

**Hearing - Day 1**

**Council Review of Boardman to Hemingway  
Transmission Line**

**August 29, 2022**



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OREGON DEPARTMENT OF ENERGY  
ENERGY FACILITY SITE COUNCIL MEETING

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Council Review of the Proposed Order/Proposed Contested  
Case Order for the  
Boardman to Hemingway Transmission Line

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August 29, 2022  
Day 1 of 3  
4:01 p.m.

REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121,  
Oregon CCR 22-0002

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1 APPEARANCES

2

3 OREGON DEPARTMENT OF ENERGY COUNCILMEMBERS:

4 KENT HOWE, Vice Chair

5 HANLEY JENKINS II

6 PERRY CHOCKTOOT

7 JORDAN TRUITT

8 CINDY CONDON

9 ANN BEIER

10 TODD CORNETT, Secretary

11 OREGON DEPARTMENT OF ENERGY STAFF:

12 KELLEN TARDAEWETHER

13 Senior Energy Facility Siting Analyst

14 SARAH ESTERSON

15 Siting Analyst

16 CHRISTOPHER CLARK

17 Siting Policy Analyst and EFSC Rules Coordinator

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19 1st Floor

20 Salem, Oregon 97301

21 FOR EFSC COUNCIL:

22 JESSE RATCLIFFE

23 OREGON DEPARTMENT OF JUSTICE

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1 APPEARANCES  
(Continued)

2

3 FOR IDAHO POWER:

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14 FOR STOP B2H and DR. SUZANNE FOUTY:

15 KARL ANUTA

16 LAW OFFICE OF KARL G. ANUTA

17 735 SW 1st Avenue

18 Portland, Oregon 97204

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20 kga@integra.net

21

22 Also Present:

23 Nancy Hatch, DOE

24 Wally Adams, DOE

25 Irene Gilbert

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1 LA GRANDE, OREGON; AUGUST 29, 2022

2 4:01 P.M.

3 -o0o-

4 VICE CHAIR HOWE: Okay. Good evening and

5 welcome. The time is now 4:01 p.m. I'd like to call

6 the August 29th and 30th and 31st, 2022, meeting of the

7 Energy Facility Siting Council to order.

8 I want to thank all of you for your

9 attendance tonight. We appreciate you taking the time

10 and we're interested in your comments.

11 Mr. Secretary, are there any agenda

12 modifications?

13 SECRETARY CORNETT: Mr. Chair -- this mic --

14 test, test.

15 Can everybody hear me?

16 VICE CHAIR HOWE: Yep.

17 SECRETARY CORNETT: Okay. Maybe it's the

18 mask. Okay. So roll call.

19 Kent Howe.

20 VICE CHAIR HOWE: Here.

21 SECRETARY CORNETT: Hanley Jenkins.

22 COUNCILMEMBER JENKINS: Here.

23 SECRETARY CORNETT: Jordan Truitt.

24 COUNCIL MEMBER TRUITT: Here.

25 SECRETARY CORNETT: Cindy Condon.

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1 (No audible response.)  
 2 SECRETARY CORNETT: Perry Chocktoot.  
 3 COUNCILMEMBER CHOCKTOOT: Here.  
 4 SECRETARY CORNETT: Ann Beier.  
 5 COUNCILMEMBER BEIER: Here.  
 6 SECRETARY CORNETT: Mr. Vice Chair, you have  
 7 a quorum.  
 8 VICE CHAIR HOWE: Okay. Thank you.  
 9 And I jumped the gun there, and so are there  
 10 any addenda modifications?  
 11 SECRETARY CORNETT: Mr. Chair, I did hear  
 12 from councilmembers earlier before the meeting that you  
 13 would like to defer voting on the draft meeting minutes  
 14 until tomorrow or Wednesday depending upon --  
 15 VICE CHAIR HOWE: Right.  
 16 SECRETARY CORNETT: So I guess we will defer  
 17 that.  
 18 VICE CHAIR HOWE: Okay. Thank you.  
 19 I have the following announcements. Please  
 20 silence your cell phones. Those participating via phone  
 21 or webinar, please mute your phone. And if you receive  
 22 a phone call, please hang up from this call and dial  
 23 back in after finishing your other call.  
 24 For those signed into the webinar, please do  
 25 not broadcast your web cam.

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1 Reminder to the Council and to anyone  
 2 addressing the Council to please remember to state your  
 3 full name clearly and do not use the speaker phone  
 4 feature as it will create feedback.  
 5 For those testifying on the B2H agenda item,  
 6 please use the "raise your hand" feature in Webex to  
 7 speak or press "star three" to raise your hand if you  
 8 are participating by telephone.  
 9 You may sign up for email notices by  
 10 clicking the link on the agenda or the Council web page.  
 11 You are also welcome to access the online mapping tool  
 12 and any documents by visiting our website.  
 13 Energy Facility Council Meeting shall be  
 14 conducted in a respectful and courteous manner where  
 15 everyone is allowed to state their positions at the  
 16 appropriate times. Consistent with Council rules and  
 17 procedures, willful accusatory, offensive, insulting,  
 18 threatening, insolent or slanderous comments which  
 19 disrupt the Council meeting are not acceptable.  
 20 Pursuant to Oregon Administrative Rule 345-011-0080, any  
 21 person who engages in unacceptable conduct which  
 22 disrupts the meeting may be expelled.  
 23 So we're going to move the discussion over.  
 24 The meeting minutes, to tomorrow or Wednesday. And  
 25 we're ready for the Council secretary report.

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1 SECRETARY CORNETT: Thank you, Mr. Vice  
 2 Chair.  
 3 First, I have a staffing update. At the  
 4 last Council meeting I had let councilmembers know that  
 5 we had somebody who had accepted the Rulemaking  
 6 Coordinator position, the Operations and Policy Analyst  
 7 3 position who was intending to start on August 22nd.  
 8 So, unfortunately, that person has elected  
 9 not to accept the position and has chosen to pursue  
 10 something else and, therefore, we have re-initiated the  
 11 recruitment process for that position.  
 12 In the meantime, Christopher Clark will  
 13 continue to serve as the Rulemaking Coordinator, as he  
 14 has in the last several months. So he will pull  
 15 double-duty being a Siting Analyst as well as a  
 16 Rulemaking Coordinator. So he will continue to move  
 17 forward on the rulemaking projects as well as the  
 18 assigned projects that he's working on. And so we thank  
 19 Chris for his efforts on that.  
 20 Next on my list are project updates.  
 21 So on August 7th, the notice of intent for  
 22 the Bonanza Energy Facility expired. So once a notice  
 23 of intent is filed by an applicant, they have two years  
 24 within which to submit a preliminary application. Prior  
 25 to the conclusion of that two-year time frame, they can

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1 also submit a request for extension for one year to  
 2 extend the notice of intent by one year, which means  
 3 extending the ability to submit the preliminary  
 4 application for site certificate for one year. Bonanza  
 5 facility failed to either submit a preliminary  
 6 application or a request for an extension. So that  
 7 facility has expired or at least that notice of intent  
 8 has expired.  
 9 And the facility was proposed at 150 to 300  
 10 megawatts. It was a solar energy project with up to  
 11 1100 megawatts of battery storage, relating and  
 12 supporting facilities. The project was proposed to be  
 13 on 2700 acres, so 4.2 square miles. It was to be  
 14 located in Klamath County near the town of Bonanza. And  
 15 the applicant was Hecate Energy Bonanza LLC, which is a  
 16 wholly owned subsidiary of Hecate Energy NAF, LLC. They  
 17 have indicated their intention to resubmit a notice of  
 18 intent in 2023. So we will wait to see if they do that.  
 19 Second on my list is the Oregon Trail Solar  
 20 Project. On August 19, 2022, we received a request for  
 21 Amendment No. 1 for that facility. That amendment  
 22 request includes two individual requests. The first is  
 23 to extend the beginning construction date from August  
 24 30th, 2022, to August 30th, 2025.  
 25 So to -- they did not construct the facility

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1 within the time frame originally approved and are  
 2 requesting a time frame extension for that.  
 3 And the second request is to revise  
 4 Condition 50 sub B to eliminate the requirement of a  
 5 cultural resources monitor being present when ground  
 6 disturbance occurs at depths of 12 inches or greater to  
 7 requiring a cultural resource monitor being present when  
 8 there is the initial open ground disturbance below 12  
 9 inches associated with collection line trenching in the  
 10 solar array.  
 11 So that's a little bit nuanced, and so I  
 12 just wanted to throw that out there. So you were kind  
 13 of aware of it. But really, it's about, sort of, the  
 14 presence of on-site cultural resource monitors during  
 15 construction. They are requesting a change to that.  
 16 They've also requested a type B review.  
 17 The facility is approved to include any  
 18 combination of wind and solar components not to exceed  
 19 41 megawatts, including up to 14 -- excuse me, 16 wind  
 20 turbines or up to 1,228 acres of solar PV generation  
 21 equipment.  
 22 And the entire site boundary is approved  
 23 at 13,800 acres. The facility was originally part of  
 24 the Montag Wind Power facility, but was split off from  
 25 that facility through Amendment No. 5 in September of

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1 2020. That's why, when I described it, it's a rather  
 2 small facility. It's because originally it was part of  
 3 a much bigger facility and then they split the site  
 4 facility into three.  
 5 The applicant -- excuse me, the certificate  
 6 holder is Oregon Trail Solar LLC, which is a wholly  
 7 owned subsidiary of Avangrid Renewables, LLC, which the  
 8 US division of the parent company, IBERDROLA.  
 9 And I have one -- unless Council has any  
 10 questions on either of my project updates, I have one  
 11 more update.  
 12 So there is a group called "Verde." It's  
 13 currently working with Renewable Northwest and Thousand  
 14 Friends of Oregon, and they just began pulling together  
 15 a comprehensive stakeholder. They've called it a table,  
 16 but essentially, you know, a group of diverse  
 17 individuals and representatives from different areas to  
 18 discuss the siting process in Oregon. And I'm quoting  
 19 from their information.  
 20 "How to address some of the frictions that  
 21 are coming up between communities and developers and  
 22 whether there are any changes that may be needed in the  
 23 system to help address new policy goals, such as those  
 24 established in House Bill 2021, but also to protect  
 25 community self-determination."

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1 So it's a pretty diverse group: developers,  
 2 the public, interest groups, state agencies, other  
 3 natural resource groups. So it's a fairly large group.  
 4 So -- just so I -- you have some  
 5 understanding, Verde, the entity, their website states  
 6 that its purpose is to serve communities by building  
 7 environmental wealth through social enterprise,  
 8 outreach, and advocacy. So that's the -- really the  
 9 head of this group.  
 10 Their group met on August 19th. It will  
 11 again meet on September 2nd with additional meetings  
 12 planned through the fall. The idea of the workgroup, as  
 13 we understand it, is to seek input from a broad group of  
 14 stakeholders in order to identify potential legislation  
 15 for the 2023 session.  
 16 The near-term goal is to have a placeholder  
 17 study LC, legislative concept, submitted on  
 18 September 23rd and spend time throughout the fall  
 19 working to identify what should be included.  
 20 There are legislators who are part of this  
 21 who have been engaged including Representative Rayfield,  
 22 Representative Marsh, Representative Brock Smith,  
 23 Representative Owens, Representative Helm,  
 24 Representative Pham, Representative Levy,  
 25 Senator Lieber, Senator Findley, and Senator Dembrow.

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1 If any councilmembers would like to be  
 2 included/invited -- it's not our group. We're not the  
 3 lead. But if anybody is interested in tracking or being  
 4 invited to that, we can reach out to the group leaders  
 5 and see if we can get an invitation extended to any  
 6 councilmembers who are interested.  
 7 COUNCILMEMBER CONDON: Todd, just a question  
 8 about Verde.  
 9 Do they have experience pulling diverse  
 10 groups together? Do you know? I mean, is this a common  
 11 practice for them.  
 12 SECRETARY CORNETT: I think so. I don't  
 13 personally have much experience for them. But that's my  
 14 understanding, is that's kind of their -- what they do.  
 15 They are kind of a -- more of a grassroots organization  
 16 seeking kind of broad -- you know, broad input. So  
 17 that's my understanding.  
 18 COUNCILMEMBER CONDON: And a follow-up, if I  
 19 may.  
 20 Is there anybody from the Department  
 21 involved?  
 22 SECRETARY CORNETT: Yes. The Department has  
 23 been participating.  
 24 COUNCILMEMBER CONDON: Thank you.  
 25 SECRETARY CORNETT: Okay. Mr. Vice Chair,

1 with that, I will conclude my secretary report.  
 2 VICE CHAIR HOWE: Thank you, Secretary  
 3 Cornett.  
 4 The next item is the Boardman to Hemingway  
 5 transmission line. At the last meeting in July, the  
 6 Council reviewed the standards from the proposed order  
 7 that did not result in any contested case issues.  
 8 This August meeting, the Council reviewed  
 9 the standards from the proposed order that did result in  
 10 contested case issues. We have Kellen Tardaewether,  
 11 Oregon Department of Energy Senior Siting Analyst, and  
 12 Jesse Ratcliffe, Senior Assistant Attorney General,  
 13 Natural Resources Section of the Oregon Department of  
 14 Justice, presenting and walking us through those  
 15 standards this evening.  
 16 So with that, I'll turn it over to  
 17 Ms. Tardaewether.  
 18 MS. TARDAEWETHER: Thank you, Vice Chair  
 19 Howe.  
 20 For the record, my name is Kellen  
 21 Tardaewether, Oregon Department of Energy. I am trying  
 22 to share my screen, so -- and normally through all of  
 23 those introductions, we would have had a PowerPoint and  
 24 a screen corresponding with all of those, but I'm having  
 25 issues sharing my screen right now.

1 a lot of you have been -- have spent over a decade  
 2 following and participating on this project. And we  
 3 really appreciate it, that time and you all being here.  
 4 And I'm sorry that my back is to you. But we can see  
 5 you up here.  
 6 So -- I'm just going to do an overview of  
 7 what we're going to cover today. And then once we get  
 8 this -- once we get it up, then we'll just kind of catch  
 9 up.  
 10 Is Council comfortable with me proceeding  
 11 without the visual queues?  
 12 Okay. The PowerPoint is also on the  
 13 Department's web page so Council can kind of pull that  
 14 up and go with it.  
 15 Now, it might be a little bit different,  
 16 because we just, you know, kind of rearranged some  
 17 slides or done some edits, so the version may be a  
 18 little bit different.  
 19 So today we're going to continue with  
 20 Council's review of the proposed orders for the Boardman  
 21 to Hemingway Transmission Line Application for site  
 22 certificate.  
 23 I, as staff at ODOE, who are also -- and the  
 24 Department is party to the contested case, which we're  
 25 here today because the contested case has concluded and

1 So one minute, if we may, while we just try  
 2 to troubleshoot this, and I may have somebody else share  
 3 until I can figure this out.  
 4 (Three-minute pause.)  
 5 MS. TARDAEWETHER: I have the announcements.  
 6 I have the PowerPoint on my screen here and we're going  
 7 to work on getting it up here on the screen here. So  
 8 thank you for being patient. This is the introduction.  
 9 And here we are.  
 10 So I'm going to do -- I know it's easier to  
 11 have the visual representation, but I'll just do it  
 12 orally just to kind of get us going here.  
 13 I do want to -- again, Kellen Tardaewether,  
 14 Senior Siting Analyst, Oregon Department of Energy. I'm  
 15 up here with my colleague, Sarah Esterson, Senior Policy  
 16 Advisor. We've been working on this project together  
 17 for the duration of my time at the Department, which is  
 18 six years. However, that is a short time compared to  
 19 some of the folks that have been working on this  
 20 project, Boardman to Hemingway transmission line from  
 21 Idaho Power over here in the room. They've spent a lot  
 22 of time.  
 23 Equally as much, I'm just going to turn  
 24 around and thank all you folks for showing up here  
 25 tonight and welcoming us to La Grande. And I know that

1 now the ball is back in Council's court. So I'm going  
 2 to be doing a presentation of the information in the  
 3 proposed order.  
 4 To the best of my ability and to the extent  
 5 that we can separate it from a contested case-related  
 6 issue, I'm going to be going over that information. And  
 7 then Council will have an opportunity to deliberate, ask  
 8 questions, and offer any changes to the materials that  
 9 are generally unrelated to a contested case issue.  
 10 And then Jesse Ratcliffe, Council's counsel,  
 11 is going to take over and do an introduction of the  
 12 contested case issue. He'll provide an overview and a  
 13 variation of it. And kind of the format may change  
 14 depending on the complexity of an issue or the amount of  
 15 information submitted on an issue. But he's also going  
 16 to provide an overview of that issue and what the  
 17 hearing officer's proposed contested case order said.  
 18 And then -- and then we'll go into exceptions filed  
 19 related to that issue as it's framed in the proposed  
 20 contested case order. And then there is also the  
 21 opportunity to file responses to those exceptions to the  
 22 proposed contested case order.  
 23 So that's what we're going to be covering  
 24 today. And then after that, Council will then have the  
 25 opportunity to deliberate, ask questions, make any

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1 modifications to the proposed order or to the proposed  
 2 contested case order.  
 3 And then Idaho Power -- we understood that  
 4 Idaho Power contracted with a court reporter.  
 5 Can we get confirmation either in the room  
 6 or that the court reporter is online? Okay.  
 7 Okay. Can we put her as a panelist?  
 8 Do you have her name?  
 9 "Crystal." Okay.  
 10 We want to make her a panelist, because if  
 11 she's having -- if somebody needs to repeat or slow down  
 12 or people are talking over each other -- okay. Okay.  
 13 And then, Crystal, can you -- do you have  
 14 the opportunity to -- to chime in whenever you need.  
 15 Thank you. I was going to ask if you guys  
 16 could hear me. Okay. I generally yell-talk anyway, so  
 17 it's not a problem.  
 18 We'll try to remind ourselves to all use our  
 19 microphones.  
 20 Okay.  
 21 MR. RATCLIFFE: So we still haven't heard  
 22 from Crystal. I do want her to be able to have the  
 23 opportunity to chime in.  
 24 Maybe, Crystal, if you can hear me, maybe  
 25 you can -- Crystal, you can unmute yourself.

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1 THE COURT REPORTER: Can you hear me now?  
 2 MS. TARDAEWETHER: Yeah. Okay.  
 3 So, Crystal, as you're documenting the  
 4 goings on here, please feel free, if something is  
 5 unclear, just chime in since you're remote. Feel free  
 6 to interject to get clarity on whatever you need for a  
 7 good transcript of this -- these meetings.  
 8 Okay. So after Jesse Ratcliffe goes  
 9 over his items, Council will then have the  
 10 opportunity -- questions/deliberations/modifications  
 11 with the basis, and then -- then we'll do a straw poll  
 12 on those items as well.  
 13 And which still can't see -- we're still  
 14 working on the presentation.  
 15 So I have a very -- on the -- on the  
 16 presentation, I have a very familiar chevron diagram of  
 17 the major process steps. And I just kind of wanted to  
 18 go over where we're at today.  
 19 I wonder if they could just pull up -- it's  
 20 just hard to do a presentation without your -- without  
 21 everybody seeing it.  
 22 Should I just keep on going?  
 23 Do you guys see it on the screen?  
 24 It's not going to work.  
 25 One minute.

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1 (Pause)  
 2 MS. TARDAEWETHER: Okay. All right. We're  
 3 back on. So some of these slides are going to work  
 4 well; some are not. I generally set up my presentation  
 5 to have some animations. So some things may be covered  
 6 up. So just bear with me.  
 7 We are on slide 8, Nancy.  
 8 So kind of going back in time, in July, we  
 9 began Council's review of the proposed order.  
 10 Now, but that -- for the issues that are not  
 11 related to the contested case, but I'm going to touch on  
 12 that in a little bit. Not going to spend a lot of time  
 13 on this. But this is -- we're in -- we have these  
 14 series of meetings because we're kind of bundling a lot  
 15 of parts into these meetings.  
 16 The Department held a series of meetings on  
 17 the draft proposed order on the hearings after those.  
 18 We issued the proposed order. It was -- it was in  
 19 redline format, because those redlines demonstrated  
 20 or -- or it was a way to highlight how the Department  
 21 and the applicant responded to the comments that the --  
 22 the public and agencies provided on the draft proposed  
 23 order. So that's why the proposed order has those  
 24 redlines in it.  
 25 And then that proposed order is what went

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1 out and folks had an opportunity to request a contested  
 2 case. If -- and basically -- just kind of summarizing  
 3 that if their issue was not appropriately -- (audio  
 4 disruption) -- or that they thought in the proposed  
 5 order, then they could raise it in their position for a  
 6 contested case. And -- and then there was the contested  
 7 case.  
 8 And now -- and then the output of that  
 9 contested case was the hearing officer's proposed  
 10 contested case order.  
 11 And so before Council gets to this final  
 12 order and site certificate -- or final order and final  
 13 decision, we kind of have to go back in time for Council  
 14 to understand everything that -- that came out of that  
 15 contested case proceeding. But it also -- Council  
 16 hasn't seen the proposed order, because the last time  
 17 Council had this project in front of them for, you know,  
 18 deliberation, input, modifications, was at its review of  
 19 the draft proposed order. And Council looked a little  
 20 bit different then. Some folks were there; some folks  
 21 weren't there. Council did offer revisions and edits to  
 22 conditions and items at that time. And those are also  
 23 reflected in that proposed order. So this is where  
 24 we're at today.  
 25 Nancy, next slide, please.

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1 Okay. Not going back in time, this is kind  
 2 of a date-by-date summary of the recent history. We are  
 3 going forward from 2010 and 2012. This is just to give  
 4 an idea of the -- the bigger milestones towards the end  
 5 of the contested case. The contested case lasted quite  
 6 some time. The contested case itself had a lot of  
 7 deadlines for all participating individuals and  
 8 opportunities to respond to those deadlines and filings  
 9 and motions and responses and it, itself, was a very  
 10 time-intensive/labor-intensive process for the  
 11 Department, Department of Justice, Idaho Power, but also  
 12 for the members of the public and their representatives  
 13 participating in the contested case.  
 14 So this is where we're at now. Okay. Next  
 15 slide.  
 16 I love talking. So I'm just going to try to  
 17 cut myself off and move forward. But as per usual,  
 18 Council, if you have any questions, please -- or want me  
 19 to slow down, just let me know. This is important. We  
 20 just wanted to let folks know.  
 21 Council has received items in electronic  
 22 versions and also in paper copies. Council does have a  
 23 very large binder, which those were very hard to put  
 24 together.  
 25 So -- sorry. I was crawling around on the

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1 floor. It's okay. We did it. So -- but it is in the  
 2 format of the agenda today. So we understand that there  
 3 may be some rearrangement or jumping around. We're  
 4 going to do our best to stay on time, go with the flow.  
 5 That said, those time frames in the agenda  
 6 are total estimates on how much just approximately we  
 7 think it may take to go through that agenda item, which  
 8 includes my part, Jesse's part, and Council's part, and  
 9 any oral testimony on it.  
 10 So we're really just doing our best to get  
 11 an idea of the schedule there.  
 12 The Council has received those items. We're  
 13 going to do our best. And if Council needs help finding  
 14 in your binder where something is or in the -- if you  
 15 are using the electronic PDF, then we can help assist  
 16 you. However, they are in the format of the agenda and  
 17 Council has had those for a while.  
 18 Next slide, please.  
 19 Okay. So in July I feel like the proposed  
 20 facility, as most are aware, is predominantly a  
 21 500 kilovolt transmission line. However, the proposed  
 22 facility -- and according to Council's definitions, a  
 23 proposed facility is the energy facility itself and  
 24 including all related or supporting facilities proposed  
 25 by the applicant.

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1 So it's predominantly a 500 kilovolt  
 2 transmission line. However, there are some rebuilds and  
 3 removals of other transmission lines. There's also a  
 4 substation and communication stations and systems.  
 5 I don't have a slide for this but -- and we  
 6 talked about these. I went into more detail primarily  
 7 to update and familiarize newer councilmembers.  
 8 Councilmember Chocktoot, I'm sorry you  
 9 weren't there in July, but I'm sure you've been looking  
 10 at these materials. But I, basically, just gave a  
 11 bigger, more detailed overview of the related and  
 12 supporting facilities and the proposed facility,  
 13 including, like, the transmission structures, et cetera.  
 14 So the related or supporting facilities  
 15 associated with the Boardman to Hemingway Transmission  
 16 Line are a series of roads. Roads are very important at  
 17 the July meeting. We talked about how the applicant  
 18 defined roads as using the Council's definitions of  
 19 "substantially modified" as a way of deciding whether or  
 20 not those are technically proposed by the applicant and  
 21 included in the application is whether or not that they  
 22 would be modified -- needed to be modified for  
 23 construction or operation of the facility. And there's  
 24 also new roads as well.  
 25 And there's also multi-use areas, pulling

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1 and tensioning sites, as well as some multi-use -- some  
 2 of the multi-use areas and pulling and tensioning sites  
 3 do have helicopter operations that could function out of  
 4 them as well.  
 5 So that's the proposed facility.  
 6 The applicant requests -- and Council's very  
 7 familiar with -- micrositing corridors.  
 8 A "micrositing corridor" is an area that is  
 9 evaluated within the site boundary where -- that, if  
 10 approved, an applicant could place any of the facility  
 11 components in that area.  
 12 For this facility, the applicant is  
 13 requesting that the site boundary function as the  
 14 micrositing area. So they have a larger site boundary  
 15 to where that -- well, let's just -- for the example,  
 16 the transmission line, the site boundary for the 500 kV  
 17 transmission line is 500 feet. However, the anticipated  
 18 final right-of-way is going to be 200 to 300 feet. And  
 19 so that means that they could move it around to  
 20 microsite around resources or minimize impacts within  
 21 that larger site boundary/micrositing corridor.  
 22 So the final right-of-way will be lesser  
 23 than the actual site boundary. We'll talk about this  
 24 later on, but the right-of-way in forested areas is  
 25 300 feet, which is larger than, say, across, like, EFU

1 zone lands, and that's to make sure that there's  
 2 adequate clearance for vegetation and trees.  
 3 Next slide, Nancy, please.  
 4 I noted that there are some alternatives on  
 5 this slide. I really want to remind Council that the  
 6 Council's process is different than the federal NEPA  
 7 review, which may result in the lead federal agency  
 8 offering, recommending, or imposing alternatives that  
 9 are not necessarily proposed by an applicant. That can  
 10 be an outcome of the federal review process. But  
 11 that -- the Council does not have the authority to have  
 12 that be an outcome. Statute tells Council that you're  
 13 approving or denying an application for a site  
 14 certificate. So what is proposed by an applicant is  
 15 what is in the application.  
 16 And -- and the question that's in front of  
 17 Council is whether or not those routes -- all the routes  
 18 meet or don't meet applicable Council standards. And it  
 19 is possible that an outcome is that maybe one or two  
 20 routes do, but maybe another alternative doesn't or they  
 21 can be conditioned differently.  
 22 That said, in the proposed order, the way  
 23 it's framed is that under the standards, say the fish  
 24 and habitat -- fish and wildlife habitat standard, we  
 25 talk about all of them together. So all of your

1 the applicable Council standards, you know, as  
 2 recommended in this order?  
 3 So, really, under each standard that we talk  
 4 about in the next several days, just in the back of  
 5 Council's mind, you're looking at the language of the  
 6 standard and then you're asking yourself -- and so I  
 7 also talked about what the preponderance of evidence is.  
 8 And so I'm just going to read this.  
 9 "The proof by preponderance of evidence  
 10 means the greater weight of evidence. And that facts  
 11 asserted are more probably true than false. Thus, to  
 12 issue a site certificate, Council must find that the  
 13 evidence on the record demonstrates that it's more  
 14 probable than not that an applicant will comply with  
 15 applicable standards, statutes, and administrative  
 16 rules."  
 17 So as we go through this, Council, ask  
 18 yourself, okay, I see the standard. And then asking is  
 19 it more likely than not that the applicant, you know,  
 20 with -- in the language of the standard -- that the  
 21 applicant -- that it's likely, with mitigation language  
 22 of the standards. Is it more likely than not that they  
 23 could meet that?  
 24 So, general standard, ultimately is what  
 25 Council is going to be making their final decision on.

1 temporary and permanent impacts to fish and wildlife  
 2 habitat for the proposed route and all of the routes are  
 3 talked about in its totality, you know, unless there  
 4 was, like, one area; for instance, you know, there's  
 5 Washington ground squirrel really only occur in, you  
 6 know, this one area in Morrow County where there are  
 7 some of those alternatives. So some of these conditions  
 8 would really only apply to those and not necessarily to  
 9 a route or an alternative route that crossed Malheur  
 10 County.  
 11 Next slide, please.  
 12 Okay. So these are the standards that we  
 13 talked about in July, and that Council, you know,  
 14 discussed, did straw polls. What I wanted to take a  
 15 minute and pause on this, which we talked about in July,  
 16 is that we did go over the general standard of review  
 17 because underneath that standard is where there were,  
 18 like, construction deadline -- deadlines, some mandatory  
 19 conditions. But I told Council we're going to revisit  
 20 general standard of review.  
 21 The general standard of review -- Oand if  
 22 Council looks at the very last page of your order, the  
 23 general standard of review is the standard that says,  
 24 Does the preponderance of evidence on the record  
 25 demonstrate that the applicant" has -- has -- "can meet

1 But it does include all of the other standards.  
 2 Okay. And I am going to pass it off to you,  
 3 Mr. Ratcliffe.  
 4 Next slide, please, Nancy.  
 5 MR. RATCLIFFE: Okay. Just want to make  
 6 sure that is coming through. Thank you, Kellen.  
 7 Vice Chair Howe, members of the Council, for  
 8 the record, my name is Jesse Ratcliffe. I'm an  
 9 Assistant Attorney General with the Department of  
 10 Justice. And my role here today is to advise the  
 11 Council in legal matters in getting through this  
 12 process.  
 13 Patrick Rowe, my colleague, has been  
 14 involved in this application heavily for quite some  
 15 time. It has been the practice of the Council and the  
 16 Department of Energy Staff for a number of years to have  
 17 separate attorneys representing the Council and the  
 18 Staff once we get to a contested case phase. That is  
 19 not required under Oregon law; however, it is something  
 20 that has been a practice for quite some time and that is  
 21 the reason why I am up here presenting to you instead of  
 22 Patrick.  
 23 And so, you know, I think at the bottom, my  
 24 role is to be a resource for all of you. I don't define  
 25 the processes that we're going through here, but I am



1 here to be able to answer questions and I will -- on the  
2 contested case issues, I will kind of kick things off by  
3 giving a summary of the issue and what the hearing  
4 officer decided before we hear the oral testimony from  
5 folks who filed exceptions and from any responses that  
6 parties may want to make.

7 So, again, Kellen walked through how we got  
8 to where we are today. And since my role will be  
9 dealing with the contested case issues, I just want to  
10 briefly talk for another minute or two about what that  
11 contested case process is.

12 It is a sort of mini trial. A somewhat less  
13 formal trial, you know, with the kind of ideas that you  
14 might have of that in terms of the ability to introduce  
15 evidence, to provide testimony, and -- and to have an  
16 independent hearing officer make a decision on the  
17 issues before her.

18 And so that's what has happened here. We've  
19 gone through a lengthy contested case with -- (audio  
20 disruption) -- for a significant number of issues and a  
21 significant number of parties. I've taken a lot of  
22 testimony and -- and the hearing officer has reached her  
23 decision on those issues.

24 And at the same time, you know, there's all  
25 the substance that comes in. You know, the purpose --

1 is subject to confidentiality. That's the  
2 attorney-client privilege.

3 The Council, as my client, in -- in this  
4 process, can choose to waive that privilege. And  
5 typically, that is what has happened in processes that  
6 I've been involved in and serving in this role in the  
7 past few years. It is not required. It is also not my  
8 choice to make.

9 So if at any point the Council decides that  
10 they want to hear advice from me that is for your ears  
11 only and is subject to privilege, what I will need you  
12 to do is have someone, you know, raise their hand, you  
13 know, let me know, "Hey, I've got a question," you know,  
14 "I think that this may pertain to the" -- the, you know,  
15 "particular risk of making a decision this way or that  
16 way, and how that might play out on appeal."

17 And then we'll kind of stop for a minute,  
18 talk about what options are, and whether or not that is  
19 something that a particular piece of advice gets  
20 delivered outside of the public meeting.

21 And again, even though the general practice  
22 of the Council the past -- at least the past few years,  
23 has been to do this all, you know, for the most part out  
24 in the open, we have had instances where that has been  
25 the Council's choice to, you know, do that. And that is

1 sorry. I'm going to really have to lean in close here.

2 The purpose of the trial, fundamentally, is  
3 to take substantive evidence. You know, so if we have  
4 a -- a fish and wildlife habitat issue that we get  
5 evidence and testimony in pertaining to that issue.

6 But as with all trials, there's also a fair  
7 bit of procedure that goes along with that. In terms of  
8 the way in which that testimony can be taken. Kind of,  
9 you know, benchmarks for the reliability of that  
10 testimony, deadlines that need to be hit so that it  
11 remains an organized process.

12 And so the first thing that I'm going to be  
13 doing here today is -- after I conclude this kind of  
14 introductory section, is to talk a little bit about the  
15 procedural exceptions that were filed in this case. So  
16 concerns about not -- the substance of has the applicant  
17 met a particular standard or not, but under the rules  
18 and statutes that apply to the hearing, to the contested  
19 case hearing, were they followed appropriately?

20 So I'll be getting into that in a second  
21 here. The last thing I want to talk about before I do  
22 that is the process that we have set up is this is  
23 taking place in an open public meeting. Ordinarily, you  
24 know, or commonly, when anyone asks their attorney for  
25 advice -- and I'm your attorney for this process -- it

1 a very common practice with -- with other boards and  
2 commissions to be able to take advice outside the public  
3 meeting.

4 But that is, you know, a component of what  
5 my role is today is to, you know, provide the sort of  
6 advice that might ordinarily be privileged.

7 So with that, I think that kind of covers  
8 what, you know, my role is. You know, how this process  
9 is going to take place.

10 The first set of issues that I want to get  
11 into, again, are the procedural ones. And this is going  
12 to immediately bring up a process point for the meeting,  
13 because on the substantive exceptions that were timely  
14 filed, the proposal on the table is to allow the parties  
15 to have oral argument time on their exceptions.

