idaho Power’s fire-related planning and mitigation documents will effectively reduce the probability of fire ignition during construction of the line. We note we approved Idaho Power’s 2022 and 2023 WMPs and we expect Idaho Power will continue submitting WMPs that will evolve as the B2H transmission line is constructed and once it is operational. The evolving nature of WMPs ensures that Idaho Power will respond to new information and threats that emerge during the life of the B2H transmission line. In combination with Idaho Power’s FPSP, Right-of-Way Clearing Assessment, and Vegetation Management Plan, we conclude these plans will ensure public safety during the construction, operation, and maintenance of the B2H transmission line.</p> <p>We also conclude that Idaho Power’s fire expert has explained the low risk of arcing related to dust/chaff clouds and we agree that the safety mechanisms in place for the B2H transmission line should prevent any such events. We also conclude that Idaho Power’s fire expert’s model for assessing fire risk is reasonable and while other models may exist, we are satisfied with the adequacy of Idaho Power’s fire risk modeling. We recognize that the consequence element of fire risk modeling centers on human life and structure loss, rather than loss of other resources and that this deeply troubles intervenors. However, the record demonstrates Idaho Power’s design and fire mitigation planning still seek to minimize the risk of ignition, despite the characterization of the consequences of an ignition. Furthermore, we find no evidence in this record to contradict Idaho Power’s ability to maintain the B2H transmission line in a manner that will continue to keep the risk of ignition low.³¹</p> <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards (Wildfire Prevention and Risk Mitigation standard) included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>

³¹ In the Matter of Idaho Power Co., Petition for Certificate of Pub. Convenience & Necessity, OPUC Docket PCN 5, Order No. 23-225 at 22 (June 29, 2023).

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Wendy King			
		<p>they must disclose their data sources and methods for risk modeling.</p> <p>As a matter of Law, EFSC can choose to require Idaho Power comply with it's Wildfire Prevention and Mitigation standard: because the Council is responsible for siting of Energy Facilities. They are culpable for incidents where these facilities are located in the state of Oregon and tasked to protect citizens. They must pay attention to developer plans that may unnecessarily place citizens and property in peril, especially when a developer chooses to place facilities in high risk areas and defends that placement because of less cost or ease of construction, or downplays the elevated risk because of lack of rural historical fire recordkeeping, lack of local fire load information or lack of local weather & wind history. From the standpoint of transmission route location, I ask the Council to propose a condition that Wildfire Risk studies be produced for landowner review and include an opportunity for comment & collaboration while including local fire response.</p> <p>Further, Idaho Power has continually defended its location of B2H in terms of wildfire prevention and risk mitigation by stating the location has been "covered." No study has ever been produced either because the information is confidential or IPC is only able to determine risk zones within their service territory. IPC customary reply is that they can't have a wildfire mitigation plan for what is not there yet (B2H Transmission Line).</p> <p>Further information about IPC Wildfire Mitigation Plan by the Citizens Utility Board states, "When utilities are planning to invest millions of dollars into mitigation strategies that are meant to protect electricity reliability and protect the lives of Oregonians and their homes, and the plans the utilities offer guaranteed a return on investment, we all should at a minimum demand they show their work." page 8 um2209hac329766054.pdf (state.or.us) The property owners of Myers Farm in Morrow County, Oregon request the wildfire risk analysis IPC has completed for our property, agriculture lands & community.</p>	