16 The idea with that is really, you know, by  
17 and large, the exceptions process is on paper. And in  
18 complex cases like this one, that makes good sense.  
19 You're, you know, having -- the party has the best  
20 opportunity to, you know, get their thinking down in  
21 writing and present that to the Council for review.

22 However, it is permissible, and the proposal  
23 on the table is with respect to the substantive issues  
24 to allow the -- both the party who filed the exception  
25 and then any responding party, be it either the

1 Department of Justice Staff or Idaho Power, to have a  
 2 short period of time to kind of highlight some of the --  
 3 the issues that they want to in oral argument.  
 4 The proposal is for that to be a  
 5 three-minute period for each exceptor. Some issues will  
 6 have more than one person who has filed an exception.  
 7 In that case, each individual person who  
 8 filed an exception will have their three minutes to  
 9 talk.  
 10 And then similarly, the Department of Energy  
 11 staff and -- and Idaho Power would have three minutes.  
 12 That time -- and we have had a couple of  
 13 requests, which I forwarded to you all, to extend that  
 14 time. That is at your discretion. Of course, you know,  
 15 the additional time is additional meeting length. We do  
 16 have a lot to get through, but that is something that  
 17 the Council could take up if it wants to.  
 18 On the procedural issues, again, the  
 19 proposal is not to have oral argument on those, to focus  
 20 on the -- the paper, the written exceptions that were  
 21 filed. And the reasoning, in part, is because we do  
 22 have a lot to get through.  
 23 And, fundamentally, the -- you know, the  
 24 process here is to determine whether or not the  
 25 applicant has met the substantive standards before you.

1 new information can be provided anyway.  
 2 COUNCILMEMBER BEIER: Just so the public  
 3 understands, we do have these amazing books full of your  
 4 written testimony. And we were allowed to get these in  
 5 time to get through them. So we -- I think the idea to  
 6 really -- in your oral testimony -- highlight what you  
 7 want us to hear would be very helpful.  
 8 And a shout out to the Department of Energy  
 9 Staff for the amazing production effort to get these  
 10 materials to us in a timely manner.  
 11 Just know we take this -- we have a  
 12 responsibility here and we were given the tools to  
 13 really dig into your testimony.  
 14 So think about how you want to summarize it  
 15 for us and hit those high points. Thank you.  
 16 VICE CHAIR HOWE: Any other comments?  
 17 Okay. We're ready to proceed.  
 18 MR. RATCLIFFE: Okay. So -- and speaking of  
 19 that very fine binder, of which we will be speaking  
 20 about a lot over the next few days, the place where the  
 21 procedural issues are to the front of the materials.  
 22 And it looks like a couple of you have them in separate  
 23 binders, which is great.  
 24 And the -- we had procedural challenges that  
 25 were specifically filed by Stop B2H and Irene Gilbert.

1 But, again, you know, I -- I want to go  
 2 ahead and set this out in case any councilmember feels  
 3 like there's a need for discussion on the proposal of  
 4 how this is going to work in terms of -- of discussion  
 5 of the contested case issues.  
 6 If there's a need for discussion on that, I  
 7 will turn the floor over and we can have that  
 8 discussion. Otherwise, what I'll do from here is move  
 9 into the procedural exceptions that were filed.  
 10 VICE CHAIR HOWE: Comments from Council that  
 11 you want to discuss before we move on into explanation  
 12 of the procedures?  
 13 COUNCILMEMBER JENKINS: This is Hanley.  
 14 You know, I support the proposal for the  
 15 three minutes because we have a lot of exceptions and  
 16 responding parties, and so --  
 17 VICE CHAIR HOWE: Also, in agreement with  
 18 that. We have all the written testimony, and there's no  
 19 new information that can be submitted, so -- and they've  
 20 had opportunity for their oral comments back when we  
 21 were here three years ago on the four meetings that we  
 22 had, as well as before the hearings official.  
 23 And so I think the three minutes is adequate  
 24 for them to emphasize anything they want to bring our  
 25 attention to in the written comments that we have and no

1 And then we also have a couple of challenges aside from  
 2 that that are objecting to how a particular contested  
 3 issue was framed by the hearing officer. Which, again,  
 4 is itself a procedural issue. The hearing officer is in  
 5 charge of the hearing, including the -- you know, the --  
 6 the definition of those issues.  
 7 So I -- I am going to be doing a little bit  
 8 of jumping around here. I apologize for that.  
 9 But there are a number of issues that were  
 10 raised by both Stop B2H and Ms. Gilbert. And as a  
 11 result of that, I will -- to kind of keep things  
 12 organized that way -- need to be moving back and forth a  
 13 little bit.  
 14 So the first of these issues that were  
 15 covered by both Stop B2H and Ms. Gilbert has to do with  
 16 the type of party status that was granted to folks who  
 17 are participating in the contested case. And the  
 18 Councilmembers may recall that we had an extensive  
 19 discussion of this and a decision by the Council on this  
 20 issue previously.  
 21 But just as a reminder and for those in the  
 22 room, that is the difference between what is referred to  
 23 as a "limited party" under the Council's rules and the  
 24 Oregon Administrative Procedures Act and a "full party."  
 25 And -- and the, you know, basic concept here

1 is that the -- the limited party has the ability to  
2 participate on the specific issues that they timely and  
3 appropriately raised, rather than coming into the  
4 contested case part process and, sort of, participating  
5 on anything that they see fit at that stage.

6 And the Council's decision came about  
7 because a number of parties earlier on in the process --  
8 after the hearing officer had made her initial decision  
9 on party status, a number of parties appealed those  
10 decisions to the Council, which is provided for in the  
11 Council's rules.

12 For the most part, the idea is we try to get  
13 through the contested case process without bringing it  
14 to you. But there are a couple of exceptions -- and  
15 that is one of them -- to hear appeals on the definition  
16 of issues and, in this case, on the nature of their  
17 party status, whether they are full or limited parties.

18 So the Council heard extensive arguments on  
19 that and reached a decision that then has carried  
20 forward through the rest of the contested case, which is  
21 that if a party raised an individual issue in a timely  
22 fashion on the record of the draft proposed order,  
23 raised that with sufficient specificity, then that party  
24 has the ability to continue forward with that issue. If  
25 they raised multiple issues that got in, they can

1 bit of a highlight summary of what's come before on the  
2 issue and then -- then where things stand, legally  
3 speaking.

4 And so I'm going to stop on this one and see  
5 if there are any comments/questions. I'll answer those.

6 What I'm going to do after that, then, is  
7 keep going through these procedural issues. I'm going  
8 to be taking notes -- if you have questions/comments/  
9 concerns.

10 Once we get to the end of this process of me  
11 walking through these procedural issues, if it appears  
12 that there are things that we need to cycle back on  
13 and -- and -- and potentially look at the idea of making  
14 changes on -- to the proposed contested case order, then  
15 we'll bring those up.

16 And we'll end up with kind of a straw poll,  
17 which is, again, not a final decision. It is the sense  
18 of the Council right now as to where we stand on those  
19 issues.

20 So with that, I will stop talking here for a  
21 minute and see if there are any questions, specifically,  
22 on this limited-party status issue.

23 VICE CHAIR HOWE: It doesn't look like there  
24 is.

25 MR. RATCLIFFE: Okay. So the next issue

1 participate in multiple issues, but the parties were  
2 not, kind of, allowed to crossover into other issues  
3 that they, themselves, did not raise.

4 So both Stop B2H and Ms. Gilbert have filed  
5 written exceptions to that raising a number of the  
6 arguments that had been heard by the Council at the  
7 earlier stage.

8 And so, again, you know, this will be the  
9 first time that I'm doing this, but, you know, as part  
10 of my role in this process, you know, it's to give the  
11 Council a read on where you stand legally, you know, so  
12 if this were taken to the Oregon Supreme Court on an  
13 appeal on a final site certification, how would you be  
14 looking on that issue?

15 And on this particular issue, again, this  
16 was the subject of extensive briefing and also my  
17 advice -- which hasn't changed from that period of  
18 time -- which at the time was that the statutes and  
19 rules allow the Council to provide for this  
20 limited-party status.

21 And so the hearing officer's approach to  
22 doing that and the Council's affirming that decision by  
23 the hearing officer are procedurally appropriate.

24 And so what I'm going to do on each one of  
25 these is -- is, essentially, just this. So what I -- a

1 that I'm going to go to is one that was raised by  
2 Ms. Gilbert that is the compliance with a statute under  
3 the Oregon Administrative Procedures Act. It's Oregon  
4 Revised Statutes 183.470(2). And the contention and the  
5 exception is that this procedural statute hasn't been  
6 complied with.

7 And the statute itself deals with the final  
8 order in the contested case.

9 The statute that she references states that  
10 "A final order shall be accompanied by findings of fact  
11 and conclusions of law."

12 It goes on to talk about what those findings  
13 of fact look like. And the -- the key point here in  
14 response is that we haven't reached a final order yet.

15 Ms. Gilbert is absolutely correct that every  
16 final order that's issued by a state agency needs to  
17 meet this. And the -- before all is said and done here,  
18 no matter what the outcome of the site certificate  
19 decision is, a final order that meets those requirements  
20 will need to be prepared. The Department Staff will  
21 assist you in the preparation of that. So we will get  
22 there, but we're not there yet.

23 And so I don't have anything else on that.

24 But, again, we'll pause for questions.

25 VICE CHAIR HOWE: Questions from the

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1 Council?  
 2 None so far.  
 3 MR. RATCLIFFE: Okay. The next issue that I  
 4 want to talk about is one that was raised by Stop B2H.  
 5 And this exception concerned the timeliness of the  
 6 filing of recommended conditions.  
 7 And so one of the parts of the -- the  
 8 process that is specific to the Council statutes is the  
 9 ability of parties -- oh, thank you -- to raise the  
 10 need, as far as they see it, for a specific condition  
 11 that the site certificate should include.  
 12 The hearing officer had made a statement in  
 13 the proposed contested case order that was not accurate  
 14 entirely on this issue.  
 15 And this is one where my recommendation is  
 16 that the proposed contested case order should be  
 17 corrected before we get to a final order.  
 18 And -- and that's to acknowledge that all  
 19 conditions that were proposed by the closing argument  
 20 deadline were timely and should be considered.  
 21 So what the hearing officer had done is  
 22 excluded some of those proposed conditions as untimely.  
 23 Now, if she had stopped there, the Council  
 24 would have more of a lift on this procedural issue,  
 25 because we would then need to be talking about what each

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1 of those conditions were; how to address the fact that  
 2 they were excluded. Fortunately, the hearing officer  
 3 went on to consider the merits of -- of those proposed  
 4 conditions anyway.  
 5 So while it is an error on the hearing  
 6 officer's part to have said that the -- the proposed  
 7 condition should be excluded from the process, she  
 8 considered them anyway.  
 9 And so this then becomes kind of a technical  
 10 fix to the proposed contested case order to acknowledge  
 11 that they were, in fact, timely and -- and that the  
 12 hearing officer did, in fact, choose to consider them.  
 13 That's all I have on that one.  
 14 VICE CHAIR HOWE: Questions or comments?  
 15 COUNCILMEMBER JENKINS: -- this is Hanley.  
 16 No, Chair.  
 17 MR. RATCLIFFE: Okay. The next procedural  
 18 exception.  
 19 This is one raised by Ms. Gilbert and is  
 20 referred to hearing officer decisions on discovery and  
 21 witness cross-examination.  
 22 So these are two of the trial-type  
 23 procedures that get used in a contested case.  
 24 "Discovery" is the ability to ask another  
 25 party in the case for records that are relevant or may

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1 lead to relevant information. There's a -- a set of  
 2 rules that govern that discovery process.  
 3 Similarly, the ability to cross-examine a  
 4 witness is fundamental to trial-like procedures in the  
 5 United States, both in courts and administrative  
 6 proceedings and -- so that's a component of these  
 7 hearings.  
 8 So on -- on this particular issue, having  
 9 reviewed this, the -- the argument is essentially that  
 10 certain witnesses did not adequately respond -- or  
 11 potential witnesses, I guess I should say -- potential  
 12 witnesses did not adequately respond to discovery  
 13 requests that were made of them and, therefore, there  
 14 was a request to cross-examine those witnesses.  
 15 This one gets a little bit technical. But  
 16 the -- there is a process for compelling discovery. If,  
 17 you know, a party feels that that was not adequately  
 18 responded to and the -- basically, the request for a  
 19 witness to appear as a -- for cross-examination wouldn't  
 20 be the appropriate next step in the process, we want to  
 21 work through these issues before we get to the hearing  
 22 and -- and so that's -- that's what would have needed to  
 23 have happened.  
 24 And so the hearing officer's decision  
 25 fundamentally to say, well, this isn't the right remedy

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1 here to have this person show up for cross-examination.  
 2 We would have needed to see more of a demonstration of  
 3 precisely what it was that was not provided and why that  
 4 should have been provided. That having looked at that  
 5 my -- my recommendation is that the hearing officer  
 6 handled that one correctly.  
 7 VICE CHAIR HOWE: Is there questions?  
 8 Okay. Continue. Thanks.  
 9 MR. RATCLIFFE: Sure.  
 10 Another procedural exception filed by  
 11 Ms. Gilbert pertains to the hearing officer's filing  
 12 requirements and her method for managing the record.  
 13 And Ms. Gilbert had proposed a different  
 14 system for referring to documents in the contested case  
 15 process. The hearing officer declined to adopt that.  
 16 It is a part of the hearing officer's  
 17 responsibilities to manage the record. I, you know,  
 18 freely acknowledge having been involved as an advocate  
 19 in cases of this size before. You know, it's a  
 20 challenge. And whatever ends up getting picked, you're  
 21 still going to end up running into difficulties with.  
 22 However, what the hearing officer did was  
 23 use a commonly accepted means for managing a record of  
 24 this size, requiring kind of a uniform process for  
 25 referring to documents. And so there -- that decision

1 is fundamentally something that's within the hearing  
2 officer's discretion to figure out and -- and -- and,  
3 you know -- and she chose an appropriate method.

4 Okay. Let me scroll here for a second.

5 So we have a related exception from

6 Ms. Gilbert that points to a statute that requires the  
7 hearing officer to conduct a full and fair hearing. And  
8 that reference shows up in Oregon Revised Statutes  
9 183.615.

10 And -- and this ties back into an earlier  
11 part of the contested case process where Ms. Gilbert had  
12 filed a motion requesting the removal of the hearing  
13 officer.

14 That was something that the -- was taken up  
15 by the Council and the Council decided not to remove the  
16 hearing officer. That motion contained a number of --  
17 of similar objections. The full and fair hearing, you  
18 know, as you can tell, kind of, by the phrasing, it's  
19 not a particularly specific requirement. Yet, under  
20 Oregon law it has, you know, including certain baseline  
21 requirements, and a lot of those are the processes that  
22 show up within the hearing -- an opportunity for  
23 discovery, taking testimony from witnesses, the filing  
24 of exhibits, that sort of thing.

25 And the Council's rules, helpfully here,

1 part of the hearing and then ends up weighing that as  
2 she discusses how she is ruling on a particular issue.  
3 That's not the only way of writing a proposed contested  
4 case order, but it is an acceptable way of doing that.

5 And so my recommendation on that one is  
6 that, again, she chose an acceptable method.

7 Okay. I have just a couple of these left to  
8 go here and just want to make sure that I'm taking them  
9 in an order that roughly makes sense.

10 Okay. So the next one has to do with an  
11 issue that the Council has similarly heard about a  
12 number of times throughout this process filed by  
13 Ms. Gilbert and that pertains to the rules that are used  
14 in this process.

15 And so this is one that the Council has  
16 heard before, so I will try to make this short. But  
17 basically, several years ago the Council determined that  
18 in order to get consistent high-quality hearing officers  
19 to hold these contested case hearings, the historic  
20 practice had been to do RFPs; basically, to go out and  
21 find an independent contractor to hold the hearings.

22 Because we had run into issues with a couple  
23 of hearing officers by that method, what the Council  
24 then decided to do is to shift over and start using  
25 hearing officers from the Office of Administrative

1 actually do provide a little bit more illumination on  
2 what that looks like, because they spell out what the  
3 duties of the hearing officer are. And the hearing  
4 officer, you know, has hit each one of those duties  
5 throughout the process.

6 So again, at the time, the Council decided  
7 not to remove the hearing officer; that she was  
8 providing that opportunity for a full and fair hearing.

9 One more related one on that note is an  
10 objection by both Stop B2H and Ms. Gilbert as to the  
11 format of the proposed contested case order.

12 So having gotten through, you know, the  
13 earlier trial-type procedures, we got to the point where  
14 the hearing officer wrote the order. And the -- again,  
15 as I referenced earlier, Ms. Gilbert's citation to a  
16 statute requiring that there be findings of fact and  
17 conclusions of law, again, that is absolutely a  
18 requirement. However, the formatting of how that gets  
19 done specifically is left to the discretion of the  
20 hearing officer. The hearing officer here did include  
21 extensive findings of fact, used those to support  
22 conclusions of law.

23 Now, many of her findings show up in the  
24 opinion section, so, you know, she frequently has listed  
25 some of the evidence that was entered into the record as

1 Hearings, which is the state body that hold most of the  
2 contested case hearings in the state.

3 And as part of that, though, there is a  
4 technical issue where any agency that chooses to use  
5 those hearing officers from the Office of Administrative  
6 Hearings ordinarily has to use the rules that -- the  
7 Attorney General's Office provides that as sort of a  
8 standardized process.

9 That has a number of exceptions, though.  
10 There are a number of agencies whose application  
11 processes are unique enough that the -- that there is an  
12 exception from the use of the Office of Administrative  
13 Hearings; and, therefore, an exemption from the use of  
14 those rules.

15 The Council is one that the legislature  
16 decided should be exempted. And for that reason, when  
17 the Council, nonetheless, decided to use the Office of  
18 Administrative Hearings for hearing officers, there was  
19 a request made to the Attorney General to have an  
20 exemption from that rule and to allow the Council's  
21 rules, which have historically been applied to every  
22 application that has come before the Council, to  
23 continue to have those rules apply.

24 And the hearing -- the Attorney General  
25 granted that request. Ms. Gilbert has objected to

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1 the -- the use of -- continued use of the Council's  
 2 rules instead of the Office of Administrative Hearings'  
 3 rules.  
 4 And the main point here is that the  
 5 exemption decision, while requested by the Department of  
 6 Energy and the Council, it's ultimately the Attorney  
 7 General's decision. An objection to that decision would  
 8 be made with the Attorney General. And at this point,  
 9 that's not really within the Council's jurisdiction.  
 10 So -- and, you know, once again, just to be  
 11 clear about this, the rules -- as a result, the rules  
 12 that have been applied in this contested case process  
 13 are the same rules. They are the Council's rules that  
 14 have been applied in every application that has come  
 15 before the Council before.  
 16 So then we have a number of issues where  
 17 folks have filed exceptions that were based on the way  
 18 that their issue statement was framed; and that is  
 19 included as a part of this initial presentation, because  
 20 the Council has already considered how those issue  
 21 statements were handled.  
 22 But because folks filed exceptions on these,  
 23 I wanted to at least bring it to the Council's attention  
 24 that there are some folks who maintain their objections  
 25 to the way that the contested case issues were framed,

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1 and that includes Michael McAllister. Mr. McAllister's  
 2 exception is to the dismissal of his issue earlier on in  
 3 the proceeding that argued that the EFSC review must be  
 4 consistent with the Bureau of Land Management's NEPA  
 5 review, the National Environmental Policy Act.  
 6 That issue was dismissed because --  
 7 basically, because the Council is bound to follow its  
 8 own statutes and its own rules, not separate federal  
 9 statutes.  
 10 This was addressed on the -- the appeal to  
 11 the Council on issue statements. And while there is a  
 12 Council statute that encourages the Council to work,  
 13 where possible, with its federal partners, that only  
 14 goes so far as the law allows. Council doesn't have the  
 15 authority to say, "adopt NEPA." There's no  
 16 authorization for that.  
 17 So that's the basis for that dismissal.  
 18 The remainder of these filled by Ms. Geer  
 19 contending there were incorrect summaries of Fish and  
 20 Wildlife 3 and Fish and Wildlife 6; Ms. Gilbert  
 21 pertaining to issues MC-2, HCA-3 and part of Fish and  
 22 Wildlife 3; and then -- and Kevin March pertaining to  
 23 Fish and Wildlife 7.  
 24 Again, each of these objections were heard  
 25 on the appeal to the Council earlier on. The parties

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1 maintain those objections. But again, the Council has  
 2 ruled on them.  
 3 So that is a lengthy list. I apologize for  
 4 the amount of time involved in that, but that is  
 5 necessary to walk through each one of those.  
 6 And so unless there are any other questions,  
 7 what I would like to turn to now is just simply a very  
 8 basic straw poll to get the sense of the Council as to  
 9 whether anything that you've heard so far bears  
 10 correction of the proposed contested case order or  
 11 requires any additional process other than what we're  
 12 going through over the next few days.  
 13 As a reminder, the one change, as I went  
 14 through, the procedural exceptions that I do recommend  
 15 be made is that the proposed contested case order be  
 16 corrected to acknowledge that all conditions proposed by  
 17 closing argument deadline were timely and -- and, you  
 18 know -- and that these ended up being addressed by the  
 19 hearing officer.  
 20 That's the type of correction to the  
 21 proposed contested case order that -- should the Council  
 22 decide to pursue that recommendation that then Staff can  
 23 turn around and prepare for you to look at at the  
 24 following meeting.  
 25 VICE CHAIR HOWE: Questions up to this

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1 point?  
 2 COUNCILMEMBER JENKINS: So Jesse -- yeah.  
 3 This is Hanley.  
 4 Jesse, how do you want to do the straw poll?  
 5 MR. RATCLIFFE: Yeah. I think what I would  
 6 like to hear, basically -- and these can be very  
 7 informal. You know, there's no particular motions that  
 8 need to be made or anything.  
 9 But, you know, a Council member can simply,  
 10 you know, raise their hand and say it's my view that  
 11 here's what I think we ought to do and we can go around  
 12 and -- and see. Folks can raise hands or however they  
 13 want to handle it.  
 14 And then if there's anything that seems to  
 15 generate discussion from that, if we have, you know --  
 16 if we don't have unanimous consent and a councilmember  
 17 wants to make a comment; then, great, we'll take the  
 18 time to do that.  
 19 But the overall point is that this is  
 20 informal because we're not making a final decision.  
 21 We're just trying to get a sense of where we're at now.  
 22 COUNCILMEMBER JENKINS: Okay. So -- thank  
 23 you, Mr. Chair.  
 24 So I agree with your proposal of the one  
 25 change. And on the other issues -- but if someone has

1 some discussions, I'm happy to entertain that.  
 2 VICE CHAIR HOWE: Thank you.  
 3 SECRETARY CORNETT: If councilmembers would  
 4 like, I could call roll. So there's a formal, on the  
 5 record, if that's -- but as Jesse said, that's entirely  
 6 your choice.  
 7 VICE CHAIR HOWE: What's the Council  
 8 druthers here? Do a formal roll call? Yeah. Okay.  
 9 And I'll go ahead and say, Mr. Ratcliffe,  
 10 that all the filings on the procedural issues, I'm in  
 11 agreement with the way they've been dealt with in your  
 12 statements that you walked us through right then. So  
 13 I'm comfortable with that.  
 14 COUNCILMEMBER CONDON: Cindy Condon. And I  
 15 also agree. Thank you.  
 16 COUNCILMEMBER BEIER: Ann Beier. And I'm  
 17 also comfortable making sure we catch the nuance on the  
 18 change you're recommending that the -- the -- it's not  
 19 the exceptions, the -- the opening.  
 20 MR. RATCLIFFE: Yeah. There's a lot of  
 21 jargon here and so this is the conditions. The  
 22 proposal --  
 23 COUNCILMEMBER BEIER: The conditions were  
 24 timely filed and that the hearings officer considered  
 25 them. I think that's important to show in the record.

1 process. The hearing officer made a decision, a  
 2 proposed decision. If parties continue to have  
 3 objections after that decision is made, the expectation  
 4 is that the best way to approach that is to -- you know,  
 5 a legally provided way to approach that is to file an  
 6 exception.  
 7 So absent an exception being filed, you  
 8 know, the general thought is that, well, okay, you know,  
 9 we may no longer have a live issue here; this may have  
 10 adequately disposed of in the contested case.  
 11 And, frankly, that's kind of the hope going  
 12 through, is that you start narrowing down on the issues.  
 13 So this slide talks about issues that were  
 14 either dismissed on summary determination by the hearing  
 15 officer or that were included in her proposed contested  
 16 case order, but no one filed exceptions.  
 17 VICE CHAIR HOWE: Questions from Council on  
 18 the 25 issues that were dismissed on motion for summary  
 19 determination?  
 20 COUNCILMEMBER JENKINS: So do we need to do  
 21 a straw poll on those? This is Hanley.  
 22 MR. RATCLIFFE: That's entirely up to you.  
 23 If -- if you would like to, that's fine. If -- you  
 24 know, again, this is kind of however you would like to  
 25 do this one. I think the main thing is that the staff

1 Thank you.  
 2 COUNCILMEMBER TRUITT: George Truitt. I  
 3 agree with our fellow councilmembers.  
 4 VICE CHAIR HOWE: Councilor Chocktoot.  
 5 COUNCILMEMBER CHOCKTOOT: I also great.  
 6 MR. RATCLIFFE: Okay. Thank you, Vice Chair  
 7 and councilmembers. So with that, I'm going give my  
 8 voice a break and turn it back over to Ms. Tardaewether.  
 9 MS. TARDAEWETHER: For the record, Kellen  
 10 Tardaewether.  
 11 Nancy, will you go to the next slide?  
 12 Jesse, I'm not sure if you wanted -- this is  
 13 like an overview of where there were -- anyhow, I'm not  
 14 sure if there's anything you wanted to say on this  
 15 slide.  
 16 MR. RATCLIFFE: Yeah. So, I guess, the only  
 17 thing I will point out here -- and thank you, Kellen --  
 18 is that we did have a number of issues where no  
 19 exceptions were filed.  
 20 So -- and, procedurally speaking, the -- the  
 21 councilmember -- the councilmembers are welcome to have  
 22 discussion on any of these issues.  
 23 But, generally speaking, you know, the way  
 24 that decision-making bodies will kind of look at things  
 25 is to say, well, we've gotten through the contested case

1 and I need to know, you know, by the end of the process  
 2 where the Council is at so that if there are any changes  
 3 to the proposed contested case order that need to be  
 4 made or any additional process that we need to go  
 5 through, that we know about it.  
 6 So, you know, if -- if, you know, you would  
 7 like to hear more about one of these issues, great. If  
 8 everyone is comfortable with where they are at, you  
 9 know, you can speak up and we can go from there.  
 10 COUNCILMEMBER JENKINS: Yeah. I'm fine with  
 11 25 that Kent mentioned. Issues that were dismissed.  
 12 VICE CHAIR HOWE: Not hearing any other  
 13 comments from any of the other councilmembers, then, I  
 14 think the position of the Council is we're okay with  
 15 those 25 issues dismissed.  
 16 Unless, Mr. Chocktoot, do you have any  
 17 concerns? Questions?  
 18 COUNCILMEMBER CHOCKTOOT: No, I do not.  
 19 MR. RATCLIFFE: And sorry. I apologize.  
 20 Before we move on, I just -- I believe that there may  
 21 have been a typo on -- on this.  
 22 We have one issue that actually will be  
 23 showing up in the exceptions process, an exception that  
 24 was filed, and that's SR-6. So I apologize for that.  
 25 MS. TARDAEWETHER: Okay. Thank you,

1 Mr. Ratcliffe.  
 2 For the record, Kellen Tardaewether.  
 3 Nancy, will you go to the next slide,  
 4 please.  
 5 So, again, I'm -- as staff to Council and at  
 6 the Oregon Department of Energy, I'm going to be  
 7 providing an overview, to the best that I can, delineate  
 8 and separate aspects of the proposed order from the  
 9 contested case issues.  
 10 I'm going to be presenting material that's  
 11 in the proposed order, which is a, you know, summary and  
 12 reflection of how the preponderance of evidence  
 13 indicates that an applicant has met applicable Council  
 14 standards with mitigation. But that's all derived from  
 15 the application from site certificate.  
 16 So as, per usual, Council is used to us  
 17 telling you this.  
 18 Once we get in front of you, everything is a  
 19 series of "boiling down a lot of information."  
 20 The application for site certificate was  
 21 over 22,000 pages. The proposed order without  
 22 attachments, I think, is 6- or 700. With all the  
 23 attachments, it's about 10,000 pages. Everything is  
 24 voluminous.  
 25 So, again, trying to -- it is very hard for

1 We're going start off with the structural  
 2 standard, and so the analysis area under Council's  
 3 definitions for the structural standard is the area  
 4 within the site boundary. We talked about the site  
 5 boundary earlier.  
 6 Now, the applicant actually went beyond the  
 7 area in the site boundary for -- particularly with  
 8 seismic hazards, went out -- out to a hundred miles. It  
 9 kind of corresponds with the magnitude, stronger  
 10 magnitude, they went further distances.  
 11 So it went out for -- for -- seismic  
 12 earthquakes went out to a hundred miles. But then for  
 13 all other, like, non-seismic hazards, the applicant  
 14 actually went out and evaluated out to a half a mile  
 15 from -- the site boundary and a half a mile out.  
 16 So then we're going to try to focus on the  
 17 language of your standard; right? What is it asking?  
 18 It's asking, did the applicant adequately  
 19 characterize the site for seismic and non-seismic.  
 20 And then, can the applicant take that  
 21 information and represent with mitigation or conditions  
 22 that it can design, construct, and operate the facility  
 23 in a manner that protects public health and safety and  
 24 the environment.  
 25 So next slide, Nancy, please.

1 us to pick-pick-pick the things we want you to focus on.  
 2 And that's why we also highlight when we give you these  
 3 materials and the staff reports and trying to hone in  
 4 certain aspects to look in. So Council has had the  
 5 proposed order for two years, so I have selected things  
 6 that I think are interesting.  
 7 However, there's still a lot more in there,  
 8 if Council, through your review, has your own specific  
 9 questions, please just interrupt, ask them.  
 10 Also, if it's something that's appropriate  
 11 for me to talk about, I can answer it. If it's kind of  
 12 crossing over, you know, Jesse can answer it. Sarah is  
 13 here. We can go wherever the Council wants to go and  
 14 we're totally prepared to provide you the supporting  
 15 documentation, you know, so we are ready.  
 16 That said -- and I've already burnt up three  
 17 minutes on each -- my portion should be about seven  
 18 minutes per standard. So I'm going to really -- I'm  
 19 going to try to move along pretty fast.  
 20 Some of my standards I'm going to talk  
 21 about, kind of, just the rule, the language of the rule  
 22 and that maybe is the best way to prepare you for what  
 23 you're going to be going over with Jesse. Some of them  
 24 are going to be going over the actual details and fine  
 25 tune -- (audio disruption) -- under each standard.

1 Okay. I know it is kind of small in here.  
 2 It's the actual data on these isn't -- you know, I'm not  
 3 really asking Council to zone in and then see exactly  
 4 what these are.  
 5 These are pages that I've clipped out of  
 6 Attachment H-1, Application Exhibit H has information  
 7 about structural -- that supports the structural  
 8 standard, which includes this very, again, voluminous  
 9 preliminary geotechnical evaluation. They looked at  
 10 soils, seismic data. Looked at LIDO for landslides and  
 11 all of those were evaluated and presented in this map  
 12 set and an evaluation done by some geotechnical  
 13 engineers.  
 14 So seismic is kind of pretty direct. We're  
 15 looking at earthquakes. And then the other part of the  
 16 Council's structural standard is the non-seismic.  
 17 So what is that?  
 18 What are we looking at?  
 19 So it's soils and issues associated with  
 20 soils which also has the kind of overlap with Council's  
 21 soil protection standard.  
 22 But we also look at erosion, landslides,  
 23 groundwater, expansive soils -- these are other types of  
 24 examples of non-seismic hazards that are evaluated for  
 25 the structural standard.



1 So on this, where the question is -- it's  
2 sub (A) and sub (C) of the standard -- has the applicant  
3 adequately characterized the site for seismic and  
4 non-seismic standards?

5 So I'm going to go back -- I'm not going to  
6 do this for every one. For, like, under general  
7 standard of review -- the question Council is asking --  
8 is the preponderance of evidence, is it more likely than  
9 not that they have adequately characterized the site?

10 So that's, like, sub -- that's the first  
11 step of this standard.

12 Nancy, will you do the next slide, please?

13 Okay. And then in -- under the structural  
14 standard in the proposed order, it's a very -- it's a  
15 pretty lengthy condition. Council is used to seeing  
16 this condition. And just kind of high-level summary.  
17 It's your pre-construction geotechnical evaluation and  
18 report that is conducted, that is site-specific, and  
19 that it is submitted prior to construction.

20 Now, because this is a very linear facility  
21 and -- so, in some regards, because of that, it is going  
22 to be crossing a lot of land, a lot of different types  
23 of, you know, fault zones; areas that may be more or  
24 less impacted by landslides.

25 The -- the Department, in preparation to

1 You don't have to answer. You're not  
2 answering that one now.

3 But just as an example of when we're going  
4 through of asking -- Council asking itself of what we're  
5 tasked with underneath this standard.

6 And let me check my notes here. Too many of  
7 them. Okay.

8 And that concludes my portion. So I'm going  
9 to pass it off to Jesse now.

10 Actually, no, wait. No, I'm not.

11 Okay. Sorry.

12 Council now gets to -- questions? Any  
13 deliberations?

14 Underneath the structural standard that  
15 isn't related to a contested case issue -- and I know  
16 it's going to be hard for you to navigate what is and  
17 isn't.

18 So I feel like if you have questions about  
19 any of the materials that I covered, we can talk about  
20 it, answer questions, and then if it starts creeping  
21 over or there's overlap, then we can just send it over  
22 to Jesse and we can end up doing, also, a straw poll at  
23 the very end, like, after Jesse's and do the structural  
24 standard, including the contested case issue and all  
25 that together.

1 understand this and to be able to explain it to Council,  
2 we've -- we've requested an investigation plan, which is  
3 basically the plan for the geotechnical plan; help us  
4 look ahead to plan ahead for how you -- how we're going  
5 to evaluate and what type of geotechnical work is going  
6 to be provided.

7 And then part of this condition is submit  
8 that geotechnical report, which is done based on  
9 evaluating, doing bore tests, soil tests by certified  
10 engineers of actually going out, doing that geotechnical  
11 work, submitting it to the Department.

12 And then the aspect that the facility must  
13 be designed -- must then be -- yeah, designed and sited  
14 based on the results of that. So the results actually  
15 matter. So as to minimize and avoid -- avoid or  
16 minimize risk to public health and safety and the  
17 environment.

18 So now I'm going to highlight that sub (2)  
19 of the standard, or -- I'm sorry, it's (B) and (D).

20 The first one is -- can the applicant  
21 that -- the standard -- ask the applicant to design,  
22 engineer, and construct the facility to avoid dangers to  
23 human safety and the environment presented by seismic  
24 hazards affecting the site; and then sub (D) is the  
25 non-seismic. So that's the question again.

1 SECRETARY CORNETT: So, Mr. Vice Chair, if I  
2 may, just from a procedural standpoint, kind of walk  
3 through this is how we're going to -- there is going to  
4 be some variation by issue and by standard.

5 But with this one, there is -- you know, for  
6 this standard, there's one issue.

7 And so the way the structure is going to  
8 work is Kellen has done her presentation. Council  
9 certainly can ask questions, you know, we can respond to  
10 anything you want.

11 If you have no changes to the proposed  
12 order -- not the proposed contested case order, but the  
13 proposed order -- you do not need to do a straw poll at  
14 this point.

15 But if you believe you have any changes to  
16 the proposed order, then that would be discussed and you  
17 can get that on the record and we would do a straw poll.

18 But we're going to wait until after the oral  
19 testimony on the exceptions and the responses. You will  
20 then do a straw poll related to both the standard and  
21 the issues.

22 So you would be making a straw poll, say  
23 you -- you know, there's a couple of options. Say you  
24 agree with everything in the proposed order and  
25 everything in the proposed contested case order. The

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1 straw poll would essentially be to evaluate everything  
 2 in the proposed order. Everything in the contested case  
 3 order related to the standard and that particular issue;  
 4 meaning, findings of fact, conclusions of law, and  
 5 conditions of approval.  
 6 So for the standard, when Kellen's  
 7 portion -- only if you have a change proposed to make  
 8 would we do a straw poll; otherwise, you would simply  
 9 move on. Jesse would do the presentation on the issue  
 10 and then we would do, in combination, the proposed order  
 11 and the proposed contested case order.  
 12 So hopefully that makes sense. And we can  
 13 re-visit it, if necessary. I think we'll get into the  
 14 swing of things. But it's going, probably, to take a  
 15 little bit to really grasp what we're doing here.  
 16 So I can go over that again, if you would  
 17 like. But just looking for your -- your understanding  
 18 or need for more explanation.  
 19 VICE CHAIR HOWE: I think we've got a few  
 20 questions.  
 21 Councillor Jenkins.  
 22 COUNCILMEMBER JENKINS: Yeah. Thank you,  
 23 Mr. Chair, this is Hanley.  
 24 So Kellen's going to present to us what is  
 25 in the proposed order.

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1 SECRETARY CORNETT: Correct.  
 2 COUNCILMEMBER JENKINS: Okay. And then we  
 3 have an opportunity to question anything related to the  
 4 proposed order --  
 5 SECRETARY CORNETT: Not in the contested  
 6 case.  
 7 COUNCILMEMBER JENKINS: Right. Then we move  
 8 to the contested case.  
 9 SECRETARY CORNETT: Correct.  
 10 COUNCILMEMBER JENKINS: When we move to the  
 11 contested case, we look at the hearing officer's  
 12 decision and the exceptions.  
 13 SECRETARY CORNETT: Correct.  
 14 COUNCILMEMBER JENKINS: Will we take  
 15 testimony, then, on the exceptions?  
 16 SECRETARY CORNETT: Yes. And so we will  
 17 wait until the conclusion of -- any oral testimony on  
 18 the exceptions, any oral testimony as responses to the  
 19 exceptions. The reason why we wanted to wait as a final  
 20 is --  
 21 COUNCILMEMBER JENKINS: Right.  
 22 SECRETARY CORNETT: -- everything is so  
 23 interrelated, you know, we would like to be able to  
 24 compartmentalize this out to say, clearly this is only  
 25 in the proposed order and clearly this is only in the

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1 proposed contested case order. It's a little bit more  
 2 complicated than that.  
 3 And so rather than get to a straw poll on  
 4 everything in the proposed order, not in the proposed  
 5 contested case order, we wanted to give you the benefit  
 6 of hearing from Kellen and, again, asking questions, you  
 7 know.  
 8 And then, again, if you have issues  
 9 specifically you want to raise and make changes to the  
 10 proposed order, this will be the time to do that for  
 11 this standard.  
 12 But say you don't; then, again, maybe based  
 13 upon the exception, the oral testimony, you know, how  
 14 you've reviewed those exceptions, the responses, that  
 15 may inform some other thought process where you then  
 16 say, oh, well, maybe that wasn't in the contested case,  
 17 but now I'm thinking about something in the proposed  
 18 order that I would like to change.  
 19 So we tried to structure this in a -- it is  
 20 complex. I mean, I certainly can't say that it's not  
 21 complex. It is. But we're trying to make it as sort of  
 22 rational as possible.  
 23 COUNCILMEMBER JENKINS: So what you're doing  
 24 is you're providing us an opportunity go back to the  
 25 proposed order, if need be, as a result of the

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1 exceptions.  
 2 SECRETARY CORNETT: Yes, exactly. That's a  
 3 better way to state it. Thank you.  
 4 COUNCILMEMBER JENKINS: Okay.  
 5 VICE CHAIR HOWE: Councillor Beier.  
 6 COUNCIL MEMBER BEIER: So we have this  
 7 example right now, the Proposed Condition 1 for the  
 8 structural standard, and that's what's in the proposed  
 9 order. Based on what Hanley said, we'll hear testimony;  
 10 we've read the exceptions. We could go back and change  
 11 Condition 1 to, perhaps, better address any of those  
 12 exceptions if we felt it was necessary.  
 13 SECRETARY CORNETT: I mean, yes, but that's  
 14 already in the exceptions so --  
 15 COUNCIL MEMBER BEIER: Yep.  
 16 SECRETARY CORNETT: The evaluation of the  
 17 issues in the contested cases and the exceptions that  
 18 were filed already should relate to any conditions that  
 19 are part of the proposed contested case order.  
 20 It's more or less, if by reviewing the  
 21 exceptions and that issue in the contested case, does  
 22 that inform something that's just in the proposed order  
 23 that's not in the contested -- the proposed contested  
 24 case order.  
 25 So it's more of an indirect connectivity

1 versus a direct connectivity, so it may be that we work  
2 through this one. And, again, I think it is going to  
3 take one or two to, kind of, get through the swing of  
4 it. But we can revisit this, you know, at any time to  
5 make sure and go over it again so that you clearly grasp  
6 the way that we've structured these straw polls.

7 VICE CHAIR HOWE: This is a time to ask  
8 questions of Kellen or comment on things that she said  
9 up to this point, but we don't want to do straw polls or  
10 anything, we wait first, then go to Mr. Ratcliffe's  
11 presentations of the exceptions in case we need to  
12 double back to the proposed order before we take --

13 SECRETARY CORNETT: Correct. Unless, for  
14 example, you know, this condition, you say -- we think  
15 this is only in the proposed order; this is unrelated to  
16 the contested case, and you say we think this could be  
17 re-written in a certain way.

18 I'm just, again, throwing out an example.  
19 That's where you would deliberate and you would make a  
20 straw poll on that because it's only related to the  
21 proposed order; this is not related to the proposed  
22 contested case order.

23 But, again, you get a chance to revisit sort  
24 of, theoretically, everything in the structural standard  
25 when you do the straw poll vote at the end of the next

1 can find the answer. So I think we can help you  
2 navigate that as well.

3 VICE CHAIR HOWE: Okay. At this point,  
4 then, are there any questions/comments of Kellen on the  
5 structural standard for the proposed order?

6 Councillor Condon.  
7 COUNCILMEMBER CONDON: Thank you.  
8 Just a question, maybe due to my lack of  
9 understanding of the standards -- the standard just in  
10 general.

11 So, Kellen, we determined that a site  
12 certificate should be granted. We are saying that it  
13 has been characterized. The site has been characterized  
14 correctly.

15 MS. TARDAEWETHER: Right. It's -- I'd say  
16 adequately characterized. Right. So is it adequately  
17 characterized and -- where is my book -- can you go back  
18 to the language of the standard, please, Nancy?

19 Yeah, I'm just looking at it here.

20 So it's -- through an appropriate  
21 site-specific study, has adequately characterized the  
22 seismic/non-seismic risks. And then that -- and then  
23 the B&D, that they can design, engineer, and construct  
24 that facility presumably based on that characterization  
25 to avoid hazards to the environment and human health.

1 stage which is Jesse presenting the -- the contested  
2 case issue, having oral comment, having oral response,  
3 oral comment responses to that. Then you would say, all  
4 right, is there anything in there that sort of reached  
5 back into the proposed order that I understand better  
6 now?

7 VICE CHAIR HOWE: Councillor Jenkins.

8 COUNCILMEMBER JENKINS: Well, I struggled  
9 with this process, you know. And I think I understand  
10 it now. It is, I think, going to be difficult for us to  
11 make the connection between the contested case order and  
12 the proposed order. And so we'll have to be careful,  
13 you know, that we do that.

14 And it may require separate polls in order  
15 to do that. So we'll just have to be as aware as we  
16 possibly can.

17 And I think -- like Todd says, I think we  
18 just -- we need to -- we'll get in a rhythm.

19 MS. TARDAEWETHER: If I can offer, that's --  
20 I feel like in between Jesse and us, like, we are  
21 here -- we're kind of compartmentalizing, but I think  
22 that if Council, if you have questions, just let -- have  
23 the conversation and we can help navigate -- well, we're  
24 going to push that over here and answer it over there or  
25 maybe it's something that is appropriate for us and we

1 And it's just -- it's very typical that there is this --  
2 now, so it's kind of like site-specific study; right?

3 So it's very typical for EFSC energy  
4 facilities that you do get this preliminary based on a  
5 lot of it is desktop analysis from DOGAMI, from various  
6 agencies. However, there is also fieldwork that is  
7 done. The LIDO slide information is very site specific.

8 And a lot of it will be the same  
9 information. And that information will show up in the  
10 final geotech engineering report, but it will also be  
11 based on field design, because that's also based on  
12 final design. Because we kind of go back to that  
13 concept of the site boundary, micrositing corridor and  
14 then kind of they're going -- it's going to be trued up  
15 based on the final placement of the facility.

16 COUNCILMEMBER CONDON: Thank you.  
17 I guess it's that desktop survey part of  
18 this that I have some discomfort with.

19 This seems like a second bite at the apple  
20 that is certainly more on the ground. I just -- I want  
21 to make sure my understanding...

22 MS. ESTERSON: This is Sarah Esterson, for  
23 the record.

24 So I also wanted to highlight the Council's  
25 information requirements that feed into exhibit -- feed

1 into the structural standard which specifically state  
2 that a description and schedule of site-specific  
3 geotechnical work that will be performed before  
4 construction for inclusion in site certificate as  
5 conditions is an information requirement that has to be  
6 included in Exhibit H.

7 And that's really where this condition that  
8 you see in every site certificate comes from and then in  
9 some instances has much more detail given the amount of  
10 site-specific geotech work that might be needed.

11 COUNCILMEMBER CONDON: And so just to finish  
12 this -- so now there's further work done, which  
13 condition one requires. And so when we issue the site  
14 certificate, if we decide to issue a site certificate,  
15 this suggests to me that if we have -- now a new  
16 characterization on the ground site certificate stands  
17 and that we have confidence that the facility can be  
18 built -- design/construction -- consistent with the  
19 standard. It just seems to me two bits -- we issue the  
20 site certificate with one set of information and now we  
21 have new information that we have to be confident that  
22 they can design -- meet the standard.

23 MS. ESTERSON: Yeah. That question applies  
24 across standards where there's a large amount of true-up  
25 based on actual data. So it is a combination of desktop

1 work with consultants. We can have -- consultants who  
2 assist with compliance assist with that who actually  
3 have geotechnical engineers.

4 Now, the last part of your question. So the  
5 question is if there's actually -- so there's a seismic  
6 or non-seismic hazard and then there's a design  
7 variation that happens to avoid that hazard. I don't  
8 know. How --

9 What is the question?

10 COUNCIL MEMBER BEIER: This is Ann Beier.

11 I'm not quite sure I can follow completely  
12 through the process, but it sounds like the applicant  
13 would have the option to design around the hazard given  
14 the standard that speaks to design and operation, I  
15 think.

16 COUNCILMEMBER CONDON: The option or  
17 requirement?

18 MS. ESTERSON: So if in the site-specific  
19 geotech investigation that happens prior to  
20 construction, a landslide hazard, is -- and now we're  
21 getting a little close to SF-5, to be honest.

22 But a hazard is identified that avoidance  
23 would be the first option and then mitigation through  
24 geotech engineering, you know, slope modification,  
25 drainage. There's different techniques that they would

1 and some survey combined with what you would get out of  
2 the condition. So it's the asking of that second bite.  
3 Is that second bite in the condition strong enough to  
4 meet the standard?

5 COUNCILMEMBER CONDON: Okay. Thank you.

6 COUNCIL MEMBER BEIER: This is Ann Beier.

7 And just for the record, any of these kind of after  
8 Council decisions require the Council to delegate the  
9 review to ODOE staff to Department of Energy staff. So  
10 the site-specific information on soils or landslide  
11 hazard would come back to you and possibly with the  
12 assistance of Department of Geology to review to make  
13 sure the standard is still met within the approved  
14 projects.

15 So I don't know what happens if within the  
16 site boundary there is a landslide hazard if there is a  
17 design around that would happen as a result to still  
18 meet the standard.

19 Is that the process, kind of?

20 MS. TARDAEWETHER: Well, yes. On that --  
21 the review is delegated to the Department and that we do  
22 engage our reviewing agencies, including DOGAMI. We  
23 also -- it would -- this would transition over to. That  
24 the siting analysts are involved. Sarah is involved.  
25 But it also goes to our compliance program and we also

1 have to look at.

2 And I just wanted to highlight a couple of  
3 the changes that we recommended Council include in  
4 structural standard condition one as a result of issues  
5 raised at the DPO to try and strengthen it a little bit  
6 more was a requirement that the investigation plan --  
7 this is just the plan. That that be prepared by a  
8 professional engineer or geologist licensed in Oregon.

9 We wanted to make sure that they had  
10 experience with Oregon-related issues. And then  
11 similarly that that report -- that the -- the result of  
12 that investigation be prepared by the same professional  
13 engineer geologist licensed in Oregon and then we did  
14 add I think based on facts that were presented and  
15 comments on the record of the DPO additional specifics  
16 that had to be evaluated, different methodologies that  
17 had to be used to evaluate risks.

18 MS. TARDAEWETHER: And Councilmember Beier,  
19 I think my numbering -- no. It is ten.

20 So in the condition sub (10), it's do the  
21 evaluation and then, you know, additional information.  
22 It is one of the really lengthy conditions. But it  
23 says, "Define and delineate geological and geotechnical  
24 hazards to the facility and identify means to mitigate  
25 the identified hazards."

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1 So there is an air -- a requirement that  
 2 says, you know, tell us if what you're seeing and then  
 3 how are you going to minimize or avoid them.  
 4 Thank you for the questions.  
 5 VICE CHAIR HOWE: Any other comments or  
 6 questions from the Council on the proposed order  
 7 structural standard?  
 8 I think we're ready, then, Mr. Ratcliffe, to  
 9 move on to the exceptions on the structural standard.  
 10 MR. RATCLIFFE: All right. Thank you,  
 11 Mr. Vice Chair and members of the Council.  
 12 And so the issues -- the contested case  
 13 issue we're going to be going to is issue SS-5. The  
 14 limited party is John White. The issue -- and do we  
 15 have a slide for the issue itself? I think we need to  
 16 bring that up.  
 17 MS. TARDAEWETHER: Yes. Keep going. It  
 18 should be one more. The straw poll and the next one,  
 19 Nancy. There you go.  
 20 MR. RATCLIFFE: Okay. So we have the issue  
 21 up on the screen that was raised by Mr. White, whether  
 22 the applicant has adequately evaluated construction-  
 23 related blasting in Union County, the City of La Grande,  
 24 under the structural standard. Specifically whether the  
 25 applicant should be required to conduct site-specific

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1 geotech surveys to characterize risks from slope  
 2 inability and radon emissions. And then on each one of  
 3 these slides, since this is our first issue, we're going  
 4 to be doing this -- we are going to have the issue up on  
 5 the screen. And we're going to have the references from  
 6 the proposed contested case order where the hearing  
 7 officer made findings of fact on the issue, reached  
 8 conclusions of law, and then wrote her opinion.  
 9 And again, because of the complexity of this  
 10 case, the number of issues, those are scattered  
 11 throughout, and so, you know, it sometimes will  
 12 necessitate some page flipping to tie things together if  
 13 we need to go to the proposed contested case order. But  
 14 we wanted to get those references up on the screen.  
 15 So -- but what I'm going to do now, before  
 16 we call Mr. White up here to provide his argument, is to  
 17 go over the hearing officer's opinion briefly.  
 18 And so what the hearing officer ruled on  
 19 this particular issue is that the Council's rules allow  
 20 the Department -- authorize the Department to establish  
 21 the level of analysis that must be included in an  
 22 application and allow consideration of the size and type  
 23 of a proposed facility.  
 24 So then the Department's second amended  
 25 project order -- and the project order, again, kind of

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1 sets out the scope of the issues that will need to be  
 2 covered in the application. That project order  
 3 established that -- what's referred to as  
 4 "reconnaissance level," which involves some field level  
 5 evaluation and "desktop" which is basically a review of  
 6 existing literature pertaining to a subject matter.  
 7 That this level of evaluation to provide a preliminary  
 8 seismic and non-seismic risk identification at the site;  
 9 that this kind of scope that the project order  
 10 established for required investigations was adequate to  
 11 evaluate compliance under the structural standard.  
 12 The project also established that a detailed  
 13 site-specific geotech investigation for the entirety of  
 14 the 300 mile site boundary was not required for the  
 15 application due to limitations and practicality, given  
 16 to -- resulting from potential route and final design  
 17 changes and limitations on site access.  
 18 So that was one piece of the opinion is that  
 19 basically the -- the level of information that the  
 20 Department was requiring that the applicant provide that  
 21 that level of information was adequate to evaluate  
 22 compliance under the standard.  
 23 And so based on that project order then the  
 24 applicant has performed a significant amount of work to  
 25 characterize the potential geological and soil hazards

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1 within the site boundary. And then the pre-construction  
 2 condition, SS-1, structural standard condition 1, would  
 3 evaluate and mitigate slope instability issues.  
 4 The hearing officer's other conclusions were  
 5 that Mr. White did not present facts or evidence to  
 6 support his concerns that blasting would likely be  
 7 needed during tower construction near his home. This is  
 8 in La Grande at towers -- tower numbers 108/3 to 109/2.  
 9 And because site specific studies have not  
 10 been done, the standard had not been met. So that was,  
 11 you know, her looking at Mr. White's issue and  
 12 concluding there weren't facts or evidence to support  
 13 that.  
 14 And, therefore, the hearing officer ruled  
 15 that the Council could find based on compliance with the  
 16 Department's recommended structural standard conditions  
 17 and soil protection condition four, which includes a  
 18 blasting plan, that the structural standard had been met  
 19 with respect to that issue.  
 20 So I'm going to stop for a second and, you  
 21 know, that I -- Council is familiar with these  
 22 materials. You've heard the exceptions. Nonetheless,  
 23 what I just said was a mouthful and gets into some  
 24 technical areas.  
 25 I don't, you know -- I think the goal here

1 is at this point to turn things over to Mr. White to  
2 provide his additional argument.

3 But if there's just plain and simple  
4 confusion over anything that I just said with respect to  
5 the hearing officer's order, you can go ahead and ask  
6 questions related to that. And if -- if there aren't  
7 any at this point, then I'm just going to provide a  
8 couple of guidelines for what the -- the oral testimony  
9 needs to look like here.

10 VICE CHAIR HOWE: Questions at this point?  
11 Doesn't look like it.

12 MR. RATCLIFFE: All right. So we're going  
13 to call Mr. White up here in a moment.

14 And I just want to go over a couple of  
15 things about what the -- the oral argument looks like  
16 here. And the main point I want to make is that the  
17 evidentiary record in this process is closed.

18 And what that means is that if you have new  
19 documents, new information that you've learned that has  
20 not already been submitted into the record as part of  
21 the contested case process or as part of your DPO  
22 comments or however it came to be in the record, this is  
23 not the time to add new information. New factual  
24 information. And by and large, the point of the  
25 contested case process is to make sure that there's

1 about whether the applicant, Idaho Power, has adequately  
2 evaluated construction-related blasting near a populated  
3 area of La Grande. I've been a homeowner in  
4 Southeastern La Grande for 12 years and my home is  
5 located about 500 feet from the B2H site boundary at  
6 Hawthorne Street.

7 My concerns have to do with damage to homes  
8 and local streets during construction. I'm asking that  
9 you reverse the ALJ's decision on Issue SS-5. The issue  
10 is about whether Idaho Power has complied with the  
11 relevant structural standard, which states that, quote,  
12 "The applicant through appropriate site-specific study  
13 has adequately characterized the seismic hazard risk of  
14 the site."

15 In other words, to obtain the Council's  
16 approval for site certificate, Idaho Power must  
17 demonstrate that they have conducted site-specific  
18 geotechnical surveys to characterize risk from slope  
19 instability.

20 And their response to my exception, Idaho  
21 Power acknowledges the wording of the relevant standard  
22 but continues to claim that is simply not practical to  
23 conduct, quote, "a detailed site specific geotechnical  
24 investigation for the entire site boundary in advance of  
25 obtaining full site access."

1 ample opportunity to get that factual evidence into the  
2 record.

3 What this is intended to do is to be an  
4 opportunity to address the councilmembers through oral  
5 argument to talk about pieces of the exceptions that  
6 have been filed that address your issue and to, you  
7 know, share those items with the Council that you have  
8 particular concern about or want to highlight.

9 So with that in mind, again, we're going to  
10 stay within the scope of the issue that you've been  
11 granted limited-party status for and if there's  
12 references to factual evidence that is to evidence that  
13 is already in the record of the contested case or the  
14 proposed order.

15 So those are all the preliminaries I have.

16 And so, Mr. White, whenever you're ready,  
17 you can come on up. Or do we have recorded -- I guess  
18 that's the other thing I should say is we have recorded  
19 testimony from some folks who weren't able to make it  
20 here in person today. So in some instances, we will be  
21 listening to a recording and seeing whether or not the  
22 applicant or the Department have anything else to  
23 respond with.

24 MR. WHITE: Hello, councilmembers. I'm  
25 Petitioner Jonathan White presenting issue SS-5 which is

1 My response to their response is: One, no  
2 one is requesting that Idaho Power investigate the  
3 entire site boundary. SS-5 requests only that they  
4 investigate the stability of the slope above  
5 Southeastern La Grande, an area identified as  
6 unconsolidated landslide debris in Idaho Power's  
7 application; two, if Idaho Power has been able to comply  
8 because they haven't obtained full site access, that's  
9 their problem and not mine.

10 Idaho Power's response is filled with lots  
11 of good intentions and excuses, but there's very little  
12 that shows actual compliance with the relevant standard,  
13 though the repeated use of the future tense in the  
14 following quotations, "Idaho Power will either avoid  
15 construction in areas of instability or will take  
16 robust measures to mitigate any impact. Idaho Power  
17 will conduct site specific geologic and geotechnical  
18 investigations. Such investigations will be performed  
19 by a professional engineer geologist. Where structures  
20 cannot be removed or realigned, Idaho Power will employ  
21 mitigation techniques." End of quotes.

22 My reading of the structural standard is  
23 clear. Before the Council can approve a site  
24 certificate to begin construction of the B2H, Idaho  
25 Power must comply with the Oregon Administrative Rules

1 which are designed to protect Oregonians from ill-  
2 considered projects such as this.

3 And, in addition, I just wanted to ask the  
4 Council not to delegate part 2 of the review. Make  
5 Idaho Power come back to EFSC to prove they can meet the  
6 build part of the standard.

7 VICE CHAIR HOWE: Thank you, Mr. White.

8 MR. RATCLIFFE: Okay. The next part of the  
9 process is to see whether or not the applicant has a  
10 response and followed by the Department. And again,  
11 three-minute time limit.

12 MS. RACKNER: Good evening, councilmembers.  
13 I'm Lisa Rackner and I'm representing Idaho Power in  
14 this case.

15 The core of Mr. White's exception is really  
16 the same subject matter that we've been grappling with  
17 already tonight, which is the phased study process which  
18 allows the company to provide a desktop -- primarily  
19 data but -- primarily desktop but not completely desktop  
20 analysis in its application in recognition of the fact  
21 that it's simply impractical for the company to do a  
22 detailed site-specific geotechnical analysis of the  
23 entire route before it has a site certificate before it  
24 knows where the route is actually going to be and based  
25 on the conditions in the site certificate can do all of

1 So there will be robust geotechnical  
2 analysis. All of that analysis in working with ODOE,  
3 any changes that need to be made, will protect the  
4 public and the condition has been satisfied.

5 Thank you.

6 VICE CHAIR HOWE: Do we have any response  
7 from Department staff?

8 MR. ROWE: Just briefly. Patrick Rowe, from  
9 the Department of Justice. I think this really comes  
10 down to Council's level of comfort with the structural  
11 standard conditions. So I'd recommend that to the  
12 extent that you haven't already take a hard look at them  
13 and make sure that you are comfortable with them.

14 As the ALJ has noted, as has been noted in  
15 the briefs on this, this type of format, phased -- doing  
16 studies after the site certificate is issued is common.  
17 It's common practice for Council to approve site  
18 certificates with those types of conditions.

19 So in this instance, you just need to look  
20 at the structural standard conditions one and two. Make  
21 sure you are comfortable with them. If there's anything  
22 that you think needs to be supplemented, then please let  
23 the Department know and the Department -- you would  
24 obviously need to let us know during the course of this  
25 hearing and the Department could make those changes in

1 the final -- the final siting and micrositing. It's at  
2 that point that it makes sense for the company to do  
3 this detailed geotechnical analysis and the conditions  
4 that you've heard about are quite robust in terms of  
5 what will be required of the company.

6 I hear Mr. White is concerned because a lot  
7 of these are commitments that are going to happen in the  
8 future. But they are commitments and they will be  
9 enforced by the Council and they will be enforced by  
10 ODOE.

11 So once those geotechnical studies have been  
12 done -- the studies will be done, first of all, in  
13 consultation with DOGAMI and with ODOE staff and all  
14 necessary mitigation micrositing changes will be done to  
15 ensure that the transmission line is safely sited and  
16 will not present seismic risks.

17 The other thing I wanted to point out is  
18 that this phase study process is consistent with the  
19 second amended project order which asks the company to  
20 work with DOGAMI to put together an analysis that showed  
21 what we -- what we can do now. What needs to be done in  
22 the future. It's also consistent with your statutes  
23 which allows you to issue a site certificate with  
24 conditions that then allow ODOE to review the rest of  
25 the data as it comes in.

1 your final order.

2 There is one note. It didn't come up in  
3 oral testimony but it was in Mr. White's written brief  
4 on this exception where he took issue with the proposed  
5 contested case order statement that there was,  
6 quote, "significant work that has been done."

7 And he took issue with the fact that there  
8 hasn't actually been significant fieldwork that was  
9 done, but it was just desktop study that has been done.

10 The Department would recommend that that  
11 statement in the proposed contested case order be  
12 modified to clarify that the work that has been done to  
13 date has been reconnaissance-level literature review and  
14 evaluation. Excuse me -- and evaluation.

15 Just to remove any implication or suggestion  
16 that the work that Idaho Power has done to date has been  
17 significant fieldwork. It's been significant literature  
18 review and evaluation. So you could clean that up in  
19 the proposed -- you can modify that portion of the  
20 proposed contested case order.

21 MR. RATCLIFFE: So we have reached the stage  
22 now on this contested case issue where we're open for  
23 discussion among our councilmembers. I'm here to act as  
24 a resource to answer any questions that I can about  
25 legal issues.

1 Ms. Tardaewether and Ms. Esterson are  
 2 available to be asked questions about locating  
 3 information, which they are going to have a better  
 4 ability to do than I will.  
 5 You know, if you want to see a -- a page  
 6 number of something, a piece of the proposed contested  
 7 case order of an exception, you know, whatever that  
 8 might be, they can assist with that.  
 9 But the goal from here is to, you know, take  
 10 a look at this particular issue that's been raised, see  
 11 if there's a feeling that anything needs to be changed  
 12 from the proposed contested case order, and then you're  
 13 going to be circling back to the -- the kind of the  
 14 broader issue, you know, with the goal of leaving the  
 15 structural standard because we just have the one  
 16 exception filed on one structural standard issue. That  
 17 we leave the structural standard with a good sense of  
 18 where the Council is at overall, not just the contested  
 19 case issue but the -- the standard as a whole.  
 20 So with that, I'll turn it over and I'm  
 21 available to answer questions.  
 22 VICE CHAIR HOWE: Councillors, are there any  
 23 comments or changes recommended for the proposed  
 24 contested case order?  
 25 COUNCILMEMBER HANLEY: So do we have the

1 proposed order is page 81 and 82; that has the language  
 2 of structural standard condition one.  
 3 And structural standard condition one also  
 4 references soil protection condition four, which  
 5 establishes a process where we have to get additional  
 6 information prior to construction on any locations where  
 7 blasting is identified as being necessary.  
 8 And then if that's the case, it routes you  
 9 over to a blasting plan that's in soil protection  
 10 condition four. That condition has a formal state,  
 11 local, and federal reviewing agency process prior to  
 12 construction to ensure that the blasting plan is  
 13 adequate.  
 14 VICE CHAIR HOWE: Ms. Esterson, the standard  
 15 was on page 81. The conditions was on what page?  
 16 MS. ESTERSON: The condition is on pages 82  
 17 and 83. That's the first condition.  
 18 COUNCILMEMBER JENKINS: Thank you.  
 19 So, Mr. Chair, this is a question for Jesse.  
 20 Do we -- at what point do we allow, then,  
 21 rebuttal, I guess it's rebuttal testimony. I mean, are  
 22 we done with the testimony and now are deliberating,  
 23 or --  
 24 MR. RATCLIFFE: Yes. You heard from  
 25 Mr. White and from Idaho Power and the Department on

1 page number for those conditions? Does somebody have  
 2 them? I don't want to start thumbing around through  
 3 here.  
 4 COUNCIL MEMBER BEIER: In terms of the  
 5 contested case, I would accept the recommendation of  
 6 counsel for Department of Energy to clarify that it was  
 7 just significant desktop analysis. So that would be the  
 8 only recommendation in the contested case.  
 9 But I, too, would like to see the conditions  
 10 so that we can ensure that those are responsive to the  
 11 exception and to any other concerns.  
 12 VICE CHAIR HOWE: I agree and I think -- do  
 13 any of the Council disagree with that? Making sure  
 14 that's included to clarify in the contested case order.  
 15 COUNCILMEMBER JENKINS: This is Hanley. I  
 16 agree with Ann, but I would like to see the conditions.  
 17 VICE CHAIR HOWE: You want to see that.  
 18 Yeah.  
 19 MR. RATCLIFFE: Just asked Wally to download  
 20 the proposed order. So we should, at some point soon,  
 21 be able to project on the screen the proposed  
 22 conditions.  
 23 MS. TARDAEWETHER: I've also put -- oh,  
 24 wait.  
 25 MS. ESTERSON: So the page number of the

1 this, and that's it, and so we're in deliberation.  
 2 MS. TARDAEWETHER: Okay. So up on the  
 3 screen here, which is projected on through the webinar,  
 4 is the proposed order in a PDF, so I can't go in and  
 5 edit this. But this is -- and so this is on -- this  
 6 condition starts on page 81 of the proposed order.  
 7 It's kind of hard to -- to see. But for  
 8 Council, if they had their computer, now, on your bottom  
 9 left-hand screen -- this is just one of those tips and  
 10 tricks -- there is this numbers thing. I'm circling my  
 11 hand around it.  
 12 So even though in the document it's page 81,  
 13 if you type in "88" right there, it will take you right  
 14 to the page. This is the -- it's like the PDF page  
 15 number.  
 16 But if we do any modifications, we will use  
 17 the actual page number in the document. But this is  
 18 just helping jumping around because this -- we're in the  
 19 big document with all the attachments.  
 20 So I'm just going to slowly scroll down  
 21 here. I know for folks in the back of the room it's  
 22 hard to see this, but.  
 23 COUNCILMEMBER JENKINS: Thank you,  
 24 Mr. Chair.  
 25 So, Patrick, your recommendation doesn't go



1 here. Your recommendation goes in the contested case  
2 order to be more clear about the information that's been  
3 provided to date.

4 MR. ROWE: I had made one recommendation  
5 with regard to just the cleanup of the proposed  
6 contested case order, and that related to Mr. White's  
7 written testimony where he took issue with the hearing  
8 officer stating that significant work had been done.

9 And that's a simple cleanup where Council  
10 could clarify that significant reconnaissance desktop  
11 study work has been done, not significant fieldwork.

12 I also pointed out, though, that for the  
13 larger compliance with the structural standard, Council  
14 should go through the exercise which it's going through  
15 right now which is reviewing the conditions the  
16 Department has recommended and let the Department know  
17 if there is any additions or revisions to those  
18 conditions Council would want made in order to find  
19 compliance with this standard.