II.F Greg Larkin

Issue Statement from Contested Case Request	RFA 2 DPO Comment Citation/Summary	Issue Properly Raised in Request for Contested Case* (Yes/No) with Arguments in Contested Case Request	Request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case. (Yes/No) with Evaluation
Greg Larkin			
<p><i>Unclear what the Issue Statement is. Department provides the information that is located under the Issue Statement section in the Template provided by Mr. Larkin.</i></p> <p>Issue 1:</p> <p>Also, the Monitoring Posts used for the noise studies IPC chose for residences dBAs are not representative of my property or an NSR property, therefore all NSRs should get the Site Specific monitoring (as required by the DEQ manual, 340-035-0005) and it needs to be paid by the developer using an Acoustical engineer agreeable to all parties. The evidence is such: At my residence on September 12, 2021, Kerrie Standlee, P.E., at DSA Acoustical Engineers, Inc., conducted sample noise monitoring which resulted in approximately 21 dBA. IPC performed a sample noise dBA at monitoring site MP 100 (on the windy ridge near Morgan Lake Park .8 mile from my residence) and it registered at 31dBA-- NOT representative! Standlee's was only a quick sample to meet the ALJ deadlines for testimony. (Exhibit 1)</p> <p>Therefore, a follow up and more accuratemonitoring measurement must be taken BEFORE (not after) my negotiation on Noisemitigation.</p>	<p>My residence, which is in a particularly quiet area, is located near several of the B2H towers/power lines. Idaho Power Company (IPC) sent me a map of the B2H project in 2007. The first formal correspondence that I received from IPC identifying and addressing my status as Noise Sensitive Receptor (NSR {residence}) was on February 24, 2024 when I received the Operational Noise Complaint Response Plan. I was informed in the cover letter that although IPC has modeled the corona noise impacts at my residence and does not expect that they'll exceed regulatory levels, they'd send me information to respond to the Noise Complaint Process just in case. which I have no recourse to oppose, report or complain. ORS 340-035-0035 (1) and ORS 467.010.</p> <p>The requirements regarding noise sensitive properties do not comply with ORS 467.030, Oregon Administrative Rule 340, Division 035 and the Oregon Sound Measurement Procedures Manual. which all continue to be in force as state law. It should not be the burden of land owners to prove what the dBA is at their residence or demand monitoring and mitigations. IPC has the burden of proving what they're saying with preponderance of evidence that the B2H power line will not harm the NSR residents. ORS 340-035-0035 (1). It is imperative that all NSR's are informed, protected, and future mitigation followed. Then, once the actual baselines are known, the negotiations can begin with the NSRs. At my residence on September 12, 2021, Kerrie Standlee , P.E., at DSA Acoustical Engineers, Inc., conducted sample noise monitoring which resulted in approximately 21 dBA. IPC performed a sample noise dBa at monitoring site MP 100 (on the windy ridge near Morgan Lake Park .8 mile from my residence) and it</p>	<p>Yes.</p> <p><u>From contested case request:</u></p> <p>IPC states in response to Stop B2H comments regarding Site Conditions Recommendation for Noise Control on same subject: Second, we also conclude that there was substantial evidence to support granting a variance. Idaho Power had requested a variance from the 'ambient antidegradation standard' in OAR 340-035-0100. Based on the noise analysis studies and weather data summarized in the final order, EFSC granted a variance to the ambient antidegradation standard for the transmission line 'at any time of day or night during foul weather events (defined as a rain rate of 0.8 to 5 millimeters per hour).' EFSC's final order first explains that 'ambient antidegradation standard exceedance[s] are predicted during foul weather conditions' and Idaho Power 'cannot be accountable for weather conditions that may cause audible corona noise, as the weather is a condition beyond its control.' EFSC also found that 'strict compliance with the ambient antidegradation standard in DEQ rule is inappropriate, unreasonable, or impractical because of special physical conditions and special circumstances contributed to the applicant's proposed transmission line location relating to NSRs [noise-sensitive receptors] that may experience noise exceedances.' Finally, EFSC found that strict compliance with the rule 'would result in substantial curtailment or closing down (never building) the proposed transmission line and that * * * there is not another alternative facility available.'</p> <p>Also from IPC: Due to the large number of NSRs in the analysis area, it was not feasible to conduct baseline monitoring at every NSR. Therefore, the Company's methodology involved a representative sampling approach based on acoustic groupings of NSRs.</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. Certificate holder previously responded indicating that, Mr. Larkin claims, without evidence, that he predicts corona noise at his house will produce exceedances above 20 dBA, this is contrary to Idaho Power's modeling and the record of RFA 2. The foul weather increase of corona noise over the late night baseline modeled at Mr. Larkin's residence (NSR 125) was modeled to be 12 dBA.³² 2. The issue regarding Mr. Larkin's health concerns <i>in particular</i> was also thoroughly litigated and considered by the OPUC, which determined that "the evidence before us does not lead us to conclude that the B2H transmission line will jeopardize public health and safety."³³ 3. Mr. Larkin's residence is not impacted by the proposed RFA2 changes. When considering requests for amendment, Council assesses whether proposed changes comply with Council's standards.³⁴ The issue raised in the DPO comments and subsequent RFA2 contested case request are associated with the evaluation, conclusions, and conditions from the Final Order on ASC. <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards (DEQ Noise Regulations) included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>

³² Final Order on ASC, Attachment X-4 at 10541 of 10586 (Sept. 27, 2022).

³³ *In the Matter of Idaho Power Co., Petition for Certificate of Pub. Convenience & Necessity*, OPUC Docket No. PCN 5, Order No. 23-225 at 23-24 (June 29, 2023) ("Intervenors argue that ORS 467.010 establishes that noise standard exceedances are, by definition, a safety hazard. We disagree. We recognize that the B2H transmission line required a noise variance on account of an exceedance of ambient noise standards, however, we disagree with intervenors that the presence of a noise variance creates a safety hazard. We are persuaded by the fact that the transmission line is not expected to create sounds that violate the maximum allowable noise limit or at levels that may result in hearing loss, but rather will increase ambient noise levels in places along the transmission line's proposed route at certain times, potentially in times of extremely low ambient noise. Based on the evidence, including Staff's assessment that it is unaware of any conclusive evidence that properly constructed transmission lines pose a health risk to humans living in proximity to those lines, we are unpersuaded that the anticipated increased noise from the B2H transmission line presents danger to the public.").

³⁴ OAR 345-027-0375. (2) To issue an amended site certificate, the Council must determine that the preponderance of evidence on the record supports the following conclusions:

(a) For a request for amendment proposing to add new area to the site boundary, *the portion of the facility within the area added to the site by the amendment* complies with all laws and Council standards applicable to an original site certificate application;

(c) For a request for amendment not described above, the facility, *with the proposed change*, complies with the applicable laws or Council standards that protect a resource or interest *that could be affected by the proposed change*;

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Greg Larkin			
	<p>registered at 31dBA-- NOT representative! Standlee's was only a quick sample to meet the ALJ deadlines for testimony. (Exhibit 1). Therefore, a follow up and more accurate monitoring measurement must be taken BEFORE (not after) my negotiation on Noise mitigation.</p> <p>EFSC rules also require ongoing monitoring to assure that there is compliance with the standards set including the 20 dB limit on increases in the current ambient noise levels. There are many residences where the projected noise level increases will be 15 dB or greater. In all these instances, there is a significant likelihood that the assigned noise levels may not be accurate and noise levels could increase by more than the 20dB exception allowed. The burden of proving that there are not exceedances lies with the developer, not the property owner. This responsibility is even greater due to the many areas where procedures used did not follow the state noise rule requirements and there was no study completed to validate that the results would be the same with the changed procedures. The ODOE AND EFSC approved an exception and a variance to the stature and rules for complying with the site certificate. The Oregon DEQ no longer approves exceptions, variances, or other requests for things such as designating areas as "quiet areas" where noise levels should be lower than the standard, etc..</p>	<p>When multiple MPs were in proximity to NSRs, the Company selected the MPs with the lower ambient sound level to provide more conservative representative ambient sound levels. In addition, the MPs selected by the Company were generally located further from existing ambient sound sources than the NSRs, further contributing to the conservative nature of the baseline ambient sound measurements.</p> <p>Please Refer to Conditions NC-01, NC-02, and NC-03 do not mitigate adequately for protection of public health, safety and welfare of Oregonians, and therefore arenoncompliant with ORS 467-.010, OAR 340-035-0005, OAR 345-035-0015, OAR 345-035-0035, ORS 469.507(2) and 469.507.</p>	