20 VICE CHAIR HOWE: Councillor Beier, you  
21 brought up the issue of the significant work being  
22 cleared that it was reconnaissance not field. And we  
23 kind of dealt with that right when handling -- or  
24 Councillor Jenkins was asking Ms. Tardaewether on where  
25 we find the condition in the document.

1 make as good of a record as she can.

2 SECRETARY CORNETT: Mr. Vice Chair, for the  
3 record, Todd Cornett. Just procedural element. So I do  
4 have language. Basically, I have potential language for  
5 all of these straw poll votes.

6 So I've already reflected this. So even  
7 though you're kind of going through and saying, you  
8 know, does everybody agree, does everybody agree, which  
9 is great, I think for the record, for the formal record,  
10 it would be good to get the voice vote and for me to  
11 read what I think it is that the Council is interested  
12 in or both the standard and the issue.

13 So I just want to put that in there before  
14 you get kind of too far and then we move to the next  
15 one. I think that would be good to have on the record  
16 because there will be consistency and clarity between  
17 each of the standards and each of the issues if we do it  
18 that way.

19 But that is just my recommendation. You are  
20 certainly --

21 COUNCILMEMBER JENKINS: This is Hanley. I  
22 think that is a good idea. That is probably going  
23 beyond a straw poll. I think it is good because then we  
24 have an understanding of what it is that we're  
25 recommending. And it's in writing.

1 So let's circle back real quick, and does  
2 the Council agree with Councillor Beier's statement  
3 about clearing up the proposed order language -- no.  
4 That was in the contested case language for the  
5 reconnaissance issue. Everybody in agreement with that.

6 COUNCILMEMBER JENKINS: Yeah. This is  
7 Hanley. I agree.

8 COUNCILMEMBER CONDON: Cindy Condon. I  
9 agree.

10 COUNCILMEMBER CHOCKTOOT: This is Perry  
11 Chocktoot. I agree.

12 MR. RATCLIFFE: Okay. We've got that taken  
13 care of. Now we can circle back.

14 VICE CHAIR HOWE: Now we go back to the  
15 proposed order --

16 MR. RATCLIFFE: Correct.

17 VICE CHAIR HOWE: -- and the conditions  
18 within the proposed order.

19 COUNCILMEMBER JENKINS: Yeah. See, this is  
20 going to be a little while. We have to keep track of  
21 where we're at.

22 MR. RATCLIFFE: And, Mr. Vice Chair, I just  
23 want to jump in for a second here because we had a  
24 request from the court reporter to just remind everyone  
25 to speak up and to not speak too quickly so that she can

1 VICE CHAIR HOWE: Okay. Let's have  
2 everybody verbally just walk through that.

3 MR. RATCLIFFE: Yeah, let's hear what Todd  
4 has.

5 SECRETARY CORNETT: I would say, though,  
6 you're still in that sort of discussion about the  
7 conditions related to the standard. If you want -- if  
8 you're ready to have a straw poll heard -- (audio  
9 disruption) -- and the contested case issue, certainly  
10 read that. Or -- being or thinking about -- all  
11 conditions of -- findings of fact, conclusions of law,  
12 conditions of -- (audio disruption) order as the having  
13 the discussion before I get to that point of reading  
14 what I think where -- where you're going.

15 COUNCILMEMBER JENKINS: Except I'm going to  
16 get confused.

17 VICE CHAIR HOWE: Excuse me.

18 Secretary Cornett, you're not speaking to  
19 the action -- or not action, but the position we just  
20 took on the proposed contested case order clarifying the  
21 language on the reconnaissance work.

22 SECRETARY CORNETT: So the way we've  
23 structured it -- and we can do that singly by itself if  
24 you want to. We currently have it structured as a  
25 combined standard and issue. I can separate that if you

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1 want.

2 COUNCILMEMBER JENKINS: Yeah. I would like

3 to separated. This is Hanley.

4 VICE CHAIR HOWE: I think we have a straw

5 poll on that one, unless the language doesn't get us

6 there.

7 SECRETARY CORNETT: I think from -- yeah, so

8 I can separate that out, but I think we still -- we

9 didn't get a sort of verbal -- we -- we, the Council,

10 agree with the proposed order for the structural

11 standard. We still need to get there.

12 COUNCILMEMBER JENKINS: I think we'll go

13 back to that.

14 SECRETARY CORNETT: So if you want, I can

15 read, again, what -- where I think you're going just

16 with the issue.

17 COUNCILMEMBER JENKINS: Yes.

18 SECRETARY CORNETT: Okay. And, again, this

19 is not like in the form of a more formal motion, this is

20 just to clarify my understanding.

21 So, Council, you agree with the findings of

22 fact, conclusions of law, and conditions of approval --

23 in this case the findings of fact, conclusions of law,

24 in the proposed contested case order pertaining to issue

25 S-5 with the following modification.

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1 To change the language to reflect in -- that

2 the significant reconnaissance -- that significant

3 reconnaissance desktop work has been done.

4 And, essentially, what this does is it gets

5 us on the record so we can go back and make a change in

6 the draft final order to reflect all of these changes.

7 So it doesn't have to be perfect language.

8 It just has to be enough to give us that understanding

9 of where you are going tonight so we can reflect that in

10 the draft of the final order.

11 VICE CHAIR HOWE: Okay. Let's each

12 councilmember go through and --

13 SECRETARY CORNETT: I can roll call if you

14 want.

15 VICE CHAIR HOWE: You can do a roll call.

16 COUNCIL MEMBER CONDON: Cindy Condon here.

17 I'm not sure I agree with -- I agree that

18 I -- I want to clarify the language from significant.

19 I'm not sure I'm ready to accept the

20 contested case, which I think I heard in -- that we were

21 accepting the findings of fact and the conclusions of

22 law.

23 COUNCILMEMBER JENKINS: Oh, I see what

24 you're saying.

25 COUNCILMEMBER CONDON: I'm not quite there

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1 yet.

2 SECRETARY CORNETT: So that's where I think,

3 again, this vote -- this should be -- I mean, we can

4 split these out but it gets much more complicated.

5 So it would be better if you are

6 deliberating and there are multiple things that you get

7 to that conclusion of this is what we think and you do

8 it in one straw poll. And if there are multiple

9 modifications, those can be reflected in that one straw

10 poll but not do -- there's already going to be about 70

11 of these things.

12 And so, you know, if we split them out,

13 we're doubling those. So it's -- it would be easier if

14 when you're ready, you know, even if you want to split

15 out the proposed order versus the proposed contested

16 case order, but you do it one time. In this case, you

17 have one change. I think that's reflected.

18 If you have other thoughts or ideas, you

19 should have that conversation and deliberation first.

20 Then we get to the straw poll on that inclusive of, you

21 know, any of the changes that you want made.

22 COUNCILMEMBER CONDON: Councilmember Condon

23 again.

24 I would like to wait. I do have some other

25 questions on the contested case. And I'm wondering if

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1 we have the opportunity to ask the -- Mr. White and

2 Idaho Power questions on their testimony.

3 I thought we were going to have that.

4 MR. RATCLIFFE: Vice Chair Howe,

5 Councilmember Condon, that is at the Council's

6 discretion.

7 You know, I think the -- the idea with the

8 oral argument is to provide everyone an opportunity to,

9 you know -- to list the important issues and then

10 provide responses.

11 But if there are specific questions, that is

12 okay if that's what you want to do.

13 The one place that I will try to kind of

14 keep things consistent is to make sure that we're not

15 veering into something that is not already included in

16 the evidentiary record. Because that is important that

17 we, you know, acknowledge that that's been closed and --

18 and that we need to stick to that.

19 VICE CHAIR HOWE: Councillor Condon.

20 COUNCILMEMBER CONDON: Councilmember Condon

21 here.

22 I am just a bit confused by the contested

23 case on page 268. And this is the first time I've read

24 through a contested case.

25 So in Mr. White's testimony, he's concerned

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1 about the stability on the hill. And I heard no mention  
 2 of water on page 268 discussing structural Standard 5.  
 3 There's a condition, I think, on B -- I don't know if we  
 4 want to call it up -- prior to construction, the  
 5 certificate holder will consult with landowners  
 6 regarding right-of-way acquisition.  
 7 It's rather long but it speaks to water.  
 8 And I'm just questioning is this a water -- is Mr. White  
 9 concerned about water or stability of the hill?  
 10 And secondly, for Idaho Power, Mr. White  
 11 said pretty clearly -- and I don't see it anywhere that  
 12 anybody is asking for a full structural stability study  
 13 on the ground for the whole project but just this one  
 14 piece. This -- the hills over La Grande.  
 15 And I would just like you to clarify for  
 16 me -- talked about the whole project versus this piece  
 17 of it to satisfy maybe some of the concerns prior to  
 18 site certificate being issued.  
 19 So I don't know what order that -- or how we  
 20 want to do this.  
 21 SECRETARY CORNETT: Can you give some  
 22 clarification, Jesse, on how to proceed.  
 23 MR. RATCLIFFE: Yeah. And again, this is  
 24 going to be at the Council's discretion how you want to  
 25 handle this.

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1 I think that, you know, they -- to keep  
 2 things as fair and as clear as possible, you know, if --  
 3 if a councilmember has a question, we should -- you  
 4 know, you should direct that to whoever it is that you  
 5 want to hear from, provide the other party an  
 6 opportunity to say something about it as well.  
 7 And, you know, in this particular instance,  
 8 I heard you ask a question that sounded like it was  
 9 directed to Mr. White. And -- and so, you know, I  
 10 think, again, to be fair, it would make sense to have  
 11 him answer that and then to see if Idaho Power has  
 12 anything else that they want to say about that.  
 13 And, again, I don't want to sound like a  
 14 broken record on this. But we really, really need to  
 15 keep things confined to what is on the record. I don't  
 16 think we've strayed from that at all. But it is just  
 17 something I want everybody to keep in mind.  
 18 VICE CHAIR HOWE: Okay. It sounds then like  
 19 we're giving the opportunity to Mr. White to come up and  
 20 answer the question that Councilor Condon has asked  
 21 with no new information being presented.  
 22 MR. WHITE: Okay. The question I think I  
 23 heard was -- was this about water on the slope.  
 24 And it's really about -- in the application,  
 25 there are maps and descriptions of the area around

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1 La Grande. And the area is described as "unstable" in  
 2 the form of unconsolidated landslide debris. And  
 3 everyone who lives in the area knows what that's about.  
 4 You know, the driveways are cracking and, basically,  
 5 pulling apart. It's a very unstable area. So people  
 6 are concerned about that.  
 7 And also the -- the blasting plan mentioned  
 8 earlier never specifies where blasting is going to  
 9 occur. So we just don't know. They might decide to  
 10 blast; they might not.  
 11 Was there anything else?  
 12 COUNCILMEMBER CONDON: Thank you.  
 13 Just to confirm. It was not specific to  
 14 water? It's stability for the hill.  
 15 MR. WHITE: Correct.  
 16 COUNCILMEMBER CONDON: And there's no  
 17 request that I've heard or read about of you or anyone  
 18 else saying there needs to be an analysis of the  
 19 whole --  
 20 MR. WHITE: Correct. Yeah. No one that  
 21 I've heard has been saying that. Right.  
 22 COUNCILMEMBER CONDON: Thank you.  
 23 VICE CHAIR HOWE: Okay. Does Idaho Power  
 24 wish to --  
 25 MS. RACKNER: Just very briefly.

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1 I've been able to confirm -- and this is in  
 2 the record -- that the geotech plan does -- there is a  
 3 plan to specifically address and do detailed  
 4 geotechnical studies of the area that Mr. White is  
 5 concerned about. That is something that will be done  
 6 once we know where the route is going to do. Those  
 7 types of studies are not particularly effective until  
 8 you know that you have the final design and routing.  
 9 And one other point I would ask the Council  
 10 to consider is that it certainly isn't in Idaho Power's  
 11 interest to place a tower in an unstable area. Not only  
 12 are we -- you know, are we required by law to avoid  
 13 those types of risks, but it would be -- you know, it  
 14 would be something that -- that Idaho Power, regardless  
 15 of the law, would avoid.  
 16 And we hope that that gives the Council some  
 17 comfort about our intentions of doing very serious  
 18 geotechnical work, particularly in areas of concern  
 19 prior to any construction.  
 20 VICE CHAIR HOWE: Thank you.  
 21 Okay. So, Council, are there any  
 22 suggestions or recommended changes to the conditions  
 23 under this structural standard No. 5 in the proposed  
 24 order?  
 25 No. Is this in the --

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1 SECRETARY CORNETT: Contested case order.  
2 VICE CHAIR HOWE: This is in the contested  
3 case order. Sorry.  
4 That's right.  
5 COUNCILMEMBER CONDON: Councilmember Condon  
6 again.  
7 Mr. Ratcliffe, on page 268, the bolded  
8 paragraph, is that a condition -- a required condition  
9 in the contested case order?  
10 MS. ESTERSON: On page 268 is contested case  
11 issue SS-3 for which there were no exceptions filed,  
12 which was more specific to blasting and potential  
13 impacts to water quality. Now we're talking about SS-5.  
14 COUNCILMEMBER CONDON: Thank you.  
15 I thought it was related to Mr. White's.  
16 MS. ESTERSON: Different party.  
17 MR. RATCLIFFE: So we have an amended  
18 recommended soil condition number four and that includes  
19 the highlighted information that you're pointing to.  
20 And so that is an -- a recommendation from  
21 hearing officer to include that language.  
22 So as the proposed contested case order is  
23 written, if adopted, that would include this bolded  
24 language.  
25 COUNCILMEMBER CONDON: But not related to

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1 structural standard 5. I misread that then.  
2 MR. RATCLIFFE: Yeah. It's not -- it  
3 wasn't -- this language didn't arise from structural  
4 standard issue 5, but it is a piece of the proposed  
5 contested case order.  
6 And so should you adopt the proposed  
7 contested case order without modifying these, then that  
8 bolded language will go in. So since we're in this kind  
9 of narrowing down of issues, we have a number of issues  
10 under which no exceptions were filed where the hearing  
11 officer may have made changes from the Agency's proposed  
12 order to address some of the concerns that were raised  
13 by the person who -- who requested that contested case  
14 issue.  
15 And, you know, I -- I don't have the  
16 specifics of this, you know, or know the reason why this  
17 person didn't file an exception. But it's entirely  
18 possible that, you know, that that revision met the --  
19 the concerns of the person involved.  
20 COUNCILMEMBER CONDON: So my error, I think.  
21 VICE CHAIR HOWE: Okay. Then back to  
22 structural standard 5. There's a lot of interweaving  
23 going on here between different structural standards,  
24 but sounds like that one was taken care of and under  
25 structural standard 3.

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1 Let's go back to structural standard 5.  
2 Are there any further comments or  
3 recommendations for changes to conditions under the  
4 proposed contested case order? Related to structural  
5 standard 5.  
6 Since hearing none, maybe we got through  
7 that one. And now we need to go back to the proposed  
8 order.  
9 SECRETARY CORNETT: No, we did not. There  
10 was no straw poll. So we stopped the straw poll and  
11 then you went into deliberations. So we need to go back  
12 to the straw poll on the proposed contested case order  
13 before we go back to the proposed order.  
14 VICE CHAIR HOWE: So in doing the straw  
15 poll, do we want you to poll us?  
16 SECRETARY CORNETT: Yes. So unless there's  
17 any other changes, I can read that one.  
18 VICE CHAIR HOWE: We'll include the language  
19 that yes, that Patrick suggested. Okay.  
20 SECRETARY CORNETT: Okay. So as I have it  
21 articulated, Council will agree with the findings of  
22 fact, conclusions of law, and conditions of approval in  
23 the proposed contested case order pertaining to issue  
24 S-5 with the following modifications. To make the  
25 changes to reflect that the proposed contested case

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1 order -- sorry -- that's duplication. That significant  
2 reconnaissance desk survey was conducted.  
3 Okay. So Henley Jenkins.  
4 COUNCILMEMBER JENKINS: (No audible  
5 response.)  
6 SECRETARY CORNETT: Perry Chocktoot.  
7 COUNCILMEMBER CHOCKTOOT: Yes.  
8 SECRETARY CORNETT: Kent Howe.  
9 VICE CHAIR HOWE: Yes.  
10 SECRETARY CORNETT: Ann Beier.  
11 COUNCILMEMBER BEIER: (No audible response.)  
12 SECRETARY CORNETT: Jordan Truitt.  
13 COUNCILMEMBER TRUITT: Yes.  
14 SECRETARY CORNETT: Cindy Condon.  
15 COUNCILMEMBER CONDON: Yes.  
16 SECRETARY CORNETT: Thank you.  
17 And now back to the proposed order.  
18 Correct.  
19 VICE CHAIR HOWE: Yes, Councillor Beier.  
20 COUNCILMEMBER BEIER: Just conferred with  
21 our counsel.  
22 I just had a question on the blasting  
23 component of this condition, which requires notice but  
24 notice through a newspaper. And newspapers aren't  
25 always the best source of information these days.

1 And I'm wondering if it is impractical to  
2 ask that the applicant notify property owners within  
3 given distance of a blasting activity. I know that's  
4 something we regularly did at the local level just to  
5 make sure that property owners were aware that something  
6 was going to happen.

7 I think the other conditions are appropriate  
8 in terms of -- of notice. But -- but I think the  
9 newspaper notice alone is -- is probably not the best  
10 vehicle. So thank you.

11 COUNCILMEMBER JENKINS: How does Council  
12 feel about that suggestion on notice?

13 COUNCILMEMBER BEIER: So thank you for the  
14 question, Councilmember Jenkins. I'm trying to remember  
15 what we did at the local level. And I don't know if  
16 it's 500 feet from the impact area or a half mile. I --  
17 I am the wrong person to ask about distance.

18 But thinking about the impact of blasting  
19 and just letting people know that it's going to happen,  
20 I -- I just can't remember from our local code what  
21 we required. But somebody with practical experience  
22 could help inform us. Thank you.

23 MR. ROWE: This is Patrick Rowe with the  
24 Department of Justice.

25 Can I just seek clarification? Are you

1 who are affected.

2 VICE CHAIR HOWE: So, first of all, I think  
3 we need to find out where is the Council on this?

4 COUNCILMEMBER JENKINS: Let me ask Ann.  
5 This is Hanley. So this would be in addition to the  
6 one-week notice in the newspaper or in replacement of?

7 COUNCILMEMBER BEIER: I don't feel strongly  
8 either way, but -- but I think it's critical to target  
9 the notice. Not -- I hate to say this in public, but  
10 not many people read public notices in newspapers.

11 MS. TARDAEWETHER: I am just going to  
12 offer -- because this would be the applicant or its  
13 construction contractor. And I guess -- and we're just  
14 so programmed that when you say "notice," I get a  
15 procedural trigger in my head and it means a certain  
16 thing.

17 So -- maybe Jesse -- Jesse could offer you,  
18 if we end up going down that route we call it an  
19 information update, you know. I just don't know --  
20 people -- some people are used to having a notice be  
21 a -- anyhow. So just mindful of the language so we  
22 don't venture into creating a process step that --

23 COUNCILMEMBER BEIER: Thank you. That's a  
24 good clarification.

25 COUNCILMEMBER JENKINS: So this is Hanley.

1 referencing, Councilor Beier, to the amended  
2 recommended soil protection condition four in the  
3 proposed contested case order.

4 COUNCILMEMBER BEIER: The contested case --  
5 two described in section --

6 MR. ROWE: Okay. I see it now. Thank you.

7 COUNCILMEMBER BEIER: Councilmember Beier.  
8 I know the intent is to give very clear and objective  
9 standards so I think notice within -- notice to property  
10 owners of record within a certain distance would be  
11 appropriate.

12 VICE CHAIR HOWE: Since we don't know what  
13 that distance is right now, is that something staff can  
14 come back to us with tomorrow when we come back to this?  
15 I hate doing that but --

16 MS. TARDAEWETHER: For the applicant  
17 construction contractor to do a mailed notice to some --  
18 to property owners within blasting of some unknown  
19 distance?

20 COUNCILMEMBER BEIER: Give more direction  
21 within a certain time frame, at least a week in advance  
22 or something, and I can look at our county code language  
23 tonight to see if I can find something specific.

24 I don't mean to be so onerous. But when you  
25 give notice, it's good to get the notice to the people

1 Ann, if you read on in this condition, it talks about  
2 giving written notice at the points of entry. Warning  
3 signs would be included -- would include information on  
4 blasting, including the general hours of blasting might  
5 take place. Access points to areas where blasting would  
6 take place would be blocked.

7 I -- I know what you're asking and I think  
8 that's very considerate of the landowners who are going  
9 to receive the greatest amount of impact. And they may  
10 want to stand there and hold their dishes or something.

11 But -- just I'm worried about -- I'm worried  
12 about adding to the condition -- this is -- I guess is a  
13 question for Jesse.

14 Does this open us up for additional  
15 testimony, you know, on the condition?

16 MR. RATCLIFFE: So the standard for changes  
17 to the proposed order is whether there's a material  
18 change. And, you know -- and if that's the case, then  
19 you have a hearing that's specific to the material  
20 change.

21 Now, the question is what is a material  
22 change? And, you know, generally speaking, a change to  
23 the outcome, you know, of -- you know, obviously a -- do  
24 they meet the standard or do they not meet the standard?  
25 Well, that's clearly material. Conditions I would, you

1 know -- I would recommend that you view changes to  
2 conditions as material. Those are, at the end of the  
3 day, things that the applicant must do.

4 Now, this is, you know, in some ways a -- a  
5 kind of minor technical change. It may really matter to  
6 people on the ground. So I'm not saying it's minor from  
7 that perspective.

8 But in terms of what we're asking of the  
9 applicant to do, it's not a -- you know, some kind of  
10 categorical, you know, this is really different. It's  
11 notice. It's still notice. How do you do the notice?

12 But, to be conservative, I would suggest  
13 that if you're looking at changes to conditions that  
14 you -- you know, you give an opportunity that you  
15 consider that material and have an opportunity for --  
16 for comment on that.

17 SECRETARY CORNETT: For the record, Todd  
18 Cornett.

19 If I may just, procedurally, the way we have  
20 this structured, would be if we conclude all of the  
21 exceptions in these three days, then we have Council's  
22 direction. That's what we're seeking here through all  
23 these straw polls is Council's direction on the proposed  
24 order and any changes, as well as the proposed contested  
25 case order and any changes.

1 And without being able to offer very  
2 specific recommendation, we can -- we can move on.  
3 But -- thank you.

4 VICE CHAIR HOWE: Okay. We've been at this  
5 for almost three hours. Maybe break time. But do we  
6 want to finish this one item and then take a break for  
7 grabbing supper?

8 So where's the Council on this issue, notice  
9 and giving direction to staff and changing the proposed  
10 order?

11 COUNCILMEMBER JENKINS: I guess I agree with  
12 Ann. You know, it's appropriate, I think, to give  
13 people within a half mile of blasting -- of blasting  
14 site notice in advance. And the -- the standard -- the  
15 condition right now requires one week in the newspaper.

16 I think simultaneous with the one week in  
17 the newspaper, you gave notice to the adjacent  
18 landowners within a half mile.

19 VICE CHAIR HOWE: Councillor Condon.

20 COUNCILMEMBER CONDON: I agree with that,  
21 and I'm wondering also in the posting of signs, there's  
22 no indication about when they are posted.

23 Like, are they posted on the day that  
24 blasting occurs? I think it would be helpful to have  
25 some time period, like the week before, you know, as

1 We would then, in the coming weeks, issue a  
2 draft of a final order. It's not a final order. It is  
3 a draft of a final order to reflect what we hear from  
4 Council. And we would identify any material changes.

5 So this would be an example, as Jesse said,  
6 of a material change. We would identify this as a  
7 material change. And then at the next Council meeting  
8 where you're reviewing -- it's a two -- it's a two-stage  
9 sort of process where you would then conduct a material  
10 change hearing and allow people to provide comment on  
11 those material changes. So this could be -- could be  
12 one of them.

13 And then if -- if you're ready, then you  
14 would be, potentially, to issue a draft -- sorry, a  
15 final order and make a final decision on the project.

16 So, again, just kind of procedurally, any  
17 time you're going through the proposed order, proposed  
18 contested case order and you're making material changes,  
19 as Jesse mentioned, those would constitute an ability to  
20 make a --

21 MR. RATCLIFFE: So not now.

22 COUNCILMEMBER BEIER: I just want to thank  
23 you all for your patience with me, because this is the  
24 first time I've been through this. And knowing that the  
25 material changes triggers another hearing is important.

1 long as we're making changes. It just seems to me that  
2 people in the notice -- or in the area should have as  
3 much notice as possible -- prior notice. Thank you.

4 COUNCILMEMBER JENKINS: And since they  
5 know -- I mean, they have got to give the notice in the  
6 newspaper and adjacent landowners within a week. They  
7 should be able to put the signs up within a week also.

8 COUNCILMEMBER TRUITT: Jordan Truitt, for  
9 the record.

10 I'm no blasting expert and no doubt there is  
11 a -- statute rules -- probably as big as this binder for  
12 blasting. And I'm a little hesitant to speculate as to  
13 what the appropriate notice or radius might be without  
14 knowing those rules. So I agree with what you're  
15 saying, "proper notice."

16 But my -- I fall back to proper notification  
17 within the rules of requirements for blasting activity  
18 in urban-type settings or within proximity to population  
19 centers. So without knowing what they are, I do think  
20 it's a valid concern.

21 VICE CHAIR HOWE: And staff can come back  
22 with that.

23 Councillor Chocktoot.

24 COUNCILMEMBER CHOCKTOOT: Yeah. Perry  
25 Chocktoot, for the record.

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1            Depending on the geotechnical investigation,  
2            blasting could be pretty hazardous, so early warning is  
3            going to be the better.  
4            So I agree.  
5            VICE CHAIR HOWE: Okay. Does staff have  
6            what you need for this?  
7            SECRETARY CORNETT: So can you let me know  
8            what the condition number is again?  
9            MS. ESTERSON: Should be soil protection  
10           condition 4.  
11           MR. RATCLIFFE: No. It's actually at the  
12           end of structural standard condition one.  
13           MS. ESTERSON: I don't think that's where we  
14           should put it.  
15           MR. RATCLIFFE: That's where the language is  
16           now that Councillor Beier has pointed out that she would  
17           like to have supplemented.  
18           So if you look at the proposed order, pages  
19           82 to 83, that's the language she's referencing.  
20           MS. ESTERSON: That's not condition  
21           language.  
22           (Sotto voce discussion.)  
23           MS. TARDAEWETHER: So what I have on my  
24           screen here -- write it down.  
25           So under the structural standard, we talk

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1            about -- we include a provision -- and I'm just walking  
2            through so we can kind of just all get oriented here.  
3            We added in, in the proposed order, this  
4            reference to kind of the submission process to include  
5            and contemplate. It's kind of connecting structural  
6            with the soil protection standard because the blasting  
7            plan is imposed underneath the soil protection standard.  
8            And so this component of the -- the  
9            structural standard is kind of connecting the two.  
10           And so what we often do is under one  
11           standard we also say, like, we kind of -- these are  
12           interconnected. And so this bulleting here that you see  
13           on proposed order page 83, I believe, is staff's summary  
14           of the information in the draft blasting plan that is  
15           imposed under recommended soil protection condition  
16           four.  
17           Okay. So -- and soil -- and I'm just going  
18           to summarize. Soil protection condition four, like some  
19           conditions, some are very detailed. Some of them say,  
20           hey, do that plan, finalize that plan, do that plan.  
21           So, really, where we should be going is to  
22           the plan rather than modifying any condition.  
23           However, as Jesse was talking about, because  
24           functionally the condition says, do the plan. If you  
25           change the plan, this would still be considered a

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1            material change. So I'm going to try to pull up the  
2            blasting plan.  
3            MS. ESTERSON: The best level of detail is  
4            there that you're looking at.  
5            MR. RATCLIFFE: Maybe is this the time --  
6            have we finished structural standard five? Or the --  
7            SECRETARY CORNETT: Yeah. So we already  
8            conducted the straw poll on structural standard issue  
9            five, and so we're now just into the proposed order. So  
10           we're going back into what the proposed order findings  
11           and conditions are.  
12           MR. RATCLIFFE: Specific language for the  
13           proposed order?  
14           SECRETARY CORNETT: Well, we're going to  
15           need something. So right now we have a proposed order.  
16           MR. RATCLIFFE: Right.  
17           SECRETARY CORNETT: That proposed order is,  
18           essentially, what is on the books. Only those issues  
19           that are in the contested case were challenged.  
20           So you're going back to the proposed order  
21           to make changes. And so we need some clarification as  
22           to what you want to do and why in order to justify  
23           specific language. So you can certainly give us clarity  
24           and guidance but enough specificity so we can actually  
25           do that.

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1            So say -- and I'm not picking on you. We  
2            want to do notice. That's not good enough. Frankly,  
3            it's not good enough.  
4            You need to be very clear as to when; how  
5            frequent; you know, in what form; how wide out; in what  
6            sort of -- so the details can be filled.  
7            Because we can't just sort of generate a  
8            concept of a notice out of thin air based on what you  
9            are saying. This is not a notice that's in our rules  
10           related to property owner notification.  
11           If it was a property notification for a  
12           draft proposed order, we have that framework set. We're  
13           all good there. You're creating something completely  
14           different.  
15           This was not evaluated during the draft  
16           proposed order. There was no comments on this. So  
17           you're creating this out of thin air today. So we need  
18           the details and the specificity from you in order to be  
19           able to reflect this in a draft of a final order.  
20           COUNCILMEMBER CONDON: Chair Howe?  
21           VICE CHAIR HOWE: Councilmember Condon.  
22           COUNCILMEMBER CONDON: So, Todd, I don't see  
23           how we're creating this from thin air.  
24           So we have it in -- the proposed order --  
25           that newspaper one week prior.

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1 If we say, now there's mail notices one week  
 2 prior --  
 3 SECRETARY CORNETT: But to whom? How? In  
 4 what form? Who is going to be giving those?  
 5 Is it the Department's responsibility?  
 6 Is it the applicant's responsibility?  
 7 What's the nature?  
 8 Is -- there has to be some specific form --  
 9 again, where we have very clear rules about  
 10 notification, it says when we have to do it, how we have  
 11 to do it, clearly what has to be in the notice itself to  
 12 meet the requirements.  
 13 So, just saying, notice that's -- that's not  
 14 guidance to us or a construction contractor.  
 15 So if you're saying the same information  
 16 that's in the notice in the newspaper needs to be put in  
 17 a property owner notification and that needs to go out  
 18 at a minimum of one week prior to all the people on the  
 19 most recent property owner tax rolls on the county  
 20 assessor records, that's something we can work with.  
 21 Just simply saying "notice"; again, we don't  
 22 know what that means. You have to be specific as to,  
 23 you know, what we're talking about here.  
 24 And so it's not creating it out of thin air.  
 25 So that was probably not the right characterization.

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1 But the property owner notification does not  
 2 exist right now. And so what your purpose and intent of  
 3 that is needs to be clear to us.  
 4 COUNCILMEMBER BEIER: Chair Howe, I think as  
 5 Kellen and Sarah mentioned, there's more detail in the  
 6 requirements for a blasting plan, and if you can direct  
 7 us to that and see if these issues are already addressed  
 8 in that very specific plan requirement, we won't need to  
 9 modify this.  
 10 If not, I agree with Secretary Cornett that  
 11 we do need to be very specific in what we're asking the  
 12 applicant or the applicant's contractor to do. And I  
 13 think there are good examples out there. There's a  
 14 reference to the blasting code that probably has very  
 15 specific requirements.  
 16 So I think, perhaps, tabling this for now so  
 17 we can do some homework, knowing that it's something we  
 18 may want to add some language on, but -- but being  
 19 prepared to come back with something more specific so we  
 20 can move on to other issues as --  
 21 SECRETARY CORNETT: So, again, procedurally,  
 22 we did put a placeholder at the very end on Wednesday.  
 23 So if there are any unresolved issues like this, if  
 24 you're -- if you think you want to be -- do it but  
 25 you're not sure of the specifics, we do have some time

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1 to work that out before the conclusion on Wednesday.  
 2 COUNCILMEMBER BEIER: Thank you.  
 3 And thank you for your patience, fellow  
 4 councilmembers.  
 5 VICE CHAIR HOWE: Where's the Council on  
 6 this?  
 7 Ready to punt to Wednesday on this issue or  
 8 keep working on it?  
 9 COUNCILMEMBER JENKINS: Yes. So -- this is  
 10 Hanley.  
 11 Do we know the specifics -- specific  
 12 requirements for the blasting plan?  
 13 MS. ESTERSON: The draft framework blasting  
 14 plan and we have a table of contents and general  
 15 information under each of the table of content  
 16 components. So it still has to be finalized.  
 17 We have referenced some of the NFPA  
 18 requirements that were cited to us by DOGAMI as what  
 19 might apply for monitoring seismic shaking during  
 20 blasting. This isn't a plan designed to demonstrate  
 21 compliance with all blasting requirements. So it  
 22 doesn't currently detail any of that.  
 23 But those that we thought folded in to  
 24 structural standard based on our consultation with  
 25 DOGAMI are referenced.

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1 VICE CHAIR HOWE: Yeah. I wanted to finish  
 2 structural standard five before we took a break. Come  
 3 back and pick up financial assurance standard one.  
 4 We're still on it.  
 5 SECRETARY CORNETT: We're still on the  
 6 structural standard. We are done with structural -- the  
 7 contested case issue five or the structural standard  
 8 issue five.  
 9 So just for clarification, everything  
 10 else -- sorry -- is that loud -- everything else in the  
 11 structural standard is okay. So you're good with that  
 12 in the proposed order.  
 13 It's just the question of the blasting  
 14 notification -- okay. So, at least -- again, I think  
 15 with that, we have time to, you know, either you do or  
 16 we do have the ability to think through a little bit and  
 17 have some kind of straw proposal for Wednesday as long  
 18 as that's the only issue.  
 19 But I would say if there are other  
 20 unresolved issues, we should continue working through  
 21 those.  
 22 COUNCILMEMBER JENKINS: No, I think  
 23 that's -- this is Hanley.  
 24 As far as I'm concerned, that's the only  
 25 unresolved issue.



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1 And I do agree with Ann's interest in  
 2 notifying the adjacent landowners or nearby landowners.  
 3 And I understand the Department's position  
 4 that we need to be specific about how we do that or how  
 5 we recommend we do that.  
 6 It's not -- if it's the same thing as the  
 7 newspaper notice, then is it to the occupants or is it  
 8 to the landowners, and, you know, so forth and so on. I  
 9 think we need to be clear about that.  
 10 So I think it's a Wednesday issue.  
 11 SECRETARY CORNETT: So then I would  
 12 recommend at this point taking a break. Dinner is here.  
 13 So however long Council wants to take a  
 14 break. It is designed as a "working lunch." We're  
 15 already about an hour behind on the schedule for tonight  
 16 for the three issues that we want to get through, or  
 17 three standards we want to get through.  
 18 So, again, take as much break as we need to,  
 19 but shouldn't linger too long since it's already 7:05.  
 20 VICE CHAIR HOWE: Council, how long do you  
 21 want? Just get it and come back?  
 22 Okay. Take a 15-minute -- it's 7:05. So at  
 23 7:20 we'll be running again.  
 24 No. No. This is what this is for.  
 25 (A break was taken from.

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1 7:05 p.m. to 7:22 p.m.)  
 2 VICE CHAIR HOWE: Standard in issue RFA-1.  
 3 So, Ms. Tardaewether, you're on.  
 4 MS. TARDAEWETHER: Thank you, Vice Chair  
 5 Howe.  
 6 I'm looking over at our -- just waiting for  
 7 our PowerPoint to get queued up.  
 8 For the record, Kellen Tardaewether, Oregon  
 9 Department of Energy.  
 10 So while we're getting the PowerPoint queued  
 11 up in its PDF format, just kind of talk about -- we've  
 12 talked quite a bit about the retirement and financial  
 13 assurance standard. For other projects I feel like  
 14 Council is pretty familiar with the standard, but I  
 15 think this is a good opportunity to remind Council about  
 16 the interconnectedness and between our -- our standards.  
 17 And part of under "retirement," we do look  
 18 to findings of fact and conclusions of law under the  
 19 organizational expertise standard. And in July, we did  
 20 review the organization -- organizational expertise  
 21 standard and Council didn't have any revisions  
 22 underneath that standard. So just kind of reminding  
 23 Council there that we -- we kind of looked at that but  
 24 organizational expertise also has an aspect that relies  
 25 on retirement. So we're just kind of keeping these in

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1 mind.  
 2 You guys working on the PowerPoint?  
 3 Okay. Well, we're -- the one right above  
 4 that. So you're -- yep. With just the standard  
 5 language. Yes, correct.  
 6 And Crystal, the court reporter, are you  
 7 still with us?  
 8 THE COURT REPORTER: Yes.  
 9 MS. TARDAEWETHER: Okay. Great. And we'll  
 10 all try to speak loudly and enunciate. And also talk  
 11 slow, but also fast. Sorry.  
 12 The Council's retirement/financial assurance  
 13 has two aspects. One, that -- can the applicant --  
 14 taking into account mitigation, can they ensure that the  
 15 site would be restored to a useful nonhazardous  
 16 condition; and then the second aspect is that there's  
 17 reasonable likelihood that -- that the applicant can  
 18 obtain a bond or a letter of credit in a form and an  
 19 amount satisfactory to the Council to restore the site  
 20 to that useful and nonhazardous condition.  
 21 So the applicant represents that the useful  
 22 life of the facility is approximately a hundred years.  
 23 This is longer than Council sees for some other  
 24 facilities. This is also something that is asked to be  
 25 presented in the application that we then rely in our

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1 findings.  
 2 So the applicant says that the transmission  
 3 line would -- the approximate life span is about a  
 4 hundred years.  
 5 But, really, it expects it is going to  
 6 remain in operation, functionally in perpetuity.  
 7 The applicant and its parent company,  
 8 IDACORP, they've been in operation -- or the company  
 9 originated in 1915.  
 10 So we talked about this under the  
 11 organizational expertise. This is a regulated utility  
 12 in Oregon and Idaho. They have constructed and operated  
 13 several transmission lines that have been in the -- in  
 14 operation for long periods of time. And that over time,  
 15 the transmission lines get upgraded and maintained to --  
 16 to where they do have and can safely operate within  
 17 these longer durations and time spans, because that is  
 18 the transmission structure of our energy system.  
 19 So let me see.  
 20 The next slide, Wally or Nancy. Now --  
 21 nope. The one with the table on it, so maybe the  
 22 previous one. Sorry. Okay.  
 23 I have the -- the table that has -- that  
 24 Council is used to seeing where we break out and we talk  
 25 about the tasks of how would this facility be retired.

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1 And the assumption is that it's "full buildout."  
 2 Can you go to the slide with the table on  
 3 it?  
 4 I think it's the one right before this.  
 5 Yes. And that's impossible to see, so  
 6 you're welcome.  
 7 I can find the -- I can find the page on  
 8 your proposed order, though.  
 9 So this task -- that's kind of helpful.  
 10 It breaks out, all the line items on our  
 11 retirement when we do the cost estimating to get the  
 12 estimated bond amount to retire the entire facility, it  
 13 is at full buildout. So we're maximum footprint,  
 14 maximum everything. It's on your proposed order page  
 15 296, this table is.  
 16 So -- and -- and it -- the discussion of the  
 17 activities to restore the site are kind of reversed  
 18 construction. So we're taking down the poles, taking  
 19 down the cabling, removing an EFU land, the foundations  
 20 for the transmission structures, and all of those get  
 21 reviewed and a price tag put next to them.  
 22 One of the major components for the facility  
 23 are the related supporting facilities which are the  
 24 roads. Or one of them is the roads. Roads would be,  
 25 you know, de-compacted, re-seeded. If new soil would

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1 need to be brought in, that would happen. The road  
 2 restoration would be a pretty significant component  
 3 to -- to retiring the facility.  
 4 So -- sorry for my pause here, folks.  
 5 Okay. So now -- next slide, please, Nancy.  
 6 So Council looked at this standard in its  
 7 review of the draft proposed order and actually had a  
 8 pretty robust discussion underneath this standard.  
 9 In the proposed order, your recommended  
 10 financial assurance condition five, which is the bond  
 11 that applies during operation is related to a contested  
 12 case issue, so I'm going to leave that for Jesse to talk  
 13 about. But just kind of reminding Council, because  
 14 Council is kind of a different Council, then, that we  
 15 did actually -- some of those revisions that you see in  
 16 the proposed order for condition five came out of  
 17 Council's deliberation and discussion and direction to  
 18 staff at its review of the draft proposed order.  
 19 So I'm going to just talk briefly about  
 20 financial assurance condition four.  
 21 So this is a condition that the applicant  
 22 proposes to apply during construction.  
 23 And it says -- because we're kind of going  
 24 back to the general standard of review condition that  
 25 said we're going to give them four years to begin

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1 construction. And once they start, they can have four  
 2 years to complete construction, so we're kind of looking  
 3 at four years to build this facility.  
 4 And what this condition says -- and I'm  
 5 paraphrasing because this is a pretty long condition,  
 6 but it basically increases the -- the bonding amount to  
 7 reach -- which, I'm sorry -- at that table, the -- the  
 8 total is about \$140 million that we're saying would be  
 9 appropriate to restore -- retire and restore the site.  
 10 Retire the facility; restore the site.  
 11 So this condition four says that during  
 12 construction, every quarter, the amount would increase  
 13 giving to that 140, which would then also be adjusted  
 14 based on, you know, the inflation factors, et cetera.  
 15 Each quarter going -- getting up to the \$140 million and  
 16 this is to cover -- to contemplate that as time goes  
 17 forward, there's more facility on the ground that would  
 18 then -- if needed to be retired that it would -- the --  
 19 yes, the bond amount would be commensurate with the  
 20 amount of facility that would be on the ground  
 21 throughout the construction period.  
 22 And I think that -- I'm just going to stop  
 23 there.  
 24 Did you have anything you wanted to add?  
 25 Yeah. Stop there and I will -- well, I'll pass it off

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1 to Jesse. But we can kind of take a pause.  
 2 Does Council have any questions about how we  
 3 generated that 140? The table.  
 4 VICE CHAIR HOWE: Questions from Council?  
 5 Looks like not.  
 6 MS. TARDAEWETHER: Okay. Great. I'm going  
 7 to pass it off to Jesse.  
 8 And then -- so will you guys go to the next  
 9 slide, Nancy.  
 10 So next one. Yes.  
 11 MR. RATCLIFFE: Okay. Thank you, Kellen.  
 12 So we have one contested case issue that  
 13 drew exceptions for retirement and financial assurance  
 14 standard, RFA-1. The party is Irene Gilbert. The issue  
 15 that was raised in the contested case is whether the \$1  
 16 bond amount adequately protects the public from facility  
 17 abandonment and provides a basis for the estimated  
 18 useful life of the facility.  
 19 So the hearing officer's findings of fact  
 20 and opinion on this are that the Council rules give  
 21 discretion to the Council to allow an amount less than  
 22 the full site -- full cost of site restoration; that the  
 23 rule allows for the certificate holder to have a bond or  
 24 letter of credit in a form satisfactory to the Council.  
 25 The site certificate condition, one of the

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1 mandatory site certificate conditions, and, again,  
 2 we're -- you know, a lot of the conditions that we're  
 3 talking about here in these contested case issues are  
 4 conditions that were added. Either they were proposed  
 5 by Idaho Power or they were requested by the Council or  
 6 they were proposed by staff to ensure that the standards  
 7 are met.  
 8 But there are a set of mandatory conditions  
 9 in the Council's reviews.  
 10 One of these conditions allows for the bond  
 11 or letter of credit amount to differ during construction  
 12 and operation.  
 13 The hearing officer went on to find that the  
 14 dollar bond was proposed by Idaho Power once the  
 15 facility is operational because of a lower risk as a PUC  
 16 regulated facility.  
 17 And it's a significant cost, roughly  
 18 \$880,000 a year to maintain the bond would be passed on  
 19 to ratepayers.  
 20 The hearing officer also looked at Idaho  
 21 Power's credit rating, concluding that it had access to  
 22 secured and unsecured credit at reasonable rates and  
 23 under acceptable terms.  
 24 For example, pointing to \$300 million credit  
 25 facility with a syndicate of large financial

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1 institutions.  
 2 In contrast, the hearing officer looked at  
 3 the evidence provided by the limited party and concluded  
 4 that there was insufficient evidence to support the  
 5 claim that the \$1 bond for the first 50 years of  
 6 operation is insufficient or that the facility is likely  
 7 to become obsolete or that Idaho Power will become  
 8 insolvent.  
 9 And then the final conclusion here is  
 10 related to an argument that was made by Ms. Gilbert  
 11 comparing solar facilities to the transmission line and  
 12 the hearing officer's conclusion that -- was that the  
 13 two were dissimilar enough that they didn't serve as a  
 14 useful comparison to a PUC regulated major transmission  
 15 line.  
 16 So that is an overview of how the hearing  
 17 officer dealt with that and how it was written up in the  
 18 proposed contested case order.  
 19 So I'd like to go ahead and have -- with  
 20 Vice Chair Howe's leave to call Ms. Gilbert to provide  
 21 her three minutes of oral argument. And again, the  
 22 reminder that the oral argument and any responses should  
 23 be limited to information that is already in the  
 24 evidentiary record.  
 25 MS. GILBERT: Am I on? Am I easy to

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1 understand?  
 2 Okay. Irene Gilbert here and I've requested  
 3 an exception to the proposed contested case order  
 4 failing to require the developer to maintain a bond in  
 5 the amount established by Council to restore the  
 6 facility site to a useful nonhazardous condition.  
 7 In the alternative, I have identified three  
 8 site certificate conditions which I'm requesting be  
 9 implemented to provide protection to the public and the  
 10 state from facility abandonment or default from any  
 11 unplanned event.  
 12 The necessity of requiring a bond is  
 13 supported by the fact that it is identified as a  
 14 mandatory site certificate condition and Council rules  
 15 specifically deny the Council the authority to use a  
 16 balancing determination in the evaluation of this rule.  
 17 I identified multiple issues of fact in the  
 18 form of statutes, rules, court decisions, and examples  
 19 of bankrupt companies which are being waived or  
 20 re-interpreted in the event Council approves a \$1 bond,  
 21 a reduced bond amount, and places the state and tax  
 22 payers in jeopardy.  
 23 The proposed contested case order fails to  
 24 identify the required facts and conclusions of law  
 25 regarding each of the arguments supporting a denial of

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1 this contested case. Multiple court decisions limit  
 2 Council authority to waive or interpret rules or  
 3 statutes to rules that are genuinely ambiguous,  
 4 including Gonzalez versus Oregon and the U.S. Supreme  
 5 Court decision in "Kisor versus Wilkie," which also  
 6 requires the interpretations to be reasonable and that  
 7 there cannot be a new interpretation that creates unfair  
 8 surprise to regulated parties.  
 9 While the Department and Idaho Power will  
 10 argue that EFSC is not bound by U.S. Supreme Court  
 11 decisions, the Council should carefully consider whether  
 12 it is prudent to accept such an argument.  
 13 The Council does not have unlimited power to  
 14 interpret and re-interpret rules and statutes of the  
 15 agency.  
 16 The Oregon Supreme Court in recent rulings  
 17 stated that the Council acted, quote, "without a  
 18 reasonable basis in fact or law."  
 19 You are being asked to apply the actual  
 20 unambiguous language of the Council rules regarding the  
 21 required bond amount and do so in the manner that is  
 22 consistent with the Council decisions before and after  
 23 B2H, including requiring the bond amount to be the  
 24 amount that Council identified as necessary to restore  
 25 the site, which has always been interpreted as the

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1 amount satisfactory to the Council for the bond.  
 2 Your decision needs to be consistent with  
 3 the recommendations from your consultant, Golder and  
 4 Associates and the amounts being required of other  
 5 developers, also the training that you received from  
 6 ODOE staff.  
 7 The risk of requiring use of a bond is  
 8 always going to be minimal.  
 9 As with any insurance, it is to protect from  
 10 the unlikely but possible events. The file -- the file  
 11 fails to document that there is a preponderance of  
 12 evidence that the rules and statutes requiring a bond  
 13 are being met. I urge Council to reject the denial of  
 14 this contested case and site certificate conditions as  
 15 the current bond amount fails to meet the requirements  
 16 that the interpretation be reasonable and not create  
 17 unfair surprise. Thank you.  
 18 VICE CHAIR HOWE: Thank you, Ms. Gilbert.  
 19 Are there any questions from Council of  
 20 Ms. Gilbert?  
 21 Okay. Thank you.  
 22 MS. RACKNER: Good even, again.  
 23 Lisa Rackner for Idaho Power.  
 24 In her exceptions, Ms. Gilbert argues that  
 25 the Council's rules prohibit it from taking a flexible

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1 approach to its bonding requirements to recognize  
 2 specific risks presented by each project.  
 3 But as a matter of law, the Council does  
 4 have that flexibility. And as a matter of policy, the  
 5 Council should exercise that flexibility in this case.  
 6 First, as a matter of law, the Council's  
 7 rules quite clearly allow the Council to exercise its  
 8 discretion as to the appropriate amount of a bond.  
 9 The rules state that in order to issue a  
 10 site certificate, the Council must find that the  
 11 applicant has a reasonable likelihood of obtaining a  
 12 bond or letter of credit in a form or amount  
 13 satisfactory to the Council.  
 14 That language, "satisfactory to the  
 15 Council," plainly indicates that the Council is to  
 16 exercise its judgment as to the appropriate amount of  
 17 the bond.  
 18 It's also consistent with mandatory  
 19 condition eight, which repeats that the bond must be in  
 20 a form and amount satisfactory to the Council.  
 21 Ms. Gilbert's interpretation would require  
 22 the Council to completely ignore the critical language  
 23 in the rules which is inconsistent with basic rules of  
 24 statutory construction.  
 25 Moreover, as a matter of policy, B2H's

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1 application confirms that a phased-in bonding approach  
 2 is reasonable.  
 3 And I want to quickly say, the bond doesn't  
 4 stay at \$1 for the entire life. The bond is designed to  
 5 increase up to the full decommissioning amount by one  
 6 hundred years. So it starts at year 50 increasing on a  
 7 regular basis.  
 8 The cost to maintain a bond is high and --  
 9 and as Mr. Ratcliffe said, would be borne by ratepayers.  
 10 Moreover, the risks that the company would ever retire  
 11 B2H before 100 years is extremely low.  
 12 High voltage transmission lines are designed  
 13 to operate in perpetuity and the company couldn't find  
 14 any example of a 500 kV line that was ever  
 15 de-commissioned.  
 16 Additionally, it's well understood that one  
 17 of the most daunting challenges to achieving the  
 18 greenhouse gas reductions required of Oregon's electric  
 19 utilities is the need to significantly increase, close  
 20 to doubling, the amount of transmission capacity that we  
 21 have. Given the urgent need for this capacity, it is  
 22 hard to imagine that B2H would be retired before the end  
 23 of its useful life.  
 24 And, finally, even in the unlikely scenario  
 25 that the line did need to be conditioned, it's highly

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1 unlikely that the company would default on its  
 2 de-commissioning obligations, given its financial  
 3 strength and its status as a public utility that's been  
 4 in existence for a hundred years.  
 5 And I do want to briefly mention,  
 6 Ms. Gilbert points to the fact that the Council did not  
 7 allow a phased-in approach for the Bakeoven Solar  
 8 Project. But that decision isn't on point, because  
 9 Bakeoven wasn't similarly situated, as was pointed out  
 10 by the hearing officer.  
 11 Specifically, in that order, the Council  
 12 stated that the developer is an independent power  
 13 producer and not a public utility, which would have  
 14 access to rate recovery authorization from the State PUC  
 15 to dismantle and restore a facility.  
 16 For those reasons, we ask you to adopt the  
 17 hearing officer's recommendation to adopt a phased-in  
 18 approach. Thank you.  
 19 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 20 Any questions from Council?  
 21 Councillor Condon.  
 22 COUNCILMEMBER CONDON: Councilmember Condon.  
 23 Thank you for being here today for so long  
 24 and something tells me for the next few days.  
 25 Just a question for you.

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1 As you have done transmission lines in other  
 2 states -- I think I'm allowed to ask this -- do you have  
 3 security instruments on any of your transmission lines?  
 4 MS. RACKNER: So --  
 5 MR. RATCLIFFE: Before we do answer this  
 6 question, we do need to stick to what is already in the  
 7 evidentiary record.  
 8 I don't have the full record in front of me  
 9 right now, so I can't, you know, completely assure that  
 10 that's the case. But I would ask that we do stick to  
 11 what's in the record.  
 12 MS. RACKNER: And I'm really sorry, but  
 13 there's nothing in the record on that question.  
 14 COUNCILMEMBER CONDON: All right. Thank you  
 15 very much.  
 16 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 17 MR. ROWE: If I may quickly share the  
 18 Department's position with this contested case issue.  
 19 Patrick Rowe with the Department of Justice.  
 20 I do not want to repeat too much. I do -- as  
 21 Ms. Rackner stated, we disagree with Ms. Gilbert's  
 22 position that this is -- that Council is bound to  
 23 require bonding more than what has been proposed. As  
 24 Ms. Rackner pointed out, the rule gives Council  
 25 discretion. It's essentially what Council finds to be

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1 satisfactory to -- to comply with the standard or to  
 2 provide assurance. The Department believes that the  
 3 proposed gradual increase of financial assurance is  
 4 appropriate because it recognizes the low risk that the  
 5 proposed facility would be retired in the first several  
 6 decades of operation and the low risk that the applicant  
 7 would not be able to pay for decommissioning and  
 8 restoration if it were to be retired earlier. This  
 9 facility is distinct from other energy facilities that  
 10 come before Council for the reasons that Ms. Rackner  
 11 noted. It is not just an energy facility. It is a  
 12 transmission line being proposed by a utility with a  
 13 long history of operation and inability to recover cost  
 14 from ratepayers, if necessary.  
 15 A couple comments that Ms. Gilbert made in  
 16 her oral testimony. She referenced -- and it might have  
 17 kind of slipped through -- that Council is precluded  
 18 from applying a balancing determination to the  
 19 retirement and financial assurance standard. That is  
 20 correct.  
 21 And I will remind Council what the balancing  
 22 determination is.  
 23 The balancing determination says that if an  
 24 applicant comes to the Department and Council and says,  
 25 we don't think we can meet this particular standard,

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1 they can ask Council to apply a balancing determination  
 2 and assess whether the overall public benefits of the  
 3 proposal outweigh the adverse affect on the resource  
 4 that's protected by the standard.  
 5 So, for example, if it was the Fish and  
 6 Wildlife standard, they say, we can't meet that.  
 7 Well, Council could -- to balance and say,  
 8 well, do the benefits of this proposed facility outweigh  
 9 the impacts on Fish and Wildlife. That's not happening  
 10 here. The applicant has not said they can't meet the  
 11 standard, and the Department has not applied a balancing  
 12 determination to this standard.  
 13 Ms. Gilbert also mentioned Court decisions  
 14 that say -- that say Council is prevented from waiving  
 15 requirements.  
 16 Again, that's not what's happening here.  
 17 The Department is not recommending that  
 18 Council waive the retirement and financial assurance  
 19 standard.  
 20 It's to the contrary. The Department has  
 21 recommended how Council can find compliance with the  
 22 standard.  
 23 I see I'm running low on time, so that's all  
 24 I have for now. Thank you.  
 25 VICE CHAIR HOWE: Any questions?

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1 Councillor Condon.  
 2 COUNCILMEMBER CONDON: Councilmember Condon,  
 3 for the record.  
 4 Mr. Rowe, I think this question is  
 5 appropriate.  
 6 In the material, the cost to ratepayers is  
 7 included, and as far as EFSC is concerned, that does not  
 8 come under our purview or it is not within our  
 9 jurisdiction how much it is going to cost ratepayers; is  
 10 that correct?  
 11 MR. ROWE: That's correct. That's a public  
 12 utility commission issue.  
 13 COUNCILMEMBER CONDON: Thank you.  
 14 VICE CHAIR HOWE: Council?  
 15 Okay.  
 16 MR. RATCLIFFE: Okay. So, once again, now  
 17 that we've heard from everyone, you're free to ask me  
 18 any questions that you might want to in terms of legal  
 19 issues and, otherwise, this is open for deliberation.  
 20 COUNCILMEMBER JENKINS: This is Hanley.  
 21 VICE CHAIR HOWE: Ms. Condon.  
 22 COUNCILMEMBER CONDON: Condon. I -- as far  
 23 as the contested case is concerned, I don't have any  
 24 questions or concerns about that.  
 25 But I do have some concerns about the

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1 proposed order. And so I -- are we going to wait -- do  
 2 we want to wait for that discussion, or --  
 3 SECRETARY CORNETT: Excuse me, for the  
 4 record, Todd Cornett. So we can either consolidate and  
 5 make one sort of straw poll like I talked originally.  
 6 But if you're -- concluded that you have --  
 7 you agree with the hearing officer on the proposed  
 8 contested case order and you just want to deal with that  
 9 straw poll right now, we can deal with that and you can  
 10 move back to the proposed order. It is entirely your  
 11 choice.  
 12 VICE CHAIR HOWE: It would be nice to check  
 13 that off.  
 14 SECRETARY CORNETT: Okay. So --  
 15 COUNCILMEMBER JENKINS: I don't have any  
 16 objections to the contested case order. This is Hanley.  
 17 COUNCILMEMBER CONDON: Councilmember Condon,  
 18 for the record. Thank you.  
 19 The contested case order is taking into  
 20 consideration the proposed order as we see it. Right?  
 21 I mean, there -- she's -- the Administrative  
 22 Law Judge has made a decision on the contested cases. I  
 23 don't have any issues with that.  
 24 So as long as -- as long as we have an  
 25 opportunity to question the proposed order, good to go.

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1 SECRETARY CORNETT: Okay. So you want me to  
 2 call the straw poll?  
 3 Okay. So I have "The Council agrees with  
 4 the findings of fact, conclusions of law and conditions  
 5 of approval in the proposed contested case order  
 6 pertaining to issue RFA-1."  
 7 And if that sounds good, I will call Cindy  
 8 Condon.  
 9 COUNCILMEMBER CONDON: Yes.  
 10 SECRETARY CORNETT: Jordan Truitt.  
 11 COUNCILMEMBER TRUITT: Yes.  
 12 SECRETARY CORNETT: Ann Beier.  
 13 COUNCILMEMBER BEIER: Yes.  
 14 SECRETARY CORNETT: Hanley Jenkins.  
 15 COUNCILMEMBER JENKINS: Yes.  
 16 SECRETARY CORNETT: Perry Chocktoot.  
 17 COUNCILMEMBER CHOCKTOOT: Yes.  
 18 SECRETARY CORNETT: Kent Howe.  
 19 VICE CHAIR HOWE: Yes.  
 20 SECRETARY CORNETT: Thank you.  
 21 VICE CHAIR HOWE: So we're back now to the  
 22 proposed order on retirement and financial assurance  
 23 standard one.  
 24 So councillors have comments?  
 25 Councillor Condon?

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1 MS. TARDAEWETHER: And I'm -- I'm -- Kellen  
 2 Tardaewether here.  
 3 I'm passing the ball to the extent there's a  
 4 little bit of lag, but I'm trying to pull it up here.  
 5 COUNCILMEMBER CONDON: This is Councilmember  
 6 Condon. And I will repeat it. I would like to turn the  
 7 attention to recommended retirement and financial  
 8 assurance condition five, and I think it's now brought  
 9 up on the screen.  
 10 With respect to -- I think, as we've  
 11 discussed, this project is very different than some of  
 12 the others we've discussed in the past. But I also  
 13 think that 50 years is a very long time and obviously a  
 14 hundred years is even longer.  
 15 And I -- I question the \$1 for the first 50  
 16 years. This is a changing industry, and I think we're  
 17 going to see more change in the next 20 years than we've  
 18 seen in the last 70.  
 19 And so from a financial perspective, it  
 20 strikes me that we -- by conditioning this project, as  
 21 we have suggested here, we are putting Oregon taxpayers  
 22 as the backstop should something happen. It might not  
 23 be likely, but it could happen.  
 24 And, certainly, given the changes in energy  
 25 per generation, just everything that's going on in -- in

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1 energy. And what I would like to see here, right now,  
 2 the added language was -- in red, in the document, is  
 3 "the Department shall review the five-year report."  
 4 So Idaho Power would be obligated to do a  
 5 five-year report.  
 6 And I would like the report to be annual.  
 7 And -- or I'd like to see it as an annual report, and,  
 8 in addition, that -- or "at any time required by the  
 9 Council."  
 10 Should something happen, wildfire,  
 11 bankruptcy, some event that would cause us concern in  
 12 terms of the -- the conditions we put on that they  
 13 obligate taxpayers of the state to be that backstop, I'm  
 14 uncomfortable.  
 15 So -- so I would like us to retain the  
 16 ability to always come back and say we need a bond to  
 17 speak to the risk.  
 18 VICE CHAIR HOWE: Cindy, I'm not clear on  
 19 what you're asking.  
 20 Are you asking that a five year be changed  
 21 to one year?  
 22 COUNCILMEMBER CONDON: That's right. I  
 23 would like to see an annual report. I'm pretty sure a  
 24 public company has to do an annual financial report and  
 25 I don't think that would be a burden to the

1 organization.  
 2 But, additionally, that we would have the  
 3 right at any time to require information and should that  
 4 information suggest more risk than we had intention of  
 5 here, that we could require additional security at any  
 6 time.  
 7 COUNCILMEMBER CHOCKTOOT: Chair, this is  
 8 Perry Chocktoot.  
 9 And for the record, a \$1 bond, it just  
 10 doesn't seem practical to me that something on this  
 11 level of cost and this level of -- of making profit that  
 12 a dollar is kind of strange.  
 13 I hope I'm able to talk about it. Sorry if  
 14 I'm not.  
 15 VICE CHAIR HOWE: Any other Council  
 16 discussion?  
 17 Where is the rest of the Council on --  
 18 Councillor Condon's suggestion?  
 19 MS. TARDAEWETHER: Can I ask a -- this is  
 20 Kellen Tardaewether.  
 21 Can I ask a clarification question?  
 22 So making it annual and then -- or at any  
 23 time Council requests, was that specific to the  
 24 information that is specified in this report?  
 25 Or are you saying that you want a different

1 State of Oregon. And it's a financial report that would  
 2 tell us -- I mean, quite frankly, I'm not really sure  
 3 what's intended here by a five-year report financial --  
 4 I thought that to be a financial report.  
 5 And maybe you were thinking just very  
 6 differently. As I read it, I was thinking, "financial  
 7 report."  
 8 MS. TARDAEWETHER: Well, it's like a --  
 9 well, the physical condition of the facility evolving  
 10 transmission or electrical technologies, the facility's  
 11 performance and the context of the larger power grid  
 12 certificate holders or general financial condition  
 13 concerning the certificate holder's credit rating at  
 14 that time.  
 15 COUNCILMEMBER CONDON: It's the financial  
 16 report I'm focused on.  
 17 And it's their financial ability to do what  
 18 we want them to do for retirement and giving us the  
 19 financial assurance.  
 20 I don't see financial assurance here. So  
 21 other than that, they are a regulated utility and have  
 22 been in business for a hundred years. There are risks  
 23 that we may not have any idea what those will be.  
 24 COUNCILMEMBER JENKINS: So this is Hanley.  
 25 And the burden really here is -- I mean, the

1 information of the examples you gave of, like, fire or  
 2 risk -- that may increase the bond amount that those are  
 3 kind of out of the scope of what was covered in this  
 4 five-year report?  
 5 When Council reviewed -- when we discussed  
 6 this at the review of the DPO, like, on your onset of  
 7 your comments, well, technology changes, we want to know  
 8 what's happening out -- out, like, with the grid and  
 9 with technology. And that's where this came from with  
 10 the five years being a reasonable time, that maybe  
 11 something would change.  
 12 But I -- I just -- if what you were asking  
 13 with those examples you gave to me, those are not --  
 14 this is, like, technology and those are, like, risk  
 15 things.  
 16 COUNCILMEMBER CONDON: Yeah. Those weren't  
 17 examples for me of information. It's financial  
 18 information.  
 19 What we're doing is saying you don't have to  
 20 provide security.  
 21 This is Councilmember Condon, for the  
 22 record.  
 23 This is security. We're willing to take  
 24 that risk ourselves. And I'm uncomfortable with our  
 25 doing that. It's not us. It's the taxpayers of the

1 information is being provided by Idaho Power, but the  
 2 burden is on the Department to evaluate that five-year  
 3 plan and include any other additional information as  
 4 it's listed here in order to do that.  
 5 So I'm not uncomfortable with the  
 6 information that's being provided, because I -- you  
 7 know, I think it does -- the certificate holder's  
 8 general financial condition, and the Department is  
 9 evaluating that as a part of that report that they  
 10 receive from Idaho Power. I'm not sure that it's  
 11 necessary every year. That, I guess, is my concern.  
 12 It's --  
 13 SECRETARY CORNETT: Scroll it so I can see  
 14 the edition.  
 15 MS. TARDAEWETHER: Thanks, Todd.  
 16 There's just a little bit of a lag here. So  
 17 I'm just trying to pull it up.  
 18 Do you mean this right here? Right here?  
 19 Okay.  
 20 COUNCILMEMBER JENKINS: So, yes, my concern  
 21 is we're talking about a transmission line. We're not  
 22 talking about the solar facility or turbines. And we  
 23 have no examples -- our testimony is that there are no  
 24 transmission lines that have been taken down, and at  
 25 least from what I'm seeing here, I think what is being

1 required in the report and by the Department's  
 2 evaluation every five years is adequate.  
 3 SECRETARY CORNETT: For the record, Todd  
 4 Cornett. And the reason I wanted to scroll through is  
 5 so you can see the full condition on the screen, is it  
 6 does come to Council.  
 7 So it is not just the staff's review. It's  
 8 the staff's review and then the Council will consider  
 9 whether the bond is required at that point in time. So  
 10 it's not just us. It is Council -- you know, ultimately  
 11 we're making the recommendation to you. But you make  
 12 the decision at that point in time whether it's every  
 13 five years or if you want to change it to some other  
 14 frequency.  
 15 COUNCILMEMBER CONDON: Right. And just in  
 16 response to that. This is Councilmember Condon.  
 17 Five years is a long time when things go  
 18 wrong. So if we want to keep the five years, that's  
 19 fine, as long as -- I would like to see something that  
 20 says we have the opportunity at any time to ask for  
 21 financial -- for -- for this information and make  
 22 decisions accordingly. Not really asking for anything  
 23 up-front for a pretty large project. And I would like  
 24 to see us as having flexibility to analyze the situation  
 25 as the situation changes.

1 enough to project what all of the instances are. But  
 2 there certainly are instances that we've seen in the  
 3 last five years that have impacted transmission lines,  
 4 power generators.  
 5 VICE CHAIR HOWE: Other councilmembers want  
 6 to let us know your support or not of this proposal.  
 7 COUNCILMEMBER BEIER: Chair Howe, this is  
 8 Ann Beier for the record. I'm torn on this because I  
 9 think it's reasonable to have the big bond during  
 10 construction. And then to have a lesser bond during the  
 11 initial operation. I like that there's the kick in at  
 12 50 years, but it is a changing world, and having the  
 13 ability to adjust the bonding.  
 14 And I understand Idaho Power's position and  
 15 they need some certainty, because they have to go in and  
 16 ask for rates. But making sure that they maintain their  
 17 financial health and -- doesn't strike me that this  
 18 Council is going to ask for information just for the  
 19 sake of having another report to review.  
 20 It would be some changing circumstance that  
 21 would -- would trigger that request. So I'm supportive  
 22 of that additional language suggesting that the  
 23 Department or the Council can request that the specific  
 24 information as necessary or when needed.  
 25 VICE CHAIR HOWE: Councillor Truitt.