II.G Susan Geer

Issue Statement from Contested Case Request	RFA 2 DPO Comment Citation/Summary	Issue Properly Raised in Request for Contested Case ³⁵ (Yes/No) with Arguments in Contested Case Request	Request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case. ³⁶ (Yes/No) with Evaluation
Susan Geer			
<p>Issue 1:</p> <p>RFA2 proposed changes would introduce invasive plant species and impact the hydrology of Winn Meadows, an important wetland in</p>	<p>RFA2 proposed changes would introduce invasive plant species and impact the hydrology of Winn Meadows, an important wetland in Glass Hill SNA, protected under OAR 345-022-0040, thereby causing significant adverse impact.</p>	<p>Yes.</p> <p>Issue in contested case request contains verbatim comments to the DPO comments with some rebuttal to ODOE and certificate holder responses to DPO comments.</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> Ms. Geer's issue relates to Council's T&E and Protected Area Standards, wetlands (DSL's removal fill laws), and weeds. <ul style="list-style-type: none"> The wording under many Council standards of "taking into account" mitigation, is critical in the evaluation of a contested case request. Because to demonstrate a

³⁵ OAR 345-027-0371(7)(a) The person making the contested case request raised the issue on the record of the public hearing described in OAR 345-027-0367 with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue.

³⁶ OAR 345-027-0371(9).

Issue Statement from Contested Case Request	RFA 2 DPO Comment Citation/Summary	Issue Properly Raised in Request for Contested Case ³⁵ (Yes/No) with Arguments in Contested Case Request	Request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case. ³⁶ (Yes/No) with Evaluation
Susan Geer			
<p>Glass Hill SNA, protected under OAR 345-022-0040, thereby causing significant adverse impact.</p>	<p>Proposed route changes in RFA2 would cut across the head of Winn Meadows. Refer to Figure 4-1, map 37 in "2024-04-11-FIG-4-1-RFA2-Micrositing-Additions-and-Expanded-Site-Boundary-MAPBOOK Major disturbance and impacts were introduced under RFA1, and RFA2 exposes even more of the perimeter of Glass Hill SNA to disturbance and impacts of the construction and ongoing maintenance of the B2H. The wetland extends beyond the area mapped in National Wetland Inventory. Introductions of invasives and alteration of hydrology at the immediate boundary of the Protected area definitely negatively affect the quality of the wetland, the integrity of the natural area, the special wetland plant community, and the livelihood of <i>Trifolium douglasii</i>, a Candidate for listing with Oregon's rare plant program and Federal Species of Concern.</p>	<p>In response to ODOE and certificate holder response to DPO comments, Ms. Geer provides rebuttal indicating that the burden of proof for delineating a wetland should be on the Applicant, not on a Commentor or Petitioner. The boundary of the wetland does not end with the boundary of Glass Hill SNA; wetlands can and are affected by construction that occurs adjacent to the wetland. State Natural Areas are meant to be an undisturbed, undeveloped area for the conservation and study of native plants and animals, especially those which are element occurrences and not protected in other natural areas throughout Oregon.</p>	<p>standard under Divisions 22, 23, or 24 is not met, there also has to be a demonstration of how exiting mitigation is not sufficient to address any documented impacts. Take for example, Ms. Geer's comment about noxious weeds being introduced to the Glass Hill protected area and harming wetlands. She has not explained or provided facts regarding how the measures in the Noxious Weed Plan (GEN-FW-03) are not sufficient to address the purported impacts.</p> <ol style="list-style-type: none"> 2. Certificate holder previously responded clarifying that potential impacts to Winn Meadow were litigated in the contested case on the ASC, where Ms. Geer submitted evidence of potential noxious weed impacts to Winn Meadow in relation to her Issue FW-6. The Hearing Officer concluded that the certificate holder's Noxious Weed Plan adequately established the measures the certificate holder will take to control noxious weed species and prevent the introduction of these species during construction and operation of the Project, and the Council adopted the Hearing Officer's conclusion.³⁷ 3. The wetland within Glass Hill SNA has been properly delineated, as per response below. Ms. Geer did not provide facts to support the Department's review of her issue – there was no mapping or data provided in the alternative of data currently on the record of this project/for areas in proximity to Glass Hill SNA. 4. Site Certificate Condition PRE-RF-01 requires that, prior to construction, the certificate holder conduct updated wetland delineation surveys; submit the associated survey reports to Oregon Department of State Lands; and provide evidence to the Department of receipt of concurrence from DSL that the wetlands and waters of the states have been properly delineated to inform extent of removal-fill impacts. Site Certificate Condition GEN-RF-04 requires that, prior to construction, the certificate obtain an updated removal-fill permit, based on the outcome of ongoing preconstruction delineation surveys and identification of impacts; and requires compliance with the terms and conditions of the removal-fill permit during and post-construction. 5. Neither DSL rules or EFSC standards require wetland delineation of areas outside of locations of potential impact or ground disturbing activities. Wetlands and WOS within the established study area, in proximity/adjacent to Glass Hills SNA, were evaluated by IPC. RFA2 Attachment 7-21 (Map 40) and RFA2 Figure 5-1 (Map 40) present mapped wetlands within the study area adjacent to Glass Hill SNA for wetlands. Wetlands and WOS within the study area have been evaluated and submitted to DSL for concurrence; a removal fill permit is required for construction of the facility and will ensure that all wetlands/WOS that could be impacted by facility construction are properly delineated (i.e., concurred with by DSL), and that all temporary and permanent impacts are mitigated and monitored (Condition GEN-RF-04, GEN-RF-01 and GEN RF-02). 6. DSL is aware of Winn Meadows and concurs that it is a wetland; wetlands that would not be impacted by ground disturbance and that are outside of areas accessible to the developer would not be required to be delineated. <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and</p>

³⁷ Final Order on ASC at 28 of 10586 (Sept. 27, 2022).