1 VICE CHAIR HOWE: So it's proposed at five  
 2 years now. Right? And Councillor Condon is suggesting  
 3 it -- that stay the same, I guess, at five years. Or  
 4 any time if the Council were to deem necessary to have  
 5 it other than at the five-year interim.  
 6 Where is the Council on that?  
 7 COUNCILMEMBER JENKINS: So you do it after  
 8 that first unlined sentence? Or at any time requested  
 9 by the Department.  
 10 I don't have a problem with that. This is  
 11 Hanley. I don't have a problem with that.  
 12 VICE CHAIR HOWE: Other Councillors?  
 13 COUNCILMEMBER TRUITT: This is Jordan.  
 14 Cindy, are you asking for the complete  
 15 report at any time or just the financial report upon  
 16 request? Financial condition.  
 17 COUNCILMEMBER CONDON: Well, I would say the  
 18 complete report, because we're trying to make -- we  
 19 would be trying to make a decision based on a changing  
 20 set of circumstances.  
 21 Top foremost in my mind is the financial  
 22 piece.  
 23 VICE CHAIR HOWE: Would there be an event  
 24 that triggered that or just at random upon request?  
 25 COUNCILMEMBER CONDON: If I were smart

1 COUNCILMEMBER TRUITT: I'm torn as well.  
 2 I'm comfortable with five years. I don't want to  
 3 necessarily -- Councilmember Condon, I understand  
 4 completely where you're coming from, but I also don't  
 5 want to arbitrarily -- maybe it's not arbitrary. But  
 6 unforeseen events open the door to what could turn into  
 7 annual reports on request.  
 8 It's a burden on both sides of the equation.  
 9 I think there should be some sort of qualifier  
 10 potentially in there. But, again, I'm -- or not.  
 11 VICE CHAIR HOWE: Councillor Chocktoot?  
 12 COUNCILMEMBER CHOCKTOOT: I'm also torn on  
 13 it, too. But we have -- we have no way of knowing what  
 14 the future brings. It might be enough just to put in  
 15 the wording that "upon request," you get the report upon  
 16 request.  
 17 MR. RATCLIFFE: Vice Chair Howe, I don't  
 18 want to overstep here, but I may have a suggestion that  
 19 is from contract language that -- because I think I've  
 20 heard the concern expressed that we don't want a future  
 21 Council to act arbitrarily.  
 22 Now, ordinarily, you know, there are legal  
 23 protections against doing that. In -- you know, you are  
 24 kind of an administrative exercise. This is the way  
 25 that the -- the statutes that govern siting work.



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1 There's this concept that the site certificate is a  
 2 contract. And so it binds the Council just as much as  
 3 it binds the applicant. You know, if there's a concern  
 4 about a future Council acting arbitrarily, well, you  
 5 know, because you put in kind of carte blanche to  
 6 request a report wherever, whenever, a typical thing you  
 7 will see in contract language is just the Council may  
 8 reasonably require that there's some kind of concept  
 9 that you can't ask for this just because you need to --  
 10 you need to have a stated basis for it.

11 And that would, you know, put things more in  
 12 line with the notion of how the Council has to conduct  
 13 itself in -- you know, its regular decision-making.  
 14 Even when you have discretion, you don't have discretion  
 15 to be arbitrary. You have to provide reasons for what  
 16 you're doing.

17 So I -- you know, because you are right.  
 18 You can't predict all potential future circumstances in  
 19 which, you know -- with hindsight you might want to see  
 20 a piece of information.

21 And so that's a tool that we'll sometimes  
 22 use to try to -- to hedge against that is -- you know,  
 23 provide some comfort to the other party that we're not  
 24 just going to ask for it for fun, which I can't imagine  
 25 anyone doing anyway.

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1 But -- but that you still have the ability  
 2 to get the information if you needed.

3 VICE CHAIR HOWE: Thank you. I think that  
 4 I'm on board, too.

5 I think there's a consensus there that this  
 6 language would work.

7 Do you want to do a straw poll?

8 SECRETARY CORNETT: I can, at least,  
 9 read what I have and you can kind of give me the "head  
 10 nod" if that sounds good and I'll call the vote or you  
 11 can make a change.

12 So what I have is "Agree with the findings  
 13 of fact, conclusions of law, and conditions of approval  
 14 in the proposed order pertaining to the retirement and  
 15 financial assurance standard and that are not related to  
 16 the issues in the contested case with the following  
 17 modifications associated with condition five."

18 And sort of preface, this is not one where  
 19 we need the actual specific language. I think there's  
 20 enough in here where we have the purpose.

21 So that would be to change to require a  
 22 complete report at any time that Council, quote/unquote,  
 23 "reasonably" requires in addition to the five-year  
 24 frequency. And we can come up with language of how to  
 25 insert that appropriately, if that's where the council

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1 wants to go.

2 COUNCILMEMBER CONDON: Councilmember Condon  
 3 here, and that works for me.

4 MR. ROWE: ... DOJ.

5 My understanding, Councilmember Condon, was  
 6 that you were asking that Council be allowed not just to  
 7 require them to provide the report but also,  
 8 potentially, revise the financial assurance that is  
 9 required if the information provided in the report  
 10 causes you concern; is that correct?

11 COUNCILMEMBER CONDON: Isn't that already  
 12 included in the language?

13 VICE CHAIR HOWE: It is part of the report.

14 COUNCILMEMBER CONDON: Part the right of the  
 15 Council. Yeah.

16 SECRETARY CORNETT: Yeah. Kind of scroll  
 17 up. That would be the follow-up. If the Council deems  
 18 it appropriate and necessary would be to require the  
 19 full bond or some other amount at that point in time  
 20 based upon the report and their evaluation.

21 COUNCILMEMBER CONDON: Councilmember Condon  
 22 here.

23 The last sentence on page 303, "the  
 24 certificate holder shall be subject to Council's  
 25 determination."

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1 SECRETARY CORNETT: So if that sounds  
 2 appropriate, then I can read.

3 Cindy Condon.

4 COUNCILMEMBER CONDON: Yes.

5 SECRETARY CORNETT: Kent Howe.

6 VICE CHAIR HOWE: Yes.

7 SECRETARY CORNETT: Jordan Truitt.

8 COUNCILMEMBER TRUITT: Yes.

9 SECRETARY CORNETT: Perry Chocktoot.

10 COUNCILMEMBER CHOCKTOOT: Yes.

11 SECRETARY CORNETT: Ann Beier.

12 COUNCILMEMBER BEIER: Yes.

13 SECRETARY CORNETT: Hanley Jenkins.

14 COUNCILMEMBER JENKINS: Yes.

15 SECRETARY CORNETT: Thank you,  
 16 councilmembers.

17 VICE CHAIR HOWE: Okay. We're now to  
 18 threatened and endangered species standard T&E one.  
 19 It's 8:15. Do we want to continue or try to  
 20 get this one done?

21 SECRETARY CORNETT: Certainly, at the  
 22 discretion of the Council, I think we need to get  
 23 through the ones that are on the list for tonight.

24 VICE CHAIR HOWE: Okay. Let's go.

25 SECRETARY CORNETT: Again, this is -- we

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1 will not be able to get through all of these unless we  
 2 kind of get through them. And we really need to get  
 3 through them.  
 4 MS. TARDAEWETHER: Council Secretary, that  
 5 was just through soil protection. So T&E and soil  
 6 protection, but not the tentative need ones. Yeah.  
 7 Okay.  
 8 Let's rock and roll.  
 9 For the record, Kellen Tardaewether, Oregon  
 10 Department of Energy.  
 11 Nancy is pulling up our PowerPoint here.  
 12 We're going to move on to the Council's  
 13 threatened and endangered species standard.  
 14 I'm just going to jump in here.  
 15 Council is familiar with this standard. I'm  
 16 going to say that it's a little bit more of a  
 17 straightforward standard, which plant species it says  
 18 that we've evaluated and addresses impacts to plant  
 19 species that are identified as threatened or endangered  
 20 by the Oregon Department of Agriculture.  
 21 And for animal species, it would be the same  
 22 for animals identified by ODF&W as threatened or  
 23 endangered. So that is the scope of Council's  
 24 jurisdiction underneath this standard.  
 25 There is overlap with federally listed

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1 species in between Oregon, however it is a different  
 2 list.  
 3 So the Council's fish -- the T&E, I'm going  
 4 to call it T&E -- threatened and endangered standard --  
 5 and Council's fish and wildlife habitat standard don't  
 6 implement federal requirements. There's not a Council  
 7 standard authorizing the Council to impose or enforce  
 8 the federal regulations.  
 9 ODF&W could -- and when I say "ODF&W,"  
 10 that's the Oregon Department of Fish & Wildlife -- could  
 11 make recommendations under the fish and habitat -- under  
 12 their mitigation policy, excuse me, based on information  
 13 about federally listed species.  
 14 However, the Council doesn't have that --  
 15 you know, the jurisdiction to, you know, enforce those  
 16 federal regulations. However, all applicants are  
 17 required to also comply with federal requirements.  
 18 So there is that dual jurisdiction there.  
 19 The analysis area for threatened and  
 20 endangered species is a half mile from the site boundary  
 21 and a half mile. That is the area that is evaluated to  
 22 look at.  
 23 Next slide, Nancy, please.  
 24 Let's see. I have a couple tables  
 25 referenced here. There were field surveys that were

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1 conducted to evaluate threatened and endangered species,  
 2 along with desktop and other studies to evaluate  
 3 threatened and endangered species. I'm sorry. I'll get  
 4 into it here.  
 5 And then I have a little snippet from Table  
 6 T&E 2 in this table naming is from the proposed order,  
 7 and those are the page numbers for these. These are the  
 8 three -- little bit hard to see there, but there's  
 9 three threatened and endangered species potentially in  
 10 existence and potentially impacted by the facility.  
 11 One is the wolverine, Washington ground  
 12 squirrels, or "WGS," and then Snake River summer Chinook  
 13 salmon.  
 14 The next slide, please.  
 15 So let's see. We have the -- the WGS, I had  
 16 mentioned those on the onset. Those -- it's specific  
 17 area where -- where there is WGS habitat. WGS habitat  
 18 is category one according to ODF&W. That is an  
 19 avoidance measure. So they are -- avoid impacts.  
 20 There's no mitigating impacts to those.  
 21 So your threatened and endangered species  
 22 condition one is the avoidance of the WGS habitat. And  
 23 then there's specific definitions of that -- types of  
 24 habitat for them.  
 25 And then there's also condition two, which

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1 imposes buffers to certain threatened and endangered  
 2 plant and animal species.  
 3 And then I have this recommended fish and  
 4 wildlife condition 16 under here which is, again, this  
 5 is, like, interrelated conditions. We love those.  
 6 But, really, it's here because it makes  
 7 sense; right?  
 8 Under fish and wildlife habitat standard we  
 9 have conditions that say, hey, go out and do these  
 10 surveys according to these protocols. It's a survey  
 11 condition. And so you may as well bundle all of your  
 12 species that you're surveying for under one survey  
 13 condition according to certain survey protocols. So  
 14 that's this condition here. The little dots there is  
 15 this does also include plant species, but Jesse is going  
 16 to talk about the plant species.  
 17 Did you have anything you wanted to add?  
 18 No. That is that.  
 19 VICE CHAIR HOWE: Thank you, Mr. Ratcliffe.  
 20 MR. RATCLIFFE: Thank you, Vice Chair Howe.  
 21 So we have one issue under threatened and  
 22 endangered species that has an exception that was filed  
 23 by Ms. Geer. The issue is -- and I guess if we could go  
 24 one slide forward, I think that will do it.  
 25 There we go. Whether the applicant was

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1 required to have an Oregon Department of Agriculture  
 2 botanist review the application for site certificate.  
 3 And so the hearing officer's opinion on that  
 4 issue was to note the -- part of the rule that's  
 5 applicable here from the Council's Division 22, which  
 6 requires that the Council consult with the appropriate  
 7 state agencies on the evaluation of impacts and  
 8 mitigation to threatened and endangered species.  
 9 The hearing officer ruled that consultation  
 10 is not defined in the EFSC rules, but based on  
 11 dictionary definitions "consult" is ordinarily  
 12 understood to mean the act of taking for -- the act of  
 13 asking for advice or opinion of someone.  
 14 The standard does not require that the  
 15 Department or the applicant demonstrate that a  
 16 Department of Agriculture botanist from the Native Plant  
 17 Conservation Program review the site certificate during  
 18 every phase of the process. It simply requires  
 19 consultation during the process.  
 20 Further, she found that the Department of  
 21 Agriculture is a reviewing agency and received notice of  
 22 the preliminary application for site certificate, the  
 23 amended application for site certificate, and the  
 24 complete application for site certificate.  
 25 The Department of Agriculture submitted

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1 comments on the preliminary application for site  
 2 certificate and ODA botanist, Rebecca Currin, provided  
 3 comments in April 2014 concerning threatened and  
 4 endangered place species and mitigation options.  
 5 So, again, that's the Council's ruling. And  
 6 I believe because Wally is here at the table that means  
 7 we have a recording of Ms. Geer's oral argument on this  
 8 issue.  
 9 MR. ADAMS: This is very high tech.  
 10 Just for the court reporter's benefit, if  
 11 you have any trouble hearing this, just interrupt and  
 12 let us know. But this should work.  
 13 MR. RATCLIFFE: That's a good point.  
 14 (Recording played)  
 15 "Susan Geer, issue TE-1. I'm a botanist  
 16 and plant community ecologist  
 17 specializing in rare plants and  
 18 monitoring plant communities for nearly  
 19 30 years. I request that the Council  
 20 deny the site certificate or remand to  
 21 the Judge for more evidence on a new  
 22 proposed contested case order and to  
 23 ODOE for updated analysis with the  
 24 current threatened and endangered plant  
 25 list in current proposed routes.

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1 Exception one, Judge Webster erred by  
 2 concluding that the consultation about  
 3 Oregon's rare plants does not need to  
 4 involve the Native Plant Conservation  
 5 Program, hereafter the "Rare Plant  
 6 Program." A rare plant botanist  
 7 representing the State of Oregon should  
 8 review and comment on the final ASC.  
 9 The proposed routes on federal land were  
 10 reviewed by a federal agency botanist,  
 11 but the routes on the other  
 12 ownerships (private, city, and  
 13 county) did not receive the same level  
 14 of review. Please read my responses to  
 15 motions for summary determination.  
 16 Exception 2, Judge Webster erred in  
 17 the summary determination by finding a  
 18 2013 comment in the 2014 meeting between  
 19 ODOE and ODA's rare plant botanist was  
 20 sufficient consultation. Judge Webster  
 21 misstates a legal issue in the proposed  
 22 contested case order. State law  
 23 requires the Council to consult with  
 24 appropriate state agencies.  
 25 Judge Webster reasons that ODOE was

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1 acting for the Council when it mailed  
 2 notifications and received a comment in  
 3 2013 and thus met requirements. Rather  
 4 than whether ODOE met cursory  
 5 requirements, the real issue is whether  
 6 the Council is fully informed of the  
 7 effects of the facility on T&E plant  
 8 species as required by state law.  
 9 Information used by the rare plant  
 10 botanist in her comments was five years  
 11 prior to the 2018 filing of the final  
 12 ASC and prior to the time that the  
 13 current routes were proposed. ODOE made  
 14 no effort to notify the ODA of the  
 15 current routes. The 2014 meeting was  
 16 not meant to be a final consultation.  
 17 The amended proposed ASC was still under  
 18 development. Meeting notes show that  
 19 the rare plant botanist expected further  
 20 involvement and they state that if the  
 21 rare plant botanist is unable to respond  
 22 for lack of resources, ODOE has a  
 23 compensation agreement with ODA.  
 24 Nonetheless, funding ended and there was  
 25 no program for several years. Thus, ODA

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1 was not an effective reviewing agency.  
 2 The Council should use the current T&E  
 3 plant list. ODA's original list is from  
 4 1988. By law, that would be reviewed  
 5 every five years, yet it has never been  
 6 updated. There have been attempts to  
 7 find updates. Native Plant Society of  
 8 Oregon successfully petitioned the state  
 9 legislature for those funds in 2017 and  
 10 2021. There are now recommended  
 11 updates. The Rare Plant Program expects  
 12 to adopt them in 2023. The recommended  
 13 list contains species which would be  
 14 impacted by B2H and they deserve  
 15 protection. Judge Webster mistakenly  
 16 states that I offer no material evidence  
 17 of rare species in more recently  
 18 proposed routes. Two species on the  
 19 list are found on Glass Hill and would  
 20 be impacted by clinopodium douglasii and  
 21 potential occurrences of pericomis  
 22 (indecipherable), the Council should  
 23 conduct a full review of the current  
 24 proposed routes and consult with ODA's  
 25 Rare Plant Program using the updated

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1 application distribution rules or an appropriate state  
 2 agency for purposes of the threatened and endangered  
 3 species standard.  
 4 Instead, the appropriate state agency is ODA  
 5 and the record demonstrates that ODA was provided the  
 6 opportunity to review and comment on each iteration of  
 7 the ASC.  
 8 In Ms. Geer's second exception to TE-1, she  
 9 challenges the hearing officer's ruling on summary  
 10 determination that ODA's 2013 comments and 2014 meeting  
 11 with ODOE were sufficient consultation.  
 12 Ms. Geer asserts that further consultation  
 13 was necessary, but the record demonstrates that Idaho  
 14 Power and ODOE provided to ODA copies of each iteration  
 15 of the ASC, and thereby gave ODA an opportunity to  
 16 comment. ODA, therefore, had additional opportunities  
 17 to provide comment on these topics.  
 18 While the Department rules do not define  
 19 consultation, the hearing officer concluded that the  
 20 term is ordinarily understood to mean the active asking  
 21 for advice or opinion of someone.  
 22 This definition is also supported by Oregon  
 23 case law and the Oregon Court of Appeals has concluded  
 24 that when consult is not defined by state, an agency  
 25 satisfies that obligation by inviting other parties to

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1 recommended T&E list."  
 2 MS. PEASE: Thank you, councilmembers.  
 3 Good evening. My name is Jocelyn Peace for  
 4 Idaho Power Company.  
 5 In Ms. Geer's first exception to TE-1 she  
 6 challenges the hearing officer's ruling on summary  
 7 determination that the Council is not required to  
 8 consult with the Native Plants Conservation Program, or  
 9 NPCP, and that the consultation with the Oregon  
 10 Department of Agriculture was adequate for purposes of  
 11 meeting the threatened and endangered species standard.  
 12 The standard provides for consultation with  
 13 appropriate state agencies and in connection  
 14 with threatened and endangered plants includes  
 15 references to the Oregon Department of Agriculture.  
 16 Neither the EFSC statutes nor the EFSC rules  
 17 further define the term appropriate state agencies or  
 18 include any specific reference to the NPCP.  
 19 Idaho Power complied with all requirements  
 20 to allow the Oregon Department of Agriculture, which  
 21 oversees the NPCP, an opportunity to review and provide  
 22 comments on the ASC.  
 23 However, Idaho Power is not required to  
 24 solicit comments specifically from the NPCP because the  
 25 NPCP is not a reviewing agency for purposes of EFSC'S

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1 comment. Relying on that common definition, ODOE  
 2 complied with its consultation obligations by inviting  
 3 ODA to comment.  
 4 Ms. Geer also argues that ODA lacked funding  
 5 to review the ASC, but didn't provide any evidence in  
 6 the record to support this assertion. Moreover, ODOE  
 7 informed ODA that there was an existing compensation  
 8 agreement between the agencies and, therefore, ODA staff  
 9 can be reimbursed at any time -- they can be reimbursed  
 10 for any time spent reviewing the ASC.  
 11 Thus, there is no evidence in the record  
 12 that ODA ever sought reimbursement and Ms. Geer's  
 13 assertions that ODOE failed to provide funding to ODA to  
 14 review the ASC is not supported by evidence in the  
 15 record.  
 16 Ms. Geer raises additional arguments that  
 17 EFSC should consider alternative lists of rare plants.  
 18 However, these arguments are clearly outside the scope  
 19 of issue TE-1. And, moreover, are inconsistent with the  
 20 plain text of the threatened and endangered species  
 21 standard which requires EFSC to assess the plant species  
 22 that ODA has listed in accordance with ODA's rules, in  
 23 particular, OAR 603-073-0070.  
 24 Based on the foregoing, Idaho Power  
 25 respectfully requests that the Council affirm the

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1 hearing officer's ruling on TE-1.  
 2 VICE CHAIR HOWE: Thank you, Ms. Pease.  
 3 Does the Council have any questions?  
 4 Doesn't look like it. Thank you.  
 5 MR. ROWE: Patrick Rowe, Department of  
 6 Justice on behalf of the Department of Energy.  
 7 We agree with the comments that Ms. Pease  
 8 just made.  
 9 In addition to those comments, the  
 10 Department would point out that there are certain  
 11 conditions, recommended conditions that the Department  
 12 has recommended that would involve the ODA Native Plant  
 13 Conservation Program to conduct review.  
 14 The Department would point Council out to  
 15 fish and wildlife habitat condition one. That's the  
 16 reclamation and -- which requires the reclamation and  
 17 revegetation plan.  
 18 That condition has a formal reviewing Agency  
 19 process built into finalization of that plan. As a  
 20 pre-construction requirement, it would require that  
 21 Idaho Power evaluate specific vegetation, including  
 22 threatened and endangered species. And that would  
 23 ensure that if there were to be any impacts to T&E plant  
 24 species, ODA, including ODA's native plant conservation  
 25 program, would have the opportunity to weigh in and

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1 concur on level of impact avoidance and necessary  
 2 mitigation.  
 3 Also, land use condition 14, the  
 4 ag. mitigation plan would also evaluate sensitive  
 5 resources, such as threatened and endangered plant  
 6 species that are present within private EFU lands.  
 7 So those additional conditions we just  
 8 wanted to call to your attention to make sure you  
 9 understand that this doesn't mean that ODA's native  
 10 plant conservation program isn't going to continue to be  
 11 involved.  
 12 VICE CHAIR HOWE: Any questions from  
 13 Council?  
 14 Okay. Counsel Ratcliffe.  
 15 MR. RATCLIFFE: Yeah. So, once again, we've  
 16 had the overview of the threatened and endangered  
 17 species standard provided by Kellen, and that's all that  
 18 we have in terms of this particular issue.  
 19 And so now is the chance for Council to  
 20 deliberate or ask any questions you might have of me.  
 21 VICE CHAIR HOWE: Okay. Question/comments  
 22 from Council?  
 23 Councillor Condon.  
 24 COUNCILMEMBER CONDON: Thank you.  
 25 Councilmember Condon.

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1 I was a little bit concerned about the  
 2 timing involved here with the consultation in 2013/2014  
 3 versus the date of the application.  
 4 Was there -- is that typical or was there  
 5 another attempt, other than just sending the -- the  
 6 application to ODA -- was there any other communication  
 7 with ODA?  
 8 MS. TARDAEWETHER: Yes. So the applicant --  
 9 I believe this is summarized in the proposed order --  
 10 kind of did in-person outreach and there was meetings in  
 11 the original PASC, which is 2013.  
 12 And then -- I would have to go back and look  
 13 at the record to confirm on whether or not in between  
 14 that gap, because basically the project kind of got put  
 15 on pause -- an amended preliminary one in 2017. But at  
 16 that time, then we did go back out for comments. We  
 17 just -- there was kind of a communication or a staffing  
 18 gap with ODA at that time. We didn't really have  
 19 somebody that would -- they didn't respond. Thank you.  
 20 So it was -- it was hard to get -- I mean,  
 21 we can't -- in our memos that we sent out to reviewing  
 22 agencies, we do include a portion that says, "if you  
 23 don't provide comments, we assume that you're okay with  
 24 the information."  
 25 I mean, we -- we tried, but we -- they

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1 didn't provide comments.  
 2 COUNCILMEMBER CONDON: Thank you.  
 3 VICE CHAIR HOWE: Okay. Is Council then at  
 4 the point that -- see if I have this right -- that the  
 5 hearings official exception decision stands as is and  
 6 the proposed order stands?  
 7 Yeah. The contested case order. Both of  
 8 them.  
 9 SECRETARY CORNETT: In this instance, I  
 10 could do a consolidated straw poll, if that was  
 11 acceptable.  
 12 VICE CHAIR HOWE: This is a good one to do  
 13 it on, I think.  
 14 SECRETARY CORNETT: Okay. So I will read  
 15 the potential and you can tell me if you agree.  
 16 So "agree with the findings of fact,  
 17 conclusions of law and conditions of approval in the  
 18 proposed order pertaining to the threatened and  
 19 endangered species standards -- standard that are not  
 20 related to the issues in the contested case and in the  
 21 proposed contested case order pertaining to issue TE-1."  
 22 VICE CHAIR HOWE: Okay. Works.  
 23 SECRETARY CORNETT: Kent Howe.  
 24 VICE CHAIR HOWE: Yes.  
 25 SECRETARY CORNETT: Ann Beier.

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1 COUNCILMEMBER BEIER: Yes.  
 2 SECRETARY CORNETT: Hanley Jenkins.  
 3 COUNCILMEMBER JENKINS: Yes.  
 4 SECRETARY CORNETT: Jordan Truitt.  
 5 COUNCILMEMBER TRUITT: Yes.  
 6 SECRETARY CORNETT: Perry Chocktoot.  
 7 COUNCILMEMBER CHOCKTOOT: Yes.  
 8 SECRETARY CORNETT: Cindy Condon.  
 9 COUNCILMEMBER CONDON: Yes.  
 10 SECRETARY CORNETT: Thank you,  
 11 councilmembers.  
 12 VICE CHAIR HOWE: Okay. We set a record on  
 13 that one. There's the soil protection.  
 14 MS. TARDAEWETHER: For the record, Kellen  
 15 Tardaewether. I'm going to go over the soil protection  
 16 standard. I have the language of the standard up here  
 17 on the screen.  
 18 This is a little bit more of a  
 19 straightforward standard, as we like to say. But  
 20 nothing is ever really that way. But it's -- as Council  
 21 was finding, that the applicant can design, construct,  
 22 and operate the facility, taking into account  
 23 mitigation, that it's not likely to result in  
 24 significant adverse impacts to soil.  
 25 Now, in here I'm going to just kind of

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1 highlight, we have some things listed. We have erosion  
 2 and I'm just going to kind of skip over and then say  
 3 "chemical spills." Right?  
 4 Those are kind of the big ones we're going  
 5 to talk about with the proposed order and the ASC talks  
 6 about.  
 7 But it does also say, "including but not  
 8 limited to," meaning that it could talk about other  
 9 things.  
 10 I do want to point out that the language  
 11 here for the standard does correspond with the  
 12 information requirement under Division 21.  
 13 So the -- the application requirements say,  
 14 hey, provide information about these things listed. And  
 15 so that's -- that's the -- so that's what is generally  
 16 provided.  
 17 However, in this application, it's  
 18 Exhibit I, there is a wealth of information because this  
 19 is -- it's a long facility and there's lots of soil  
 20 types, et cetera.  
 21 The temporary impacts to soil are about 4300  
 22 acres and then the permanent impacts are 757 acres.  
 23 The temporary impacts are impacts that are  
 24 associated -- next slide, please, Nancy -- that are  
 25 associated with construction. We're kind of familiar

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1 with talking about that. So these are temporary roads,  
 2 the multi-use areas, the pulling and tensioning sites,  
 3 and the activities that would impact soils are the  
 4 clearing and rubbing, the grading. Vehicle compaction  
 5 from going in and driving on these roads.  
 6 So the temporary -- the areas temporarily  
 7 impacted associated with the construction of the  
 8 facility in restoration would have to be de-compacted  
 9 and revegetated and there are conditions that address  
 10 both of those.  
 11 The permanent impacts to soils are kind  
 12 of -- make sense. They are like the permanent tower  
 13 structure, the permanent infrastructure on the ground  
 14 are those permanent impacts.  
 15 And then next slide -- this is just -- I  
 16 have a map here. There's a very large map set that maps  
 17 out all of the soils. The analysis area for soil  
 18 protection is just the area within the site boundary.  
 19 So that's what you would see on those MAP sets.  
 20 So there's several soil protection  
 21 conditions.  
 22 We kind of inadvertently re-routed to one  
 23 that we talked about earlier under "structure." Again,  
 24 I'm just pulling and highlighting some conditions but  
 25 there are more than I'm pulling out here. The staff

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1 report summarizes some too, but there's more conditions  
 2 than what we're providing, but we can talk about  
 3 anything.  
 4 But soil protection condition one, Council  
 5 is used to seeing this condition. This is that prior to  
 6 construction, the -- the applicant will obtain and  
 7 provide to the Department the NPDES permit, the National  
 8 Pollution Discharge Elimination System, 1200-C, general  
 9 construction permit typical of that permit or required  
 10 in that permit is an erosion sediment control plan.  
 11 So this is kind of -- this is a federally  
 12 dedicated permit this is not a permit that Council is  
 13 making a decision on. But we -- we, the Department,  
 14 requested -- use this information to demonstrate  
 15 compliance underneath the soil protection standard.  
 16 And a lot of it is that erosion and sediment  
 17 control plan, because that has those best management  
 18 practices, the BMPs, about how the applicant is going to  
 19 reduce run-off, soil erosion, dust control, et cetera.  
 20 And then up on the slide here, I have the  
 21 soil protection condition five, which has -- that the  
 22 certificate holder shall inspect the facility components  
 23 for impacts as part of its regular transmission line  
 24 inspections, which this is some more of the operational  
 25 aspect of addressing impacts to soils.

1 And that's what I have.  
 2 Do you want to add anything?  
 3 MR. RATCLIFFE: Okay. So thank you, Kellen.  
 4 So we have one issue under "soil protection"  
 5 that was raised by Dr. Fouty. She filed exceptions.  
 6 And -- right.  
 7 And the issue is whether the soil protection  
 8 standard and general standard of review required  
 9 evaluation of soil compaction, loss of soil structure  
 10 and infiltration and loss of stored carbon in the soil  
 11 and loss of soil productivity as a result of the release  
 12 of stored carbon in soils.  
 13 The hearing officer's opinion talked about  
 14 the structure of the standard language and the use of --  
 15 the phrase Kellen had mentioned -- the "including but  
 16 not limited to" language and -- and read that to say  
 17 that the -- you know, there are certain enumerated  
 18 things.  
 19 And, again, those appear in the Council's  
 20 Division 21 application rules as well in terms of what  
 21 needs to be submitted for a complete application that  
 22 are specifically enumerated.  
 23 So we have the erosion deposition  
 24 application of chemical substances.  
 25 But the hearing officer's view is that

1 Soil protection conditions two and  
 2 three would minimize erosion and spill impacts during  
 3 construction. Fish and wildlife habitat conditions  
 4 would also ensure that temporary soil impacts are  
 5 restored post construction through revegetation and  
 6 noxious weed control within a reasonable time frame to  
 7 as close to pre-disturbance conditions as possible.  
 8 So that's the issue as it was framed in the  
 9 contested case and the hearing officer's ruling and --  
 10 and so now is the time for Dr. Fouty to provide oral  
 11 argument.  
 12 MR. ANUTA: My name is Karl Anuta. I  
 13 represent Stop B2H. And for purposes of tonight, I'm  
 14 assisting Dr. Fouty also.  
 15 Stop B2H concurred in Dr. Fouty's materials  
 16 in her presentations -- and so I'm going to cover both  
 17 her materials and Stop's concurrence and do so briefly;  
 18 and then, hopefully, answer any questions you might  
 19 have.  
 20 I'm going to start with the key points,  
 21 which are that the proposed contested case order omitted  
 22 any findings related to dynamic soil property changes.  
 23 There's a lot of data put in about erosion,  
 24 but that's not the only impact. Compaction in dynamic  
 25 soil makes a huge difference.

1 this -- the "included but not limited to" does not  
 2 necessarily require that an application for site  
 3 certificate evaluate things that are, you know, perhaps  
 4 of a different kind than the -- the list had provided.  
 5 So the issues raised by Dr. Fouty, including  
 6 the soil compaction and structure, et cetera.  
 7 The hearing officer also ruled neither the  
 8 application for site certificate content rule nor the  
 9 standard itself require that the applicant use a  
 10 specific methodology to evaluate soil types or  
 11 characteristics, nor require the presentation of highest  
 12 level of detail from the most current sources.  
 13 The standard does not require the applicant  
 14 to establish a specific time frame for restoration or  
 15 recovery.  
 16 Idaho Power correctly evaluated soil types  
 17 within the analysis area and evaluated impacts based on  
 18 potential locations of temporary and permanent  
 19 disturbance. Then, in response to the issue as it was  
 20 initially presented by Dr. Fouty and then supported by  
 21 her arguments, Idaho Power, during the contested case,  
 22 provided an updated table that presented soil  
 23 information by county with the soil order, ID, name,  
 24 acreage, percent, and acreage of disturbance area and  
 25 soil properties.

1 In addition, the Administrative Law Judge  
 2 made an evidentiary ruling at the end of the process  
 3 where she improperly excluded documents that should have  
 4 been in the record.  
 5 Those are both fundamental errors in our  
 6 part -- in our view.  
 7 Dr. Fouty is a Ph.D. She's a soil  
 8 specialist and hydrologist. She lives here in  
 9 La Grande. She knows her materials.  
 10 Her testimony was that IPC had failed to  
 11 examine the impacts from the proposed facility in  
 12 sufficient detail. She used best available science in  
 13 her presentation. Her testimony was, in our view, and  
 14 if you listen to the recordings, I think you would  
 15 agree, never really credibly rebutted.  
 16 When Dr. Fouty outlined in her closing  
 17 remarks the fact that there was a host of failures by  
 18 IPC's expert in particular to address some of the basic  
 19 documents that IPC's own expert relied on, IPC asked  
 20 that those documents be stricken from the record.  
 21 The ALJ mistakenly agreed. And as a result,  
 22 gave less weight to Dr. Fouty's testimony. Any document  
 23 that IPC and its experts used should have been part of  
 24 the record. Because without that, the applicant can  
 25 claim anything was true and the public wouldn't have the

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1 opportunity and this Council wouldn't have the  
 2 opportunity to review materials and determine if they  
 3 agreed.  
 4 Dr. Fouty outlined how IPC had failed to  
 5 demonstrate compliance with the standard. There was a  
 6 lot of discussion about how -- and the condition you saw  
 7 a few minutes ago on SP-1 was that the Department was  
 8 relying on the NPDES permit from DEQ. That permit, as  
 9 was outlined by Dr. Fouty, only addresses erosion.  
 10 It does not address compaction; it does not  
 11 address dynamic soil changes; it does not address any of  
 12 those other issues. Reliance on that is inadequate.  
 13 There were a number of fundamental problems  
 14 with the IPC analysis. I encourage you to read  
 15 Dr. Fouty's exceptions. They are very detailed and very  
 16 scientific.  
 17 And thank you, Secretary Cornett. I was  
 18 going to point out that I'm using both her time and  
 19 mine.  
 20 Dr. Fouty also outlined how the proposed  
 21 mitigations by IPC were not consistent with the stated  
 22 goals, they weren't peer-reviewed, and they didn't  
 23 follow the literature.  
 24 She noted that IPC used the wrong NRC soil  
 25 database when that resulted in planning level analysis

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1 rather than project level analysis. That's important  
 2 when you're doing mitigation.  
 3 IPC used the wrong analysis for soil  
 4 impacts. Because it used a larger soil boundary rather  
 5 than a smaller soil impact area, thus incorrectly  
 6 minimizing the nature -- or the magnitude of the soils  
 7 impacts, IPC misrepresented the longevity of this soil  
 8 impact by stating that the impacts would be "temporary";  
 9 and then defining "temporary" as "the life of the  
 10 project" which you have already heard is "forever." Not  
 11 what most of us would consider a temporary impact.  
 12 She also noted that IPC failed to provide a  
 13 soils restoration plan and instead relied on vegetation  
 14 restoration plan as a proxy for soil productivity.  
 15 IPC also failed to identify major soil types  
 16 in the analysis area, incorrectly discussed the soil  
 17 order, the broad -- highest level soil category, and  
 18 they failed to identify all current land uses on  
 19 productive soils. That's also important.  
 20 The fundamental problem here is that the --  
 21 Dr. Fouty's testimony should have been given more  
 22 weight. The hearings officer disregarded some of the  
 23 literature she cited.  
 24 And we think that this, under the  
 25 circumstances, should motivate this Council to send this

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1 issue back for further analysis by the Administrative  
 2 Law Judge and a further hearing on these detailed  
 3 scientific issues.  
 4 I'm happy to answer any questions, if you  
 5 have any.  
 6 VICE CHAIR HOWE: Thank you, Karl. I didn't  
 7 get your last name.  
 8 MR. ANUTA: Anuta.  
 9 VICE CHAIR HOWE: Anuta.  
 10 Any questions of Mr. Anuta?  
 11 Okay. Thank you.  
 12 MS. PEASE: Thank you, again. This is  
 13 Jocelyn Pease, for the record.  
 14 Dr. Fouty raised many issues in her  
 15 exceptions filing. And Idaho Power fully addressed  
 16 these issues in its responsive briefing. I will just  
 17 focus on several of the key arguments that Dr. Fouty had  
 18 made in her exceptions filing and attempt to address in  
 19 the short time the number -- a number of the issues that  
 20 Mr. Anuta had also raised.  
 21 First, in her exceptions filing, Dr. Fouty  
 22 argues that Idaho Power should have addressed additional  
 23 soil properties in its analysis regarding the soil  
 24 protection standard.  
 25 In support of this argument, Dr. Fouty

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1 emphasized language in the standard regarding impacts to  
 2 soils, including but not limited to erosion and chemical  
 3 factors such as salt deposition from cooling towers,  
 4 land application of liquid effluent and chemical spills.  
 5 Dr. Fouty urges that the Council should read  
 6 the phrase "including but not limited to" expansively.  
 7 However, Idaho Power explained in its  
 8 briefing that when applying Oregon principles of  
 9 statutory interpretation to discern the intent behind  
 10 the regulation, it is clear that the scope of the  
 11 standard is limited to the common characteristic between  
 12 the specific examples and the standard.  
 13 Consequently, the general term "impact to  
 14 soils" must be interpreted considering the commonality  
 15 between the specific terms of the regulation. And this  
 16 was a point that Mr. Ratcliffe had also pointed out in  
 17 his remarks.  
 18 On the other hand, in her analysis,  
 19 Dr. Fouty provided no legal basis for her interpretation  
 20 of the soil protection standard. Instead, it is simply  
 21 to satisfy her opinion that the soil properties listed  
 22 in her issue statement are necessary to satisfy the  
 23 standard.  
 24 Furthermore, Dr. Fouty's request to evaluate  
 25 additional soil properties is essentially an academic



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1 exercise. Idaho Power's expert witness addressed this  
 2 issue during cross-examination, explaining, at length,  
 3 that Dr. Fouty's requests are not consistent with  
 4 industry standards and that Idaho Power and others are  
 5 not expected to perform the academic research project  
 6 level of analysis that Dr. Fouty demands but, rather,  
 7 the project evaluation must conform to industry  
 8 standards which rely on agency-issued guidance documents  
 9 and best management practices, or BMPs.

10 Second, Dr. Fouty claims that Idaho Power's  
 11 analysis was not sufficiently granular. However, there  
 12 is no evidence in the record that supports Dr. Fouty's  
 13 claim that compliance with the soil protection standard  
 14 requires a more granular analysis or that a more  
 15 granular analysis would result in any new or different  
 16 mitigation measures, or BMPs, to achieve compliance with  
 17 the standard.

18 And, in fact, the level of data that Idaho  
 19 Power provided is consistent with the other applications  
 20 that have come before the Council.

21 Contrary to Dr. Fouty's assertions, Idaho  
 22 Power committed to performing mitigation in connection  
 23 with potential impact to soils. Idaho Power will  
 24 conduct construction activities in accordance with  
 25 Oregon environmental laws and permits, including the

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1 erosion and sediment control plan that accompanies  
 2 the ODEQ-issued 1200-C permit and the reclamation and  
 3 revegetation plan which will be reviewed by the Oregon  
 4 Department of Agriculture and the Oregon Department of  
 5 Fish and Wildlife, Idaho Power will work closely with  
 6 these agencies during the preparation and implementation  
 7 of these plans.

8 Now, in response to Mr. Anuta's assertion  
 9 that the analysis had failed to adequately address  
 10 dynamic soil properties, like compaction.

11 In fact, the issues around compaction are  
 12 addressed through the reclamation plan. The reclamation  
 13 plan provides an explanation of how Idaho Power will  
 14 treat the soils following construction, which will  
 15 include, in some cases, ripping the soil and working to  
 16 revegetate the landscape. And the best determination as  
 17 to whether this mitigation will be successful will be  
 18 the revegetation efforts.

19 And Idaho Power is bound to monitor the  
 20 success of those revegetation efforts and if they're not  
 21 working to perform adaptive management. And so those  
 22 measures that are already in place will, in fact, ensure  
 23 that -- that mitigation is accomplished for the soils.

24 Regarding Mr. Anuta's assertion about  
 25 documents that were excluded, the -- the way that worked

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1 was in the contested case there is a portion that's  
 2 dedicated to developing an evidentiary record and then  
 3 that record closes and there's briefing.

4 And after the close of the evidentiary  
 5 record, no one else is allowed to put more evidence into  
 6 the record. It's closed. And then folks can argue the  
 7 merits of the evidence on briefing.

8 And so what Mr. Anuta is referring to, is  
 9 evidence -- or documents that Dr. Fouty had attempted to  
 10 put into the record late in the -- late in the  
 11 proceeding after the close of the evidentiary record and  
 12 those documents were properly excluded.

13 Thank you.

14 VICE CHAIR HOWE: Thank you, Ms. Pease.  
 15 Are there any questions?  
 16 Okay.

17 MR. ROWE: Just a few comments on behalf of  
 18 the Department.

19 Patrick Rowe with the Department of Justice.  
 20 The thrust of Dr. Fouty's argument seems to  
 21 be that Idaho Power's application is not complete. She  
 22 argues Idaho Power should have conducted, you know,  
 23 several different types of analyses that it did not,  
 24 which Mr. Anuta listed and Ms. Pease also referenced.  
 25 Council has rigorous requirements for approval of a site

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1 certificate, including with regard to compliance with  
 2 its soil protection standard.

3 But in making her arguments, Dr. Fouty is  
 4 setting a bar for approval that is even higher than what  
 5 is required in law and in Council's rules.

6 The rules in Division 21, Council's rules  
 7 that govern what information must be included in an  
 8 application, the rules don't require analysis of the  
 9 items that Dr. Fouty is suggesting.

10 As has been discussed, the only specific  
 11 items addressed in the rule are erosion and whether  
 12 there are chemical factors related to operation of the  
 13 facility that could adversely impact soils. Idaho Power  
 14 conducted those analyses.

15 Second, Council can find -- as we've  
 16 discussed throughout the evening, it can find compliance  
 17 with one of its standards based not just on the  
 18 information in an application but also on conditions  
 19 that Council imposes.

20 We have Mr. Ratcliffe and Ms. Pease  
 21 referenced a couple of those conditions. I'll point  
 22 them out. I think I'm going to overlap in, at least,  
 23 one or two of these with what Mr. Ratcliffe and  
 24 Ms. Pease said.

25 I would point your attention to soil

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1 protection conditions one and two. Those would minimize  
 2 erosion and soil impacts. Those are on pages 97 and 99  
 3 of the proposed order.  
 4 And, actually, I'm not going to give you the  
 5 page references because there are two different ways to  
 6 reference the pages with, which I won't bore you with.  
 7 But at any rate, soil protection conditions  
 8 one and two, land use condition 14, and fish and  
 9 wildlife habitat conditions one and three would also  
 10 ensure that temporary soil impacts are restored post  
 11 construction. That's the one that I think Mr. Ratcliffe  
 12 mentioned.  
 13 Soil protection condition three. That has  
 14 the erosion best management practices under the 1200-C,  
 15 which Mr. Anuta referenced.  
 16 Fish and wildlife habitat conditions one and  
 17 three include very detailed pre-construction  
 18 assessments, landowner consultation, ongoing treatment  
 19 and monitoring during the first five years, and also  
 20 assessment for long-term obligations.  
 21 So, in short, I think the two points that I  
 22 would like you to take away are, one, Dr. Fouty is  
 23 asking for analyses that go beyond what the Council's  
 24 rules require and there are conditions that the  
 25 Department has recommended that will address soil

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1 impacts.  
 2 COUNCILMEMBER CONDON: Councilmember Condon.  
 3 I'm curious about the "five year."  
 4 Monitoring goes for five years and then what happen --  
 5 what's the -- what's the timing after that?  
 6 Does the Department --  
 7 MR. RATCLIFFE: I'm going to kick this one  
 8 over to Kellen or Sarah.  
 9 MS. ESTERSON: So reclamation and  
 10 revegetation is viewed as short-term. And so it's  
 11 typical to set a five-year milestone where there is more  
 12 aggressive monitoring and treatment and restoration in  
 13 that first five years.  
 14 But then, for this plan under that  
 15 condition, at the five-year mark, then based on  
 16 evaluation of the first five years, they will develop a  
 17 long-term monitoring plan. And it might be different  
 18 for certain areas. It's everything is going to be quite  
 19 specific for various segments. But -- so it will be a  
 20 large long-term plan with different levels of monitoring  
 21 depending on the success of the first five years.  
 22 COUNCILMEMBER CONDON: So just a follow-up  
 23 on that. So because this is -- or as I understand it,  
 24 it's going to be constructed in phases.  
 25 MS. ESTERSON: Uh-huh.

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1 COUNCILMEMBER CONDON: So will each of those  
 2 phases have a five-year monitoring time frame?  
 3 MS. ESTERSON: I guess I imagined it to be  
 4 that the line would become operational at one point in  
 5 time. While it might be phased in operation, I think  
 6 there's going to be one point in time when the full line  
 7 goes in operation that that starts to trigger the  
 8 operational monitoring.  
 9 Now, many of these plans have construction  
 10 requirements as well. So there will be a different set  
 11 of actions that are happening during construction that  
 12 are really like treatment, avoidance, monitoring,  
 13 control, but then that's different than restoration.  
 14 And that's --  
 15 COUNCILMEMBER CONDON: That's during  
 16 construction --  
 17 MS. ESTERSON: Right.  
 18 COUNCIL MEMBER CONDON: -- right, as opposed  
 19 to when construction is finished?  
 20 MS. ESTERSON: Right. So many of these  
 21 plans have multi-temporal component where they have to  
 22 do pre-construction assessment, construction activities,  
 23 and then short- and long-term monitoring.  
 24 COUNCILMEMBER CONDON: Thank you.  
 25 VICE CHAIR HOWE: Thank you, Ms. Esterson.

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1 Okay. So we're ready now to -- does the  
 2 Council have a different -- we've got the proposed  
 3 order. We've got the proposed exception -- wait.  
 4 Contested case order.  
 5 Do we have differences on those two or are  
 6 we ready to have Todd call the roll on that?  
 7 So this is -- well, go ahead, Cindy. Yeah.  
 8 So I don't have any objections to the  
 9 proposed contested case order, because I believe that  
 10 what was being asked of Idaho Power was beyond the  
 11 industrial standard and the goal is to meet the soil  
 12 protection standard.  
 13 And I think with the various plans that  
 14 are -- that are required under the conditions, I think  
 15 that they adequately address that. So I don't have any  
 16 problems with the proposed contested case order or the  
 17 proposed order.  
 18 Where's the rest of the Council?  
 19 Any difference of opinion on that? Hearing  
 20 none.  
 21 Councillor Condon.  
 22 COUNCILMEMBER CONDON: Councilmember Condon.  
 23 I have some concern about the most current  
 24 science being used or not being used, as someone might  
 25 say.

1 And -- and I'm sorry, I don't have it up in  
2 front of me, but is there a requirement -- a condition  
3 that requires survey prior to construction?

4 It seems like there are -- there was related  
5 to this soil protection. And it wasn't clear to me of a  
6 that's -- if that speaks to that most current  
7 information available or best available science.

8 I would hope we're using the best available  
9 science and most current information.

10 So I'm just curious if -- now we're -- you  
11 know, the project is ready, is there a survey --

12 VICE CHAIR HOWE: I'm not sure that the  
13 standard requires that, though, Cindy.

14 COUNCILMEMBER CONDON: Pardon?

15 VICE CHAIR HOWE: I'm not sure that the  
16 standard requires that.

17 COUNCILMEMBER CONDON: I'm not either. I'm  
18 wondering if it does. Or if we just use any data, use  
19 any survey requirement.

20 MS. TARDAEWETHER: For the record, Kellen  
21 Tardaewether. It is a little bit hard to see. I need  
22 to zoom it in. But I have the language which is -- it  
23 says, "Information from reasonably available sources  
24 regarding soil conditions and uses in the analysis  
25 area."

1 So, I mean, it's more data than we would  
2 normally get in an Exhibit I to evaluate potential  
3 impacts under soil.

4 COUNCILMEMBER CONDON: Thank you.

5 VICE CHAIR HOWE: Okay. I think we're ready  
6 to entertain a roll call on both the proposed order and  
7 the proposed contested case order.

8 COUNCILMEMBER CHOCKTOOT: Just for the  
9 record, this is Perry Chocktoot.

10 And I hate to complicate things, but I know  
11 there was a requirement to do cultural resource surveys  
12 on the project. It was probably done years ago, but  
13 hopefully there's a caveat for monitoring, doing  
14 cultural monitoring during ground disturbance.

15 Because out there on the flat, I know  
16 there's buried cultural resources and the  
17 anthropological record puts the existence of Native  
18 American populations pre Mount Mazama layer, so that's  
19 7,000 years deep.

20 So I just wanted to bring that up. Like I  
21 said, I didn't want to complicate the issues.

22 MS. TARDAEWETHER: Thank you, Councilmember  
23 Chocktoot. We will talk about that underneath the  
24 historical, cultural, and archeological resources  
25 standard tomorrow.

1 So that's the guidance.

2 COUNCILMEMBER CONDON: Is it -- excuse me.  
3 Is it expected that that be the current or  
4 if there's something found ten years old?

5 MS. TARDAEWETHER: Well, we get into -- and  
6 I would have to go -- maybe Sarah or Idaho Power knows  
7 what the NRCS date for the soil MAP sets were. We can  
8 check the date. But we might be in one of those  
9 situations where it's -- since, you know, at the time it  
10 was submitted, it was, you know, current but now we've  
11 moved forward in time and there may be new -- new soil  
12 datasets.

13 As a side note, for those familiar with  
14 soils, the soil categorization doesn't really change  
15 that much over time.

16 COUNCILMEMBER CONDON: So what I heard you  
17 say is that at the time it was submitted, it was  
18 current.

19 MS. TARDAEWETHER: That's what -- we're  
20 looking. I don't know.

21 MS. ESTERSON: But in the contested case  
22 proceeding, updated information was obtained from NRCS.  
23 I believe the date on it is 2021. And then a much more  
24 detailed poll of factors was also provided that was in  
25 Idaho Power's expert witness, Mr. Madison.

1 MR. RATCLIFFE: Yeah. That's correct.

2 VICE CHAIR HOWE: Not there yet.

3 SECRETARY CORNETT: Okay. So if I heard  
4 correctly, then, where we're at -- I'm sorry, let me  
5 clarify, it's SP-1; right?

6 Okay. So "agree with the findings of fact,  
7 conclusions of law and conditions of approval in the  
8 proposed order pertaining to the soil protection  
9 standard that are not related to issues in the contested  
10 case and in the proposed contested case order pertaining  
11 to issue SP-1."

12 VICE CHAIR HOWE: Sounds good to me.

13 SECRETARY CORNETT: Okay. Kent Howe.

14 VICE CHAIR HOWE: Yes.

15 SECRETARY CORNETT: Ann Beier.

16 COUNCILMEMBER BEIER: (No audible response.)

17 SECRETARY CORNETT: Hanley Jenkins.

18 COUNCILMEMBER JENKINS: Yes.

19 SECRETARY CORNETT: Jordan Truitt.

20 COUNCILMEMBER TRUITT: Yes.

21 SECRETARY CORNETT: Perry Chocktoot.

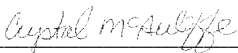
22 COUNCILMEMBER CHOCKTOOT: Yes.

23 SECRETARY CORNETT: Cindy Condon.

24 COUNCILMEMBER CONDON: Yes.

25 SECRETARY CORNETT: Thank you,

1 councilmembers.  
 2 VICE CHAIR HOWE: Well, we didn't get to the  
 3 needs standards.  
 4 SECRETARY CORNETT: That was a potential.  
 5 VICE CHAIR HOWE: Yeah.  
 6 SECRETARY CORNETT: So we got through all  
 7 the ones that we absolutely wanted to get through done  
 8 tonight.  
 9 So I appreciate everybody's efforts tonight.  
 10 That was a big poll, and I think, you know, as we talked  
 11 about, trying to get the cadence.  
 12 They will be a little more complicated  
 13 tomorrow because the -- there are more -- more issues  
 14 for some of the standards. So -- but I think you kind  
 15 of got the swing of things now.  
 16 VICE CHAIR HOWE: We did pretty good for  
 17 only being an hour late.  
 18 SECRETARY CORNETT: Yes.  
 19 VICE CHAIR HOWE: Okay. The time is now  
 20 9:07 p.m., and the August 29th, 30th, 31st, 2022 meeting  
 21 of the Energy Facility Siting Council is now recessed  
 22 until tomorrow morning until 8 a.m. Thank you.  
 23  
 24 (Adjourned at 9:07 p.m.)  
 25

1  
 2 CERTIFICATE  
 3  
 4  
 5 STATE OF WASHINGTON )  
 ) ss.  
 6 COUNTY OF KITSAP )  
 7  
 8 I, CRYSTAL R. McAULIFFE, a Certified Court  
 9 Reporter in and for the State of Washington, do hereby  
 10 certify that the foregoing transcript of the Energy  
 11 Facility Siting Council Meeting on AUGUST 29, 2022, is  
 12 true and accurate to the best of my knowledge, skill and  
 13 ability.  
 14 IN WITNESS WHEREOF, I have hereunto set my hand  
 15 and seal this 6th day of September, 2022.  
 16  
 17   
 18 \_\_\_\_\_  
 19 CRYSTAL R. McAULIFFE, RPR, CCR #2121  
 Oregon CCR 22-0002  
 20  
 21  
 22  
 23  
 24



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## Hearing - Day 2

# Council Review of Boardman to Hemingway Transmission Line

August 30, 2022



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OREGON DEPARTMENT OF ENERGY  
ENERGY FACILITY SITE COUNCIL MEETING

Council Review of the Proposed Order/Proposed Contested  
Case Order for the  
Boardman to Hemingway Transmission Line

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August 30, 2022  
Day 2 of 3  
8:00 a.m.

REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121,  
Oregon CCR 22-0002

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1 APPEARANCES

2

3 OREGON DEPARTMENT OF ENERGY COUNCILMEMBERS:

4 KENT HOWE, Vice Chair

5 HANLEY JENKINS II

6 PERRY CHOCKTOOT

7 JORDAN TRUITT

8 CINDY CONDON

9 ANN BEIER

10 TODD CORNETT, Secretary

11 OREGON DEPARTMENT OF ENERGY STAFF:

12 KELLEN TARDAEWETHER

13 Senior Energy Facility Siting Analyst

14 SARAH ESTERSON

15 Siting Analyst

16 CHRISTOPHER CLARK

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1 APPEARANCES  
(Continued)

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14 FOR STOP B2H and DR. SUZANNE FOUTY:

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16 LAW OFFICE OF KARL G. ANUTA

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21

22 Also Present:

23 Irene Gilbert

24 Kevin March

25 Anne March

Wally Adams, DOE

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1 LA GRANDE, OREGON; AUGUST 30, 2022

2 8:00 A.M.

3 -o0o-

4

5

6 VICE CHAIR HOWE: The time now is

7 eight o'clock a.m., and I would like to call the August

8 29th, 30th, 31st, 2022 meeting of the Energy Facility

9 Siting Council to order.

10 Mr. Secretary, please call the roll.

11 SECRETARY CORNETT: Kent Howe.

12 VICE CHAIR HOWE: Here.

13 SECRETARY CORNETT: Hanley Jenkins.

14 COUNCILMEMBER JENKINS: Here.

15 SECRETARY CORNETT: Jordan Truitt.

16 COUNCILMEMBER TRUITT: Here.

17 SECRETARY CORNETT: Cindy Condon.

18 COUNCILMEMBER CONDON: Here.

19 SECRETARY CORNETT: Perry Chocktoot.

20 COUNCILMEMBER CHOCKTOOT: Here.

21 SECRETARY CORNETT: Ann Beier.

22 COUNCILMEMBER BEIER: Here.

23 SECRETARY CORNETT: Mr. Vice Chair, you have

24 a quorum.

25 VICE CHAIR HOWE: Thank you.

Hearing - Day 2 - 8/30/2022

1 Are there any agenda modifications,  
 2 Mr. Secretary?  
 3 SECRETARY CORNETT: Mr. Vice Chair, just to  
 4 reiterate from yesterday, the Council did not review the  
 5 draft meeting minutes, so that is put off until  
 6 tomorrow, Wednesday, to evaluate and potentially adopt  
 7 that.  
 8 And then I would say just -- we'll figure it  
 9 out along the way today in case there are any changes  
 10 that need to be made such as, you know, the one -- the  
 11 one item that got kicked to Wednesday for review related  
 12 to the notification on blasting. So there may be  
 13 elements like that that get pulled from, you know, the  
 14 regular, sort of, schedule and then put off to the end.  
 15 So just kind of a reminder that we'll just  
 16 go along and see how it kind of plays out.  
 17 VICE CHAIR HOWE: Okay. Thank you.  
 18 Well, I have the following announcement.  
 19 Please silence your cell phones. Those participating  
 20 via phone or webinar, please mute your phone. And if  
 21 you receive a phone call, please hang up from this call  
 22 and dial back in after finishing your other call.  
 23 For those signed on to the webinar, please  
 24 do not broadcast your webcam.  
 25 Reminder to Council and to anyone addressing

1 person who engages in unacceptable conduct which  
 2 disrupts the meeting may be expelled.  
 3 So we're in the review of the Proposed Order  
 4 and Proposed Contested Case Order and exception hearing  
 5 on the Boardman to Hemingway Transmission Line.  
 6 We have Kellen Tardaewether with the Oregon  
 7 Department of Energy Siting Analyst -- Senior Siting  
 8 Analyst. And we have Jesse Ratcliffe, Senior Assistant  
 9 Attorney General in the Natural Resources Section of the  
 10 Oregon Department of Justice providing us the review of,  
 11 again, the Proposed Order and the Proposed Contested  
 12 Case Order.  
 13 So with that, we left off last night with  
 14 the noise and that's where we're going to start today.  
 15 So, Ms. Tardaewether, it's yours.  
 16 MS. TARDAEWETHER: Good morning. Good  
 17 morning. Testing.  
 18 For the record, Kellen Tardaewether, Siting  
 19 Analyst, Oregon Department -- can you hear me okay?  
 20 Thank you, Vice Chair. Good morning,  
 21 Councilmembers. We left off -- we finished up with the  
 22 soil protection standard last night and we're picking up  
 23 on the need standard this morning.  
 24 My esteemed colleague is taking care of some  
 25 errands and then she'll be back next by my side. I'm

1 the Council to please remember to state your full name  
 2 clearly and not use the speaker phone feature as it will  
 3 create feedback.  
 4 For those attending in person, comment  
 5 registration cards for Agenda Item C are available on  
 6 the table.  
 7 For those testifying on the B2H agenda item  
 8 or those who wish to provide comment during Agenda Item  
 9 C, please use the "raise your hand" feature in Webex to  
 10 speak during the public comment period or press "star  
 11 three" to raise your hand if you are participating by  
 12 telephone.  
 13 You may sign up for email notices by  
 14 clicking the link on the agenda or the Council web page.  
 15 You are also welcome to access the online mapping tool  
 16 and any documents by visiting our website.  
 17 Energy Facility Council meetings shall be  
 18 conducted in a respectfully and courteous manner where  
 19 everyone is allowed to state their positions at the  
 20 appropriate times consistent with Council rules and  
 21 procedures.  
 22 Willful accusatory, offensive, insulting,  
 23 threatening, insolent, or slanderous comments which  
 24 disrupt the council meeting are not acceptable.  
 25 Pursuant to Oregon Administrative Rule 345-011-0080, any

1 kind of pivoting today and I'm going to be running the  
 2 PowerPoint, but then I'm also going to try to toggle in  
 3 between the documents and pulling up rule language. So  
 4 I just kind of want this to be as informative and  
 5 helpful for Council. That said, just bear with me as I  
 6 kind of present but also find information that is --  
 7 that is helpful for Council.  
 8 So I think that if I -- okay. I'm going to  
 9 have to go -- I'm going to have to close out of this.  
 10 Bear with me. Because we had the need standard to be  
 11 slated.  
 12 The need standard -- it should pull up  
 13 there -- applies to energy facilities for nongenerating  
 14 energy facilities.  
 15 Nongenerating facility, for example, is a  
 16 transmission line or a pipeline. There are provisions  
 17 of the needs standard that apply to pipelines. We're  
 18 just going to skip over those.  
 19 So I'm going to just kind of walk through  
 20 mostly just what the standard says and then some facts  
 21 and findings that are in the proposed order.  
 22 So there's -- basically, there's three  
 23 pathways to meet the needs standard. An applicant can  
 24 meet the needs standard by the Least-Cost Plan Rule or  
 25 by the System Reliability Rule, or on this third

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1 provision here, which I'm not going to spend time on  
 2 because it doesn't apply to this project.  
 3 So the applicant, Idaho Power, in the  
 4 application, requested Council consider and provided  
 5 information in support of both the Least-Cost Plan Rule  
 6 and the System Reliability Rule.  
 7 Now, as this, sub (1), underneath standard,  
 8 these are an "or"; it's not an "and."  
 9 So if we meet either one of the System  
 10 Reliability Rule or Least-Cost Plan Rule, they've  
 11 demonstrated that the need standard is met. In the  
 12 proposed order, we are recommending that both have been  
 13 met.  
 14 So I'm going start with the Least-Cost Plan  
 15 Rule and -- maybe. I've lost my page. Bear with me.  
 16 Thank you. Sorry, guys.  
 17 In my PowerPoint I have snippets of my rule  
 18 language, but I want to pull up all the rule language  
 19 here.  
 20 Okay. So we're under need for facility.  
 21 Under this sub (1) -- there's a little bit of a delay,  
 22 so it will pull up here -- is what I just read from the  
 23 PowerPoint, which says Least-Cost Plan Rule, System  
 24 Reliability Rule.  
 25 And then we go down to the Least-Cost Plan

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1 Rule. And the sub (1) under that has direction for  
 2 Council on what they shall find. That the applicant has  
 3 demonstrated need for the facility, et cetera,  
 4 et cetera.  
 5 And then there's -- basically, it says these  
 6 are the items that -- that the applicant must represent,  
 7 and if they have any of these plans or combination of  
 8 plans adopted or approved by a municipal utility,  
 9 people's utility district, that these can be used and  
 10 submitted to demonstrate the Least-Cost Plan Rule.  
 11 And then it goes through items that says  
 12 these are the things that need to be included in a plan:  
 13 range of forecast, evaluates range of practical demand  
 14 of supply resources.  
 15 I'm just going to slowly scroll down. The  
 16 delay, it will kind of -- but it goes through several  
 17 items of what needs to appear in those plans. And that  
 18 is for sub (1).  
 19 And I'm going to go down to sub (2), which  
 20 says the Council shall find that the least-cost plan  
 21 meets the criteria of an energy resource plan  
 22 described -- described in sub (1) -- what we just kind  
 23 of scrolled through, if the Public Utility Commission of  
 24 Oregon has acknowledged the Least-Cost Plan Rule.  
 25 So this is where we went. Idaho Power, as a

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1 regulated utility in Oregon, must comply with the public  
 2 utility commissions. There are other rules as a utility  
 3 which means that every other year on a two-year cycle  
 4 they submit an Integrated Resource Plan or an IRP for  
 5 review and acknowledgement to the PUC. So they do this  
 6 on an ongoing basis.  
 7 And as part of the application Idaho Power  
 8 submitted -- well, we have several years of their IRP.  
 9 But really we're just looking for the most recent one.  
 10 And in 2017, the Oregon Public Utility  
 11 Commission did acknowledge their IRP. As we discussed  
 12 in the proposed order, several years back -- and I don't  
 13 have the date, but it is footnoted in the -- the  
 14 document -- doc ID. The record document is -- is talked  
 15 about in there.  
 16 But the Department took the position --  
 17 because there's several different things that the Public  
 18 Utility Commission can acknowledge in an IRP. And in  
 19 years prior, like 2013 and 2015, the PUC had  
 20 acknowledged the ongoing permitting for the Boardman to  
 21 Hemingway Transmission Line. And the Department took  
 22 the position that to meet this -- what the Department  
 23 wanted to see in that -- in that acknowledgement from  
 24 the PUC is not only the ongoing permitting but also that  
 25 the PUC is going to acknowledge the construction of the

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1 Boardman to Hemingway Transmission Line.  
 2 So in that 2017 acknowledgement of the 2017  
 3 IRP, the PUC did acknowledge the ongoing permitting but  
 4 also the construction activities for the Boardman to  
 5 Hemingway Transmission Line.  
 6 So in the proposed order, I -- I believe --  
 7 and I can pull it up. But this is a Council "shall," so  
 8 this isn't a -- really recommended. This is kind of a  
 9 directive. This has already -- this has been done.  
 10 So let me gather my notes here.  
 11 So that is what I really wanted to say for  
 12 the Least-Cost Plan Rule. I can stop there. And then  
 13 I'm going to go on to the System Reliability Rule, and  
 14 I'm going to dance around aspects of it.  
 15 So I'll just -- I'm going to pull up the  
 16 rule now. So I'm going to pass off aspects that are  
 17 kind of related to what Jesse is going to talk about in  
 18 the contested case issues. But there is one portion of  
 19 it, maybe it's not the most interesting portion. But  
 20 that -- that really isn't very related to the contested  
 21 case issue.  
 22 So then this is the System Reliability Rule,  
 23 which is more of an in-depth analysis of the data  
 24 provided, which we can pull from and use. Which, in the  
 25 proposed order, we did use the information that was

1 submitted in the IRPs -- in the Integrated Resource  
2 Plan, because it has that technical information about  
3 load, et cetera, and -- and demand. So we used that to  
4 draft findings for each of these subparts under the  
5 System Reliability Rule.

6 So I'm going to skip over one and two.

7 Sub (1) is -- is that the facility -- I'll  
8 just -- we'll just read this rule here.

9 So to demonstrate that the facility is  
10 needed to enable the transmission system of which it's  
11 to be part of to meet firm capacity demands for  
12 electricity or firm annual electricity sales. And then  
13 this is, you know, on weather conditions that have five  
14 percent chance of occurring in the area served by the  
15 facility. So there's findings in the proposed order for  
16 that.

17 And then the second one is that the facility  
18 is consistent with applicable mandatory -- so this is  
19 that it complies with the NERC regulations that apply  
20 either internally or externally to a utility system.

21 So I can -- so the portion that I was going  
22 to talk about is the -- the NERC. So I'm really kind  
23 of -- we're going to leave the one because it kind of is  
24 related to capacity. And then that this second  
25 portion -- and we've talked about this. We've talked

1 Okay. This one -- this one is working.

2 Okay. All right. Good morning, Mr. Vice  
3 Chair, members of the Council.

4 So we have two issues under the needs  
5 standard that have exceptions filed on them. Both of  
6 the exceptions were filed by Stop B2H.

7 So the first issue is issue N-1. And that  
8 is whether the Department erred in defining "capacity"  
9 in terms of kilovolts instead of megawatts.

10 So the Proposed Contested Case Order's  
11 opinion dealt with this in a ruling on motion for  
12 summary determination. And the general idea with motion  
13 for summary determination is that is intended to deal  
14 with the situation where you don't have material facts  
15 in dispute and so you're looking at a purely legal  
16 issue.

17 And so Idaho Power had filed a motion for  
18 summary determination on this issue, and the hearing  
19 officer ruled in their favor, finding that the Council  
20 rules don't define the term "capacity" for the purpose  
21 of the -- the needs standard rule.

22 And she acknowledged that in one of the  
23 definitions in the Council statutes capacity is  
24 associated with --

25 SECRETARY CORNETT: Jesse, can I -- we got

1 about it in July when it came up about organizational  
2 expertise and operating other transmission lines and  
3 really that the applicant is bound to comply with other  
4 regulatory agencies and guidelines, for instance, NERC,  
5 North American Electric Reliability Corporation. So  
6 there are findings for that.