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Susan Geer			
			Council standards (T&E, Protected Areas, Removal Fill law) included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.
<p>Issue 2:</p> <p>The Council should find that RFA2 would result in significant adverse impact. The Council should also recognize that RFA1 and the Morgan Lake Alternative as approved, together with RFA2 result in Cumulative Effects with significant adverse impact to Glass Hill SNA (Protected Area Standard OAR 345-022-0040). The Council should call for an Amended Route between the Baldy Alternative and Hilgard State Park.</p>	<p>The Council should find that RFA2 would result in significant adverse impact. The Council should also recognize that RFA1 and the Morgan Lake Alternative as approved, also result in significant adverse impact to Glass Hill SNA. The Council should call for an Amended Route between the Baldy Alternative and Hilgard State Park.</p> <p>Map 30 of Figure 8-1 2024-04-11-FIG-8-1-RFA2-RFA1-ASC-Expanded-Site-Boundary-Changes-MAPBOOK and Map 38 of 2024-04-11-FIG-4-1-RFA2-Micrositing-Additions-and-Expanded-Site-Boundary-MAPBOOK shows the proposed site boundary cutting through Glass Hill SNA in several places, fatally damaging the integrity of the natural area. Confusing additional access roads were added in RFA1. In the Winn Meadow area, "existing roads" are should on a map, yet those roads no longer exist on the ground and have not been driven in over 40 years. This should never have been allowed under the EFSCs rules for Protected Areas.</p>	<p>Yes. Issue in contested case request contains the same comments that were provided on the DPO.</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. Council does not have the authority to propose or approve any facility routes, roads, or components that are not proposed by an applicant or certificate holder. Council cannot call for an Amended Route between the Baldy Alternative and Hilgard State Park. Under ORS 469.300(24) and OAR 345-001-0010(31), Council is obligated to review a facility within a proposed site boundary, as proposed by the applicant or certificate holder.³⁸ 2. At the time of Council approval of the ASC, the Glass Hill SNA was not protected under the standard because the standard, at that time, had a date stamp "goal post" for protected areas to be protected under the standard. The ASC approved Morgan Lake alternative route crosses what is now protected as the Glass Hill SNA. Under ORS 469.401(2), the site certificate or amended site certificate shall require both parties to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate is executed. As such, Council approval of the Final Order on the ASC was done so with the protected area rules in place at that time and the RFA2 upcoming final decision by Council will apply the rule as effective at the time of that decision. The current version of the protected area standards protects Glass Hill SNA, therefore the area is evaluated under the standard for indirect impacts associated with water use, noise, traffic, and visual impacts from the RFA2 proposed changes. The changes proposed in RFA2, including the expanded site boundary, would not cross the Glass Hill SNA.. 3. As stated in the DPO, in the Department response to DPO comments, in the Proposed Order, and here in this document, the Scope of Council's Review under OAR 345-027-0375(2)(a) means that all existing laws and standards must be evaluated for the portions of the facility within the proposed micrositing area additions and expanded site boundary. OAR 345-027-0375(2)(a) does not allow review of previously approved facility components or routes as evaluated by Council in its Final Order on ASC and RFA1 that are not requested to be changed in RFA2. Council does not have the authority to reverse or re-evaluate its prior decision, as it is maintained as a final decision through prior Final Orders. <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 3:</p> <p>Pyrrocoma scaberula (rough goldenweed), an extremely rare plant, is now listed as Endangered under OAR 603-073-0070. The</p>	<p>Pyrrocoma scaberula (rough goldenweed), an extremely rare plant, is now listed as Endangered under OAR 603-073-0070. The approved route should be shifted to avoid the Morgan Lake/Twin Lake area where it grows.</p>	<p>Yes. Issue in contested case request contains the same comments that were provided on the DPO.</p> <p>Ms. Geer provides rebuttal to the ODOE and certificate holder responses to DPO comments stating that "The fact that the ODA rare plant program went unfunded for several years and failed to</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. The proposed RFA2 micrositing addition areas were surveyed for state listed T&E species, as listed by ODAg at the time of the surveys. <i>Pyrrocoma scaberula</i> (rough goldenweed) is not identified by ODAg as likely to occur in Union County, but rather Wallowa County. Further, as indicated in ODOE and certificate holder responses to DPO comments, no facility components are approved or proposed to be located within Morgan Lake Park.

³⁸ Final Order on ASC Attachment 6: Contested Case Order (CCO) as Amended and Adopted, page 224. See *In re the Application for a Site Certificate for the Wheatridge Wind Energy Facility*, Final Order, April 28, 2017 at page 7 and 31 "It is the Council's responsibility to review, evaluate and issue orders either approving or denying ASCs as put forth by an applicant; the Council does not have authority to propose alternatives," and " It is the Council's responsibility to review, evaluate and issue orders either approving or denying ASCs submitted by an applicant. The Council does not have authority to evaluate structures that are not proposed by the applicant. An amendment to the site certificate would be required if a certificate holder proposes related and supporting facilities to the energy facility not included in or evaluated in the ASC."

Issue Statement from Contested Case Request	RFA 2 DPO Comment Citation/Summary	Issue Properly Raised in Request for Contested Case ³⁵ (Yes/No) with Arguments in Contested Case Request	Request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, justifies a contested case. ³⁶ (Yes/No) with Evaluation
Susan Geer			
<p>approved route should be shifted to avoid the Morgan Lake/Twin Lake area where it grows.</p>	<p>The largest known occurrence of the species is known from within the RFA2 expanded Site boundary in and near Morgan Lake Park. Herbarium specimens have been submitted to OSU and WSU and siting forms are on their way to Oregon Biological Information Center. It grows only in unique mesic grasslands. It is likely that it occurs in the Morgan Lake Alternative original site boundary/micro siting area. Surveys are needed to document the extent. As of May 3, 2024, this species is listed as Endangered by the State of Oregon rare plant program.</p> <p>The species was declared Endangered after the ASC was issued, but before final Amendments or construction. The species had been a Candidate for several years, in fact this is the first time ODA has updated the rare plant list since the start of the program in 1987. ODA rare plant program is slowly working its way through the Candidate species since the program finally got funded in 2020. Listing was not unexpected. ODA funding problems prevented the required Periodic Review of State List 345-022-0070 from being done regularly but and it has finally been listed. <i>Trifolium douglasii</i> (Douglas clover) is another rare Candidate for State listing that grows in mesic grasslands in and around Morgan Lake Park and occurrences are found along the monocline from the park south to Winn Meadow, part of Glass Hill State Natural Area. The EFSC should be proactive in recognizing Candidate species and doing all they can to protect them.</p>	<p>update their rare plant list between inception (1987) and 2024 should be taken into consideration since earlier efforts were truncated. At the very least, a full survey for <i>P. scaberula</i> should be required in any likel habitat that is included in the final site boundary so that existing plants can be avoided.”</p>	<ol style="list-style-type: none"> 2. ODAg confirmed that the data submitted by Ms. Geer has been determined not to be rough goldenweed. Current OSU Herbarium Curates, Dr. Jame Mickley, confirmed that they survey data represents morphological characteristics key to a different species of the Willamette Valley.³⁹ 3. See response immediately above regarding Council's inability to rescind its previous decisions that are not part of an amendment. Council does not have the authority to reverse or re-evaluate its prior decision, as it is maintained as a final decision through prior Final Orders. 4. Site Certificate Condition CON-TE-02 requires that the certificate holder avoid impacts to threatened and endangered plant species by adhering to a 33-foot avoidance buffer if possible, and if not, to install temporary construction mats.⁴⁰ In the DPO on RFA 2, the Department proposes changes to Site Certificate Condition CON-TE-02 to require a more thorough evaluation of avoidance, followed by mitigation developed by the Department, in consultation with ODAg. The proposed amended condition would require Idaho Power to submit a final micrositing evaluation that maximizes impact avoidance, subject to review and approval by the Department in consultation with ODAg. If the Department determines that complete avoidance is not possible, then Idaho Power must implement mitigation including but not limited to seed collection and long-term conservation storage, transplanting and seeding, and research/monitoring activities.⁴¹ This is consistent with the Council's T&E Species Standard, which allows the Council to consider mitigation.⁴² 5. Ms. Geer alleges that a recently listed T&E plant species is known to occur in and near Morgan Lake Park – and that information is “on their way” to Oregon Biological Information Center. The Department affirms that ODAg has recently updated its T&E plant species list, as of May 2024, and that the species identified by Ms. Geer is on the list. However, based on ODAg's listed plants by county documentation, <i>Pyrrcoma scaberula</i> (rough goldenweed) is only known to occur in Wallowa County, a county that is not impacted by B2H or the proposed RFA2 changes. Ms. Geer referred to information that would support the assertion that the newly listed plant species is or could be located in or near Morgan Lake Park, but that information was not provided. Therefore, there are no facts to support the allegation. <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standard (T&E) included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 4: Mitigation called for in RFA 2 - Attachment 4 “Draft T and E Plant Mitigation Plan” is NOT a substitute for occurrences of rare plants and their unique undisturbed habitat</p>	<p>Mitigation called for in RFA 2 - Attachment 4 “Draft T and E Plant Mitigation Plan” is NOT a substitute for occurrences of rare plants and their unique undisturbed habitat.</p>	<p>Yes. Issue in contested case request contains the same comments that were provided on the DPO.</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. The Council's T&E Species Standard allows the Council to consider mitigation.⁴³ Moreover, as discussed above, certificate holder and the Department consulted with ODAg, and ODAg was directly involved in the development of the mitigation and concurs that it reasonably ensures

³⁹ B2HAMD2 Proposed Order Agency Consultation_T and E Plant Geer 2024-08-12.

⁴⁰ Final Order on ASC at 423 of 10586 (Sept. 27, 2022).

⁴¹ Draft Proposed Order on RFA 2 at 198 (Apr. 16, 2024).

⁴² OAR 345-022-0070(1).

⁴³ OAR 345-022-0070(1).