7 And then they also must comply with the WEC  
8 reliability criteria. And in compliance.

9 And I have -- there's several -- so the  
10 proposed order discusses that there are these -- find my  
11 notes here -- transmission planning standards or "TPL."  
12 And those prescribe acceptable system operating limits  
13 for a wide range of system conditions.

14 And then the basis and under this, as we do  
15 draft findings and we pull from other aspects of the  
16 application to support findings of why -- of how the  
17 sub (2) of the standard is met.

18 I'm just going to stop there.

19 And if we get -- want to get into any of  
20 those details, we can talk about them. But I'll just  
21 pass it off to Jesse. And I'm going to pull up your --  
22 your slide here.

23 MR. RATCLIFFE: Okay. Great. Make sure  
24 that I can be heard on this. I'm not sure. No, it  
25 doesn't seem like it.

1 sort of a little heads-up that the court reporter is  
2 having a hard time hearing the information. Sort of a  
3 recommendation for all of us to lean into the mics so  
4 that she can clearly hear us. Especially, I think,  
5 probably you and I with the masks on.

6 MR. RATCLIFFE: Yep.

7 Okay. So the -- let me find my place here.

8 Okay. So one of the definitions in the  
9 Council statutes that the hearing officer looked at in  
10 469.300 sub (11), the -- one of the definitions  
11 provided, capacity is associated with voltage and not  
12 megawatts.

13 Similarly, in Idaho Power's Integrated  
14 Resource Plan, the capacity is associated with voltage  
15 and not megawatts. And that that's the way that the --  
16 the PUC acknowledged that capacity and, as a result, did  
17 not err in finding capacity in terms of kilovolts; that,  
18 basically, you know, where there's uncertainty in the  
19 rule, the hearing officer is going to look to sources of  
20 information that she can.

21 And, you know, when you have a couple of  
22 other sources, as was the case here, that are relying on  
23 the term in the same way, that's persuasive in helping  
24 to -- to figure out what capacity might be meant by --  
25 in the Council's rule since it is not explicitly

1 defined.  
 2 And with that, I will go ahead and turn it  
 3 over to Stop B2H for oral argument.  
 4 SECRETARY CORNETT: And while they are  
 5 coming up, just to let Councilmembers know, we are a  
 6 little bit different today, we have two issues on the  
 7 needs standard. So we'll go through oral comments on  
 8 the first issue, conclude that. Then go back to the  
 9 next issue where Jesse will provide the update. And  
 10 then we'll go through oral comments again. Then we'll  
 11 deal with the straw poll as a whole or however you want  
 12 to separate it out. But we will go through the full  
 13 oral comments before we get into any of the straw polls,  
 14 if that works for Council.  
 15 MR. ANUTA: But that's usually not an issue  
 16 with my voice. So hopefully the court reporter could  
 17 hear that.  
 18 For what it's worth, my suggestion on these  
 19 two is -- from Stop's perspective -- the issue in both  
 20 this and the prior -- and the next one are the same,  
 21 which is the summary determination -- what -- did the  
 22 hearings officer treat the facts appropriately.  
 23 So I'm happy to have Jesse present on the  
 24 other issue and then argue them both at the same time,  
 25 which might go faster for you folks. But it's up to the

1 though Idaho Power is the applicant here, this is a  
 2 joint venture between several different entities in  
 3 terms of the construction and operation of the project.  
 4 So that is the hearing officer's opinion on  
 5 this. And so -- and, again, this was, as with issue  
 6 N-1, issue N-3 was a ruling on summary determination;  
 7 basically, a conclusion that is a matter of law. The --  
 8 the hearing officer could rule in favor of Idaho Power  
 9 on this issue.  
 10 So with that I will turn it back over to  
 11 Mr. Anuta for oral argument.  
 12 MR. ANUTA: Members of the Council, this  
 13 particular set of issues puts you in an interesting  
 14 position. You are essentially sitting as an appellate  
 15 court reviewing the Administrative Law Judge's proposed  
 16 summary judgment or summary determination decision. You  
 17 must evaluate whether this law judge correctly reviewed  
 18 the facts and that there were no facts in dispute.  
 19 We've outlined in our exceptions this is fundamentally a  
 20 problem. There were facts in dispute, so there should  
 21 not have been summary determination granted. There  
 22 should have been a hearing.  
 23 And what we ask at this point, when you go  
 24 back and review those matters, if you agree there were  
 25 facts in dispute, you should remand these issues to the

1 Council.  
 2 VICE CHAIR HOWE: Council okay with that? I  
 3 think we are.  
 4 (Connectivity discussion. )  
 5 MR. RATCLIFFE: Okay. So where we left off  
 6 was combining these two issues for the purposes of oral  
 7 argument. And so the second issue is issue N-3, which  
 8 is whether the applicant demonstrated need for the  
 9 proposed facility when the applicant has only shown that  
 10 it's need represents 21 percent of the total capacity.  
 11 And so the Proposed Contested Case Order's  
 12 opinion on this said -- went through the history of  
 13 acknowledgement by the PUC, pointed out that the PUC  
 14 acknowledged the proposed project in IPCs 2017,  
 15 Integrated Resource Plan, and then affirmed that  
 16 acknowledgement in the 2019 Integrated Resource Plan.  
 17 The -- the hearing officer found that,  
 18 importantly, the PUC had acknowledged the proposed  
 19 transmission line as a whole, not simply with respect to  
 20 Idaho Power's capacity or Idaho Power's part of the  
 21 project. And that as a result, the project satisfies  
 22 the needs standard under the Least-Cost Plan Rule,  
 23 regardless of the percentage of transmission capacity  
 24 needed specifically for Idaho Power's customers.  
 25 And again, as a reminder, this -- even

1 hearings officer and direct her to have a hearing on  
 2 these issues so that the facts can be determined.  
 3 So what was in dispute here? It's pretty  
 4 straightforward. There was a dispute about whether or  
 5 not you use kilovolts or megawatts to determine  
 6 capacity.  
 7 And as Jesse acknowledged, the capacity  
 8 definition is a little vague, so the hearings officer  
 9 looked elsewhere. She looked at what was done  
 10 previously. She looked at a variety of other things.  
 11 And then she reached a conclusion, a factual conclusion  
 12 about whether or not you use kilovolts or megawatts.  
 13 You cannot do that on summary determination. You cannot  
 14 make factual decisions after weighing the evidence. You  
 15 must only conclude issues of law. Whether or not you  
 16 use kilovolts which -- or megawatts was a factual  
 17 dispute.  
 18 We pointed out Idaho Power used megawatts in  
 19 its original application. Idaho Power used megawatts in  
 20 its 2017 IRP. And in addition to that, the draft  
 21 proposed project order discussed the needs standard in  
 22 megawatts. All of that is factually inconsistent with  
 23 using kilovolts now. There should have been a hearing  
 24 on that issue so the matter could be decided.  
 25 One other point that we made in our

1 exceptions, which you should look at closely, in its  
2 reply on summary determination briefing, Idaho Power  
3 introduced an affidavit from Jared Ellsworth, an IPC  
4 employee. He presented additional facts about how, in  
5 his view, industry standard required the use of  
6 kilovolts. That should have been a red flag to the  
7 Administrative Law Judge. An affidavit introduces facts  
8 not law.

9 If there was an affidavit that had to be  
10 introduced, then there was going to be a weighing of the  
11 facts. And, in fact, the Administrative Law Judge  
12 relied on the facts that Mr. Ellsworth presented, among  
13 others, for concluding that it was kilovolts versus  
14 megawatts.

15 Our position is that was clear error because  
16 it was a factual determination and you cannot do that on  
17 summary determination.

18 Other facts that were in dispute here, you  
19 heard the discussion of the fact that there was -- this  
20 was a joint venture and the need standard that's before  
21 you mentions that IPC only has 21 percent of this.  
22 There was a factual dispute about whether the OPCs --  
23 excuse me, Oregon Public Utility Commission, OPUC, their  
24 acknowledgement of the fractional share that IPC had  
25 with its partners potentially there, was that enough to

1 have factual disputes at their core. And that's where  
2 we should be back to now, not after a full appellate  
3 process and six months to a year down the road. So we  
4 ask that you reverse on these issues. Happy to answer  
5 any questions if you have any.

6 VICE CHAIR HOWE: Thank you, Mr. Anuta.  
7 Any questions from Council? Thank you.  
8 MS. RACKNER: Good morning, Commissioners --  
9 excuse me, Councilmembers.

10 I want to start by correcting Mr. Anuta's  
11 statement of the applicable law.

12 For a -- in order to grant summary  
13 determination, the Council needs to find that not that  
14 there's no dispute about fact anywhere in the record,  
15 but there's no dispute of material fact.

16 Mr. Anuta is describing what's going on here  
17 as -- you know, as some kind of a factual dispute. But  
18 it's not.

19 I mean, the question is purely legal.

20 Does the OPUC's acknowledgement of a 500  
21 kilovolt -- kV line or kilovolt line, satisfy the  
22 Least-Cost Plan Rule. And the hearing officer correctly  
23 found that it did.

24 I want to start by providing just a little  
25 bit of context on the Public Utility Commission's

1 acknowledge the whole plan? That's -- and which IRP do  
2 you use was another factual dispute. Those are both  
3 decisions that the ALJ made on summary determination.  
4 That's a mistake. You shouldn't be making factual  
5 disputes -- determinations on "which IRP do we rely on?"  
6 Or "is a fractional share enough?"

7 But there was evidence submitted showing  
8 that one of the three partners has withdrawn. What --  
9 is this enough or not?

10 That's a factual resolution. That should  
11 have been heard. Evidence should have been submitted in  
12 addition to what had already been submitted and then the  
13 ALJ could have made a factual determination on those  
14 issues.

15 You, today, sit in a difficult spot. What  
16 should happen here is really straightforward. You  
17 should remand these issues to the Administrative Law  
18 Judge, despite the fact that that will lengthen this  
19 process because there was a legal error. We'd ask that  
20 you do precisely that, because the consequences of not  
21 doing that are significant for everyone involved.

22 We would have to appeal to the Supreme Court  
23 and ask them to reverse. And if they reverse after that  
24 whole appellant process, we are back to where we were,  
25 which is in front of the ALJ on these need issues that

1 integrated resource planning process. That process  
2 requires utilities to perform a comprehensive review of  
3 alternative approaches to meeting the resource needs of  
4 the utility.

5 The IRP uses stochastic and other modeling  
6 methodologies to evaluate alternative portfolios of  
7 resources under various scenarios. Full IRPs are filed  
8 every two years with IRP updates filed every year.

9 The process of reviewing those IRPs involves  
10 the OPUC staff, ODOE, customer groups, environmental  
11 groups, and any other interested party. It has involved  
12 Stop B2H for the last several years. There are numerous  
13 rounds of comments. Several presentations to the OPUC.  
14 And at the end of the process, the PUC will acknowledge  
15 the short-term action plan -- those are the actions that  
16 will be taking place in the next four to five years --  
17 or they will decline to acknowledge them and they do it  
18 on an action-by-action basis.

19 And in the last two IRPs, the Commission  
20 acknowledged B2H in the short-term action plan  
21 describing it as the construction of a 500 kV line.

22 Now, by adopting the Least-Cost Plan Rule,  
23 the Council clearly intended to rely on the OPUC's  
24 expertise to determine whether a resource under the  
25 PUC's jurisdiction was need.

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1 So in its exceptions, Stop B2H has argued  
 2 that the Council should disregard the PUC's  
 3 acknowledgement because it didn't explicitly acknowledge  
 4 the need for B2H's capacity in terms of megawatts, but  
 5 rather acknowledged the 500 kV line.  
 6 Stop B2H seems to acknowledge the capacity  
 7 for transmission line can be referred to in either kV or  
 8 megawatts, but they are claiming that because it could  
 9 be "and/or" somehow summary determination wasn't proper.  
 10 But that argument should be rejected,  
 11 because it was entirely proper for the hearing officer  
 12 to rely on the PUC's acknowledgement of a 500 kV line.  
 13 First, there's nothing in the Council's  
 14 rules that would require the capacity of a transmission  
 15 line to be evaluated in megawatts instead of kilovolts  
 16 for the purpose of the Least-Cost Plan Rule.  
 17 Second, the statutory definition of high  
 18 voltage lines that are under your jurisdiction is  
 19 expressed in terms of kilovolts and not megawatts. But  
 20 perhaps most importantly, Idaho Power demonstrated in  
 21 un rebutted evidence that you can't purchase a  
 22 transmission line or acquire a transmission line in  
 23 terms of megawatts. Megawatts is a rating that a  
 24 transmission line gets once it's already in service.  
 25 So in terms of the acknowledgement of Idaho

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1 Power's plan to construct the transmission line, that  
 2 had to be in kilovolts. And that's why the Public  
 3 Utility Commission would acknowledge the -- acknowledge  
 4 in terms of kilovolts.  
 5 I see I'm running out of time on that issue.  
 6 I want to quickly get to Stop B2H's comments about the  
 7 fact that this is a transmission line that is being  
 8 acquired by partners.  
 9 And so throughout the PUC process and  
 10 throughout this Council's process, Stop B2H was  
 11 concerned that somehow the Commission's acknowledgement  
 12 of a 500 kV line that they weren't really acknowledging  
 13 a 500 kV line because Idaho Power is going to be sharing  
 14 the capacity of that line.  
 15 And at a public meeting on the 2019 IRP,  
 16 Stop B2H representatives specifically asked the OPUC's  
 17 members, "Are you acknowledging the full line or are you  
 18 acknowledging a fractional piece of that line?"  
 19 Both Chair Decker and Commissioner Tawney  
 20 were very clear in responding: "We are acknowledging  
 21 B2H as a 500 kV line."  
 22 Finally, Stop B2H -- well, let me back up  
 23 just a minute. You know, given the fact that in their  
 24 IRP, they were very clear they were acknowledging the  
 25 full capacity of the line. That should be -- you know,

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1 that should automatically fulfill the Least-Cost Plan  
 2 Rule.  
 3 And, finally, in their -- you know -- I  
 4 think I will not respond to the very last comment, but I  
 5 am available for questions.  
 6 This is Lisa Rackner for Idaho Power  
 7 speaking.  
 8 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 9 Are there any questions from Council?  
 10 Councillor Condon.  
 11 COUNCILMEMBER CONDON: Thank you.  
 12 Councilmember Condon for the record. Quick  
 13 question. And this has do with just an understanding  
 14 about the least-cost rule.  
 15 So the PUC makes its determination on the  
 16 IRP -- according to least-cost rule. So it was -- was  
 17 there an analysis that -- this is the least costly plan  
 18 as -- as included in the IRP.  
 19 I'm trying to figure out the least-cost  
 20 aspect of it.  
 21 MS. RACKNER: Yeah. And the rule is called  
 22 the "Least-Cost Plan." But the integrated resource  
 23 planning process at the PUC is not just an analysis of  
 24 the least-cost plan, but it's the least-cost, slash,  
 25 least-risk plan, which looks at the combination of

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1 resources, the full portfolio of resources that a  
 2 utility needs to acquire in order to fulfill their  
 3 obligation to provide fair and reasonable service and  
 4 reliable service to their customers.  
 5 So what's complicated is there's a whole  
 6 list of resources that the utility will rely on over the  
 7 20-year period.  
 8 But then there's something called the  
 9 "short-term action plan," which is what's referred to in  
 10 your Least-Cost Plan Rule, which says -- this is the  
 11 thing that we're going to do for 20 years.  
 12 But short term, for the next four to five  
 13 years, these are the very specific actions that the  
 14 utility is going to take in order to fulfill their  
 15 obligations.  
 16 So in the last several IRPs, B2H -- the  
 17 actual construction of B2H has been on that short-term  
 18 plan. And each time the Public Utility Commission --  
 19 and they dedicated a full section of their order to B2H  
 20 looking at B2H and saying, yes, we acknowledge the  
 21 construction of B2H.  
 22 COUNCILMEMBER CONDON: Okay. Thank you and  
 23 I have a follow-up -- another question.  
 24 Just related to your preliminary application  
 25 and the application and the use of megawatts.

1 And I apologize, I haven't gone completely  
2 through those documents. But I'm just curious. And I  
3 think I understood you to say that transmission line can  
4 only be measured in megawatts after construction.

5 And so I'm curious about if you use  
6 megawatts in your application and preliminary  
7 application why that would be instead of the kilovolt?

8 MS. RACKNER: So it's not quite correct to  
9 say we only relied on megawatts.

10 So there's two measures. A transmission  
11 line can only be acquired in kilovolts. Like, you can  
12 buy a 500 kV line. You can buy a 235 kV line.

13 There's another question about how much  
14 capacity of that -- of the line is that line actually  
15 going provide. And you only know that once you've put  
16 it into service. Because the capacity of a line, while  
17 it's partially informed and quite significantly informed  
18 by the -- the rating of the line, it's also influenced  
19 by load on either side -- load on either side of the  
20 line. A lot of other little technical things that I  
21 probably am not well-equipped to explain.

22 So when -- in the IRP, one of the things the  
23 company looks at is "What are our load requirements in  
24 megawatts?"

25 And those are all described in megawatts.

1 reliability is a very different analysis that we never  
2 really got deeply into in this case because -- because  
3 the hearing officer early on in the case granted summary  
4 judgment on -- on the Least-Cost Plan Rule.

5 So that's a very different analysis that we  
6 never really got into. Least-Cost Plan Rule in terms  
7 of: What did we tell the Public Utility Commission that  
8 we were going to acquire; what did we put in our  
9 short-term action plan; and what did they acknowledge?

10 Always kilovolts, a 500 kV line. Never  
11 megawatts.

12 COUNCILMEMBER CONDON: Thank you.

13 VICE CHAIR HOWE: Any other questions from  
14 Council of Ms. Rackner?

15 MR. RATCLIFFE: Do we have anything from the  
16 Department?

17 VICE CHAIR HOWE: Thank you.

18 MR. ROWE: Patrick Rowe, Department of  
19 Justice on behalf of the Department of Energy.

20 These are both issues that Idaho Power  
21 brought motions for summary determination on; the  
22 Department did not. However, the Department supports or  
23 believes the ALJ did correctly rule on them. I will  
24 take them issue by issue.

25 N-1, whether the Department erred in

1 But in terms of resource acquisition, what -- what are  
2 we going to buy or construct in order to fulfill that?

3 We need a capacity -- our capacity is  
4 described then in a 500 kV line. If that makes sense.

5 COUNCILMEMBER CONDON: It makes perfect  
6 sense to me. But what I don't understand is if in the  
7 application you used kilowatts instead of kilovolts to  
8 describe what you were constructing.

9 MS. RACKNER: I'm sorry. We used -- I may  
10 have misspoken. We used kilovolts in order to describe  
11 what we were constructing. We would not ever describe  
12 what we were constructing in terms of megawatts.

13 What Mr. Anuta was referring to is that  
14 there is also an analysis in an IRP and also a  
15 discussion with respect to the System Reliability  
16 Rule which -- and by the way, the System Reliability  
17 Rule really isn't at issue here because the hearing  
18 officer granted summary judgment on the least-cost rule.

19 But when you look at what Stop B2H pointed  
20 out -- and they were correct on this point -- that in  
21 analyzing the System Reliability Rule, we were looking  
22 at load resource tables that described -- that described  
23 load and the resource in terms of megawatts. That is  
24 correct. That's the System Reliability Rule.

25 Least-Cost Plan Rule -- so system

1 defining "capacity" in terms of kilovolts instead of  
2 megawatts.

3 On that issue, the Department agrees that  
4 with the ALJ's dismissal of the issue in her order  
5 dismissing the issue on summary determination, the ALJ  
6 describes kilovolts and megawatts. Both measures are  
7 used -- as we've heard discussed, are used to describe  
8 transmission lines.

9 And as the ALJ stated in her ruling and  
10 order dismissing their issue, there is no genuine  
11 factual dispute that both terms are used to describe  
12 transmission lines.

13 We believe that she was correct in  
14 describing the issue as a purely legal question and that  
15 the Department appropriately considered the operating  
16 voltage of the proposed line in concluding that Idaho  
17 Power demonstrated need under the Least-Cost Plan Rule.

18 On issue N-3, whether the applicant  
19 demonstrated need for the proposed facility when it's  
20 shown that it is -- its need is -- represents 21 percent  
21 of total capacity.

22 Again, this is an issue that was essentially  
23 disputed between Idaho Power and -- and Stop. But the  
24 Department doesn't believe that the ALJ correctly ruled  
25 on that issue.



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1 Under the Council's Least-Cost Plan Rule,  
 2 the Council shall find the applicant has demonstrated  
 3 need for a line if the PUC has acknowledged a least-cost  
 4 plan. That is the Integrated Resource Plan which  
 5 Ms. Rackner was discussing.  
 6 The ALJ granted summary determination on  
 7 this issue based on a finding that when the PUC  
 8 acknowledged the IRP -- the Integrated Resource Plan, it  
 9 acknowledged a 500 kV line with co-participants, meaning  
 10 the other participants in construction and operation of  
 11 the line.  
 12 As the ALJ noted, PUC did not acknowledge  
 13 only Idaho Power's 21 percent of the entire line. It  
 14 acknowledged the line itself.  
 15 So we believe that the ALJ correctly found  
 16 that PUC acknowledged the B2H project as a whole. And  
 17 as such, Idaho Power, as Kellen described, has satisfied  
 18 the Least-Cost Plan Rule and demonstrated need for the  
 19 proposed facility.  
 20 COUNCILMEMBER JENKINS: Chair, I have a  
 21 question, I think, for Jesse. So Idaho Power -- I'm  
 22 sorry. This is Hanley Jenkins.  
 23 Idaho Power submitted their position that  
 24 they met both the least-cost rule and the other second  
 25 requirement for addressing this standard.

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1 Do we have to -- and the hearings officer  
 2 has found in the summary determination that they've met  
 3 the least cost rule.  
 4 Do we have to address the other way to  
 5 approve this? The -- sorry.  
 6 MR. RATCLIFFE: This is Jesse Ratcliffe, for  
 7 the record.  
 8 And so what we need to do here, you have --  
 9 this comes back to the two pieces that we're looking at.  
 10 So we have the proposed order and the proposed contested  
 11 case order.  
 12 The proposed contested case order issues  
 13 deal with the Least-Cost Plan Rule. The Council does  
 14 need to make decisions on whether or not the hearing  
 15 officer's determinations were correct on those two  
 16 issues.  
 17 Separately, the proposed order discusses  
 18 both -- both, to my understanding, the System  
 19 Reliability Rule and the Least-Cost Plan Rule.  
 20 When you adopt the -- when you issue a final  
 21 order on this, if you adopt the proposed order as is,  
 22 that will include the proposed order's discussion and  
 23 conclusions with respect to the System Reliability Rule  
 24 as well.  
 25 So there will be -- unless there are changes

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1 to the -- between the proposed and the final order,  
 2 there will be both discussion and findings on the System  
 3 Reliability Rule and the Least-Cost Plan Rule.  
 4 COUNCILMEMBER JENKINS: So this is Hanley  
 5 again. So I guess the Council needs to address the  
 6 proposed order and both methods where the exception only  
 7 addressed the least-cost rule.  
 8 MR. RATCLIFFE: Yes.  
 9 COUNCILMEMBER BEIER: For the record,  
 10 Councillor Beier.  
 11 Does it make sense to acknowledge in the  
 12 proposed order that the Council considered evidence on  
 13 the system reliability standard but made findings only  
 14 on the least-cost method just to clean it up?  
 15 Since we only have to come up with one of  
 16 the "and/or" or the "or" standards, should we only  
 17 make -- have the order include the least-cost and --  
 18 just a question.  
 19 MR. RATCLIFFE: Sure. So the Council is  
 20 charged with issuing an order on the application as it's  
 21 presented to you.  
 22 And we've had some discussion about that.  
 23 Of, you know, what -- the limits on the Council's  
 24 authority to look at alternatives.  
 25 And so when the staff goes through and

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1 prepares the proposed order, they are looking at what  
 2 the applicant has asked for.  
 3 And in this case, that included an "ask"  
 4 both respect to the System Reliability Rule and the  
 5 Least-Cost Plan Rule.  
 6 So the -- the -- you know, my recommendation  
 7 is that the Council should make a finding as to both.  
 8 The statutes and rules only require a  
 9 positive finding that, you know, for one. But yes, I  
 10 would recommend that both are addressed.  
 11 COUNCILMEMBER BEIER: One more question.  
 12 This is for Kellen.  
 13 You had a slide early on that was a "shall"  
 14 statement for the Council -- that the Council shall if  
 15 the PUC acknowledges, I think is the term of art.  
 16 Could you just pull that up again?  
 17 MS. TARDAEWETHER: For the record, Kellen  
 18 Tardaewether.  
 19 Yes. On the screen here, I have the  
 20 proposed order. Make it a little bit bigger here.  
 21 VICE CHAIR HOWE: Any other questions from  
 22 Council?  
 23 COUNCILMEMBER JENKINS: Yeah. This is  
 24 Hanley. Kellen, so this talks about the 2017 IRP. And  
 25 in the evidence that we've received, it looks like the

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1 PUC recognized the 2017 and the 2019.  
 2 Is there a reason why this doesn't include  
 3 the 2019 IRP?  
 4 MS. TARDAEWETHER: Correct. Because --  
 5 because the proposed order we're looking at, as it  
 6 stands here in this PDF with the redline, this is what  
 7 we issued in 2020 that was in the contested case. And  
 8 then the contested case opens up the record again and  
 9 then -- so evidence can be submitted to -- to support  
 10 the application or in response to the issues raised.  
 11 So -- and then once the contested case  
 12 closes, the record closes again. So we're actually at a  
 13 point where we do have, for several standards and  
 14 issues, additional facts that could be reflected in the  
 15 later document in the draft final order and functionally  
 16 the final order.  
 17 COUNCILMEMBER JENKINS: So could that be --  
 18 I guess this is a question for Jesse.  
 19 Could that be included?  
 20 This is Hanley again.  
 21 MR. RATCLIFFE: The 2019 RRP. Yeah. So it  
 22 was made a part of the record. And so it is something  
 23 that is available to be considered by the Council.  
 24 The -- the issue here for the Council is the  
 25 fact that the -- or whether or not the PUC has

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1 acknowledged the project in an IRP.  
 2 Starting with a 2017 IRP, there was an  
 3 acknowledgement of the construction of the facility.  
 4 And Kellen talked briefly about the  
 5 Department of Energy's staff position starting, you  
 6 know, somewhat before then that that's what needed to  
 7 happen that. It wasn't just an acknowledgement of the  
 8 fact that, you know, there was a permitting process  
 9 going on but there was an acknowledgement that the --  
 10 that the -- that included the actual construction of the  
 11 line.  
 12 So, you know, the existence of the 2019 IRP  
 13 is helpful in the sense that it reflects a similar  
 14 understanding. It's more recent, but, you know, as a  
 15 technical matter, once the 2017 IRP came out and did  
 16 what it needed to do, that was the, you know -- the  
 17 piece that needed to be in place in order for the  
 18 Least-Cost Plan Rule to be fulfilled.  
 19 With the exception of the issue that we're  
 20 talking about here that Stop B2H has raised, which is  
 21 the one thing that is really still within the Council's  
 22 purview here. You know, a significant amount of this  
 23 has been -- you're relying on the PUC's action.  
 24 But the Council still is responsible for  
 25 determining whether the capacity has been acknowledged

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1 by the -- by the PUC. And that is a -- a conclusion  
 2 that the Council needs to make.  
 3 And so that's why our -- our issues here  
 4 have focused on that -- that definition of capacity.  
 5 So -- sorry for the long-winded answer. But  
 6 this issue is -- the complexity of this issue has mostly  
 7 to do with the fact that there's a significant chunk of  
 8 the Least-Cost Plan Rule that is dependent upon another  
 9 body's action, on the PUC's action. So.  
 10 COUNCILMEMBER JENKINS: So this is Hanley  
 11 again. That's why I thought it was beneficial to  
 12 include both 2017 and 2019 from the PUC. And the  
 13 language is company's second amended 2019 IRP.  
 14 So I don't know if the rest of the Council  
 15 is interested in including that in the -- in the order.  
 16 The proposed order.  
 17 VICE CHAIR HOWE: I think that makes sense.  
 18 This is Kent Howe.  
 19 MS. TARDAEWETHER: For the record, Kellen  
 20 Tardaewether.  
 21 What I'm pulling up here is this is in the  
 22 hearing officer's proposed contested case order. This  
 23 is Appendix 2. This is the evidence entered in the  
 24 record during the motion for summary determination  
 25 phase. So this over here lists. And I believe

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1 Ms. Rackner referenced the comments from PUC. So this  
 2 is the information that is added into the record.  
 3 And so what Council can do is -- you know,  
 4 update your facts.  
 5 Now, I would have to go and pull up those --  
 6 I'm not sure if these are the -- the comments in which  
 7 the Commissioners are -- discussing acknowledgement of  
 8 the 2019 IRP or is it the actual order. I'd have to go  
 9 into the record and really find that.  
 10 But Council could give direction to do that.  
 11 MR. RATCLIFFE: If I may, because of the way  
 12 in which this was introduced as part of a motion for  
 13 summary determination which, again, gets a little  
 14 technical, but the evidence is being introduced for a  
 15 very limited purpose, and that is to, you know,  
 16 essentially provide enough information for the hearing  
 17 officer to decide whether or not this is -- whether  
 18 there are material facts in dispute or not.  
 19 I think it's appropriate for the Council to  
 20 recognize that what was offered and admitted for that  
 21 limited purpose to say simply that is part of the motion  
 22 for summary determination briefing. There were  
 23 references made to the 2019 IRP, whatever those  
 24 references are, and we can leave it to staff to sort  
 25 that out.

1 But to make clear that the -- the Council  
2 is -- the document that it's relying on, principally, is  
3 the 2017 IRP, because that's -- that's the initial  
4 decision.

5 So if -- you know, the IRPs happen every two  
6 years but if for some reason, you know, it didn't  
7 happen, you know, we have the 2017 IRP. That is the  
8 initial decision that triggers compliance with the  
9 Least-Cost Plan Rule. Again, provided that the Council  
10 finds that the capacity of the facility is what was  
11 acknowledged.

12 COUNCILMEMBER CONDON: Councilmember Condon.

13 Just a question for you, Jesse. So we have  
14 the 2017 IRP acknowledged here.

15 If -- if in 2019 the PUC had not  
16 acknowledged it -- the reason I ask is, if there's a  
17 chance of that, I think it is important that we state  
18 that it was acknowledged in 2019 too. Most recent.

19 MR. RATCLIFFE: So you -- I guess what my  
20 recommendation is, is that when discussing the 2019 IRP,  
21 that there's a discussion of how that came to be in the  
22 record. That it was a part of the motion for summary  
23 determination briefing. And that the Council can  
24 acknowledge that that was -- is a part of the larger  
25 record as a result of that.

1 matter. Because the -- the summary determination,  
2 again, it gets into some kind of wonky legal stuff and I  
3 want to --

4 COUNCILMEMBER JENKINS: I don't have any  
5 arguments with the summary determination and the  
6 hearings officer order. I think it needs to be in the  
7 proposed order, the Department's proposed order that we  
8 explain that there is continuity.

9 MR. RATCLIFFE: Yeah. And so that would be  
10 my suggestion that staff and I can take a look at that.  
11 And we can come back with a draft final order that  
12 handles that.

13 VICE CHAIR HOWE: Councillor Condon,  
14 Jenkins, and I have all stated that we're supportive.

15 So I'm going to ask Councillor Truitt and  
16 Beier and Chocktoot, are you on board with the same  
17 recommendation?

18 COUNCILMEMBER CHOCKTOOT: For the record, my  
19 name is Perry Chocktoot, and I'm on board.

20 VICE CHAIR HOWE: Toot?

21 COUNCILMEMBER CHOCKTOOT: Toot as in --

22 VICE CHAIR HOWE: Got it. Thank you.  
23 Sorry.

24 COUNCILMEMBER TRUITT: This is Jordan  
25 Truitt, and I am in agreement as well.

1 But the -- and -- and to -- I guess to  
2 answer the, you know, kind of underlying hypothetical  
3 that's in your question, what would have happened if in  
4 2019 the, you know, PUC reverses course? We would have  
5 had a contested case issue about that. This would have  
6 been a very different discussion.

7 So, you know, the -- again, I think it's  
8 fine to acknowledge what came into the record as part of  
9 the -- you know, the motion for summary determination  
10 briefing. But I think it's also important to note that  
11 that is the reason, that was how that was introduced,  
12 and that the -- you know, in terms of the initial  
13 application that was filed, the reliance was on the 2017  
14 application.

15 So, really, all that is happening by  
16 reference to that 2019 is just the fact that they didn't  
17 change their mind, so.

18 COUNCILMEMBER JENKINS: So this is Hanley.  
19 How do we do that?

20 MR. RATCLIFFE: So we can help with that.

21 My suggestion is that if -- if -- if you --  
22 if the Council's wish is to have a -- the -- the record,  
23 the final order reflect that the 2019 IRP is in the  
24 record, then that's something that I would suggest that  
25 I work with staff on to properly address as a technical

1 COUNCILMEMBER BEIER: This is Councillor  
2 Beier, I'm in agreement.

3 SECRETARY CORNETT: And I have -- again,  
4 some not actual language -- so for the record, Todd  
5 Cornett.

6 So I can read this and then, again, I can  
7 look for head nods and then do roll call.

8 So okay. So what I have is "Agree with the  
9 findings of fact, conclusions of law, and conditions of  
10 approval in the needs standard not pertaining to issues  
11 in the contested case and in the proposed contested case  
12 order pertaining to issues N-1 and N-3 with the  
13 following modifications: Recognize the 2019 IRP  
14 acknowledgement was brought into the contested case  
15 record in the draft final order, findings of fact and  
16 conclusions of law."

17 So that works?

18 MS. TARDAEWETHER: For the record, Kellen  
19 Tardaewether. Sorry to interrupt.

20 We're looking at what was actually submitted  
21 and we need to look a little bit further, because some  
22 information is embedded in footnotes. But the 2019 IRP  
23 itself, the whole document, doesn't appear to be  
24 submitted