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Susan Geer			
	<p>This plan is all about seed banking and making plans for re-introduction. In fact it is over half a million dollars in seed banking. As Dr. Karen Antell demonstrated in her EFSC contested case, few if any cases of successful conversion of habitat exist. Instead of spending this money on seed banking, Idaho Power should spend this money re-routing B2H away from rare plants.</p>		<p>that the impacts from the facility would not significantly impact the likelihood of survivability or recovery of the species.⁴⁴</p> <ol style="list-style-type: none"> Ms. Geer argues that CON-TE-02 is "all about seed banking and making plans for re-introduction." The Department disagrees. First, during the review of proposed RFA2 changes, the Department consulted with ODAg to review adequacy of IPC's design and avoidance efforts, for which several adjustments were made by IPC. Second, the condition establishes a requirement that final design be reviewed by ODOE and ODAg to ensure that avoidance efforts are maximized and that there is valid justification for any areas represented as infeasible for avoidance. This is a preconstruction requirement that must be satisfied prior to any ground disturbance in areas that could affect a T&E listed species. The expanded site boundary also provides greater flexibility in consideration of avoidance opportunities. While any adjustments outside of the proposed expanded micro-siting area would require review through the Council's ADR or amendment processes, the evaluation of avoidance opportunities would no longer be limited to a 500-ft wide corridor. <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standard (T&E) included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 5: EFSC erred in approving the Morgan Lake Alternative to go through Glass Hill SNA, and then in allowing additional access roads within Glass Hill SNA under RFA 1.</p>	<p>EFSC erred in approving the Morgan Lake Alternative to go through Glass Hill SNA, and then in allowing additional access roads within Glass Hill SNA under RFA 1. The EFSC Protected Areas rule 345-022-040 before recent revision (December 2022) provided a list of Protected Areas as of 2007 (when the rule was written). The ALJ in the contested case process at the time, erred in ruling that only areas on that list would be protected, even though it was obvious that areas in certain categories which were designated after 2007 but before the new rule took effect in 2022, should be included and protected. It does not make any sense that Areas designated after 2007 would not be recognized until December 2022. I have suggested changes in the route to Joe Stippel, Site Manager of Idaho Power, but have no response. Therefore, I will be proposing an Amendment soon.</p> <p>Glass Hill SNA contains plant communities not protected elsewhere in Oregon's natural areas program: In addition, the more time we have spent in the area, the more we realize how many ephemeral stream and unmapped wetlands there are. We plan to suggest new plant community categories to the Natural Areas program. The program currently does not</p>	<p>Yes. Issue in contested case request contains the same comments that were provided on the DPO.</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> Under OAR 345-027-0375(2)(a), for a request for amendment proposing to add new area to the site boundary, Council must determine that the preponderance of evidence on the record supports a conclusion that the portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application; All existing laws and standards must be evaluated for the portions of the facility <u>within the proposed micro-siting area additions</u>. OAR 345-027-0375(2)(a) does not allow review of previously approved facility components or routes as evaluated by Council in its Final Order on ASC and RFA1 that are not requested to be changed in RFA2. The Protected Areas Standard in effect during Council final decision on the ASC did not include Glass Hill State Natural Area as a "protected area." At the time of the contested case concerning the ASC, for protected areas designated under state programs, such as the Natural Areas Program, the Protected Areas Standard applied only to "designations in effect as of May 11, 2007[.]" Glass Hill was not designated as a State Natural Area until 2019, and therefore the Hearing Officer properly concluded that under the plain language of the rule Idaho Power was not required to analyze it as a protected area. However, the certificate holder analyzed impacts to the area under other Council standards, such as the Fish and Wildlife Habitat Standard. <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standard (Protected Areas) included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>

⁴⁴ Draft Proposed Order on RFA 2, Attachment 5: Draft Threatened and Endangered (T&E) Plant Mitigation Plan, Consultation Summary with Oregon Department of Agriculture Native Plant Conservation Program at 3 (Apr. 16, 2024) (381 of 855).

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Susan Geer			
	recognize these wetland types representing the southern end of the Palouse prairie and open pine stands with inclusions of wet meadow unique to the region and found nowhere else in Oregon. The Zumwalt is more closely associated with the canyon grasslands. The Glass Hill and Morgan Lake area smaller remnant grasslands more closely aligned with the Palouse and a series of wet meadows due to the geology.		
Issue 6: The Draft Proposed Order for RFA2 continues to mischaracterize the management of Glass Hill State Natural Area (SNA), a Protected Area under OAR 345-022-0040, and the managers of the Natural Area were not notified of RFA2.	The Draft Proposed Order for RFA2 continues to mischaracterize the management of Glass Hill State Natural Area (SNA), a Protected Area under OAR 345-022-0040, and the managers of the Natural Area were not notified of RFA2. RFA 1 Draft Proposed Order mischaracterized the management of Glass Hill SNA as I wrote in Comments dated September 23, 2023 (Geer Comments on RFA1). RFA 2 makes no corrections. Preliminary Request for Amendment #2 Idaho Power Company for the Boardman to Hemingway Transmission Line, Attachment 7-2, page 37 lists Blue Mountain Land Trust as the manager. RFA 1 listed it as Blue Mountain Conservancy. Neither of these organizations is the manager, nor have they ever been. Owner Joel Rice and myself manage the land, with advice and assistance from Noell Bachellor of ORPD Natural Areas Program, and specialists from ODF, NRCS, and ODFW. I was not notified of either RFA 1 or RFA 2, even after submitting comments on RFA 1. Dr. Rice says that he was not notified either. Drafts of the 2022 Protected Areas rulemaking called for managers of Protected Areas to be notified, yet this wording was inexplicably omitted from the final version.	Yes. Issue in contested case request contains the same comments that were provided on the DPO.	No, for the following reasons: 1. Consistent with OAR 345-027-0360(2)(a)(D), the Department provided notice to all property owners of record identified in RFA2. For the Glass Hill State Natural Parcel, Joel Rice is identified as the landowner of record. ⁴⁵ Joel Rice was on the mailing list for notice for the RFA2. 2. EFSC's December 2021 rulemaking for the Protected Areas standard included updates for notifying protected areas land managers during the NOI and ASC phase but omitted the requirement for the amendment process. In efforts to apply a consistent process for the NOI, ASC and amendment phases, the Department utilizes the protected areas land manager contact information provided in Exhibit L and includes it in its notices during site certificate amendment review – noting that this is not required by the amendment rules. 3. Landowner coordination on site specific mitigation plans is required across several mitigation plan requirements. Most relevant is the Noxious Weed Plan, which applies to areas within the micro-siting area where facility components would be located/disturbance would occur. Because the facility was approved to be located within the boundaries of Glass Hill SNA prior to its designation as a SNA, the requirements for landowner consultation/coordination on a site specific noxious weed plan will apply within areas of impact in Glass Hill SNA. The existing plan requirements will ensure that impacts from disturbance and noxious weed control monitoring and treatment will not negatively impact Glass Hill SNA. 4. In its review of the DPO comments, the Department attempted to confirm the formal contact information of the land manager. The Department added revised text to the Proposed Order summarizing the Department's research and indicating the area is managed by the landowner, in coordination with other entities. For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.
Issue 7: General Conditions under the Protected Areas Standard 345-022-0040 should apply to Glass Hill State Natural Area.	General Conditions under the Protected Areas Standard 345-022-0040 should apply to Glass Hill State Natural Area. Attachment 6-1 Second Amended Site Certificate dated Sept. 22, 2023; page 32 should apply to Glass Hill SNA as well as Ladd Marsh Wildlife Area as follows:	Yes. <u>From contested case request:</u> "I maintain that the Hearing Officer and EFSC acceptance of her interpretation of the former rule, are both senseless and clearly biased toward the Applicant.... EFSC should re-examine it's acceptance of that ALJ's (hearing officer) ruling."	No, for the following reasons: 1. As previously stated, the Council does not have the authority to reverse or re-evaluate its prior decision, as it is maintained as a final decision through prior Final Orders. The rules that applied to the Final Order on ASC, were the rules in place at the time of that decision; which was the version of the Protected Areas standard that did not include Glass Hill. 2. The two conditions that Ms. Geer proposes to revise for RFA2 have specific findings of fact associated with the applicable rules for the areas listed in the conditions; these are detailed in

⁴⁵ RFA 2, Figure 9-1 at Map 14 (Apr. 11, 2024).

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Susan Geer			
	<p>GEN-PA-01: During design and construction of the facility, the certificate holder must:</p> <p>a. Coordinate construction activities in Ladd Marsh Wildlife Area and Glass Hill SNA (Areas) with the Area managers.</p> <p>b. Provide evidence to ODFW of a determination of eligibility and findings of effect pursuant to Section 106 NRHP compliance for the facility and the final HPMP for the portion of the facility that would cross the Areas subject to confidential material submission materials. [Protected Areas Condition 1; Final Order on ASC]</p> <p>GEN-PA-02: During design and construction of the facility, if the Morgan Lake alternative route is selected, the certificate holder shall ensure that facility components are not sited within the boundary of the Areas. The certificate holder shall provide to the Department a final design map for Union County demonstrating that the site boundary micro-siting area and facility components are located outside of the protected area boundary. [Protected Areas Condition 2; Final Order on ASC]</p>		<p>the Final Order on ASC and EFSC cannot arbitrarily add protected areas to conditions without findings of fact under an applicable standard to support the change.</p> <p>3. Landowner coordination on noxious weed control within locations of sensitive resources, such as T&E plant species, is a requirement under the Noxious Weed Control Plan (Fish and Wildlife Condition 3 [GEN-FW-03], see Section 5.3.1.3 of the Plan, Final Order on ASC Attachment P1-5). The requirements of the Noxious Weed Plan apply to areas within the site micro-siting area. Because the facility was approved to be located within the boundaries of Glass Hill SNA prior to its designation as a SNA, the requirements for landowner consultation/coordination on a site specific noxious weed plan will apply within areas of impact in Glass Hill SNA. The existing plan requirements will ensure that impacts from disturbance and noxious weed control monitoring and treatment will not negatively impact Glass Hill SNA</p> <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 8:</p> <p>RFA2 Proposes changes to General Conditions (Attachment 6-1 Second Amended Site Certificate dated Sept. 22, 2023, page 61-62) under the Threatened and Endangered Species Standard OAR 345-022-0070 which are unacceptable and should be rejected by the Council.</p>	<p>RFA2 Proposes changes to General Conditions (Attachment 6-1 Second Amended Site Certificate dated Sept. 22, 2023, page 61-62) under the Threatened and Endangered Species Standard OAR 345-022-0070 which are unacceptable and should be rejected by the Council.</p> <p>CON-TE-02 a. adds the words "where practical" leaving the interpretation wide open. CON-TE-02 b. is a new addition which allows IPC to destroy T and E plant species as long as there is "mitigation". No "mitigation" is a replacement for T and E plants.</p>	<p>Yes.</p> <p><u>From contested case request:</u> The IPC commentor cites a revised version of CON-TE-02, which is a slight improvement over the "where practical" language initially proposed. However, to really make a difference, the developer/IPC should demonstrate that not only have they micro sited away from individual plants, but that they have avoided the habitat of the endangered plant species. In many instances the reason plant species are rare is due to limited, unique habitat that they require. In some cases, the habitat was once widespread, but now due to human incursion is fragmented and of lesser quality. It should be recognized that this is what happens in the case of power lines and access roads: valuable habitat is fragmented and lost forever.</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. Site Certificate Condition CON-TE-02 precludes impacts within 33-feet of a delineated state-listed threatened or endangered plant population unless avoidance is not possible. If avoidance is not possible, the proposed condition modifications provide for mitigation, as described above. This condition is entirely consistent with the Council's T&E Species Standard, which allows the Council to take into account mitigation for potential impacts to listed species.⁴⁶ 2. See above response to Issue 4, related response related to T&E species and allowable and appropriate mitigation under the Council's standard. <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>
<p>Issue 9:</p> <p>The Council should reject Site boundary expansion and ask Idaho Power to apply for further Amendments instead, if they are needed. Alternatively, expansion should be subject to landowner</p>	<p>The Council should reject Site boundary expansion and ask Idaho Power to apply for further Amendments instead, if they are needed. Alternatively, expansion should be subject to landowner approval and this should be a condition of the Site Certificate.</p>	<p>Yes. Issue in contested case request contains the same comments that were provided on the DPO.</p> <p><u>From contested case request:</u> The IPC commentor states Contrary to Ms. Geer's assertion, Twin Lake is not within the proposed expanded site boundary. Twin Lake is within Morgan Lake Park, and Idaho Power modified the</p>	<p>No, for the following reasons:</p> <ol style="list-style-type: none"> 1. As stated previously and in this document, the certificate holder will still be required to obtain approval before moving any part of the facility outside the micro-siting corridor and into the proposed expanded site boundary. The certificate holder would have to obtain an amendment to the Site Certificate for any modification that could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard; could impair the certificate holder's ability

⁴⁶ OAR 345-022-0070(1).

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Susan Geer			
<p>approval and this should be a condition of the Site Certificate.</p> <p>Morgan Lake Park and Protected Areas should not be subject to site boundary expansion.</p> <p>Allowing an expanded site boundary without surveys would be in violation of OAR 345-027-0375(2)(a). The Council should not allow it.</p>	<p>RFA2 proposes expanding the site boundary to be ½ mile wide along the B2H transmission line and would add 101,600 additional acres not subject to survey. The expansion along the B2H line does not include expansions such as roads and facilities. If the site boundary is expanded as proposed, Idaho Power would have free-reign to micro-site within that half mile – rather than within the 500’ which was approved.</p> <p>An Amended route should be found which stays at least ¼ mile from Morgan Lake Park and Glass Hill SNA as well as other Protected Areas. Furthermore, these areas should not be subject to expansion. Allowing an expanded site boundary without surveys would be in violation of OAR 345-027-0375(2)(a). The Council should not allow it. The proposed expanded site boundary in Union County especially on the area (monocline) between Winn Meadow and Morgan Lake contains many wetlands, both mapped and unmapped. There is no doubt that sandhill cranes and bald eagles’ nest at Twin Lake and Columbia spotted frogs are found there within the potential expanded site boundary. Additional rare plants would include Pyrrocoma scaberula and Trifolium douglasii which grow in unique mesic grasslands, but there may be others as well. It has never been surveyed because it was outside of the site boundary in the past. This would be in violation of OAR 345-027-0375(2)(a), which states: “For a request for amendment proposing to add new area to the site boundary, the portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application;” Since the wetland has never been surveyed, compliance with the Fish and Wildlife Habitat Standard (OAR 345-022-0060) cannot be determined, nor Threatened and Endangered Species (OAR 34-022-0070).</p>	<p>proposed expanded site boundary so that it borders but does not overlap with Morgan Lake Park. It is a relief that the expanded site boundary is not overlapping the Park. However, as in the case of the Glass Hill SNA, activities outside of the Park boundary do affect plants and animals within the Park.</p> <p>Along with habitat fragmentation which is a leading reason for the decline of both rare plants and animals, direct effects would harm sandhill cranes, bald eagles, Columbia spotted frogs, and other sensitive species. They do not stop at boundaries. The impact would be especially severe for the many birds nesting at Twin/Little Morgan Lake, as has been discussed in my own and other contested cases with EFSC and OPUC.</p>	<p>to comply with a site certificate condition; or could require a new condition or a change to a condition in the Site Certificate.⁴⁷ The certificate holder may also submit an ADR to determine if an amendment is necessary. Based on the certificate holder representation in response to these concerns raised in DPO comments, the Department recommended in the Proposed Order New General Standard of Review Condition 12.</p> <ol style="list-style-type: none"> 2. Importantly, Division 27 rules apply to certificate holder’s approved facilities and site certificate. The ADR process is designated in these rules; Council cannot preclude a certificate holder from exercising the rules. 3. The entire 0.5-mile expanded site boundary does not need to be field surveyed to demonstrate compliance with applicable Council standards. The micrositing areas are the areas where facility components would be located, so field surveys, if necessary, would only be needed in those areas. The expanded site boundary is characterized and evaluated using desktop or literature review studies, which Council routinely accepts to evaluate resources covered by its standards. 4. As demonstrated in RFA2 Figures 4-1 and as discussed at the DPO Hearing, EFSC review of the DPO and clarified in the Proposed Order, there are no RFA2 facility components or routes located within Morgan Lake Park or any protected areas. The proposed expanded site boundary does not cross Morgan Lake Park or any protected areas. <ul style="list-style-type: none"> - Ms. Geer misinterprets OAR 345-027-0375(2)(a), which states that for a request for amendment proposing to add new area to the site boundary, Council must determine that the preponderance of evidence on the record supports a conclusion that the portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application. As discussed in the DPO and Proposed Order, this does not mean, ground based, pedestrian surveys are necessary to support the evaluation of the impacts from the proposed expanded site boundary. The proposed site boundary expansion does not authorize siting of facility components within, but allows review of facility component siting through EFSC’s ADR process in the event that the proposed changes do not warrant review under the site certificate process. <p>For the above reasons, the Department recommends Council find that this request does not raise a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24; and therefore, it does not justify a contested case.</p>

⁴⁷ OAR 345-027-0350(4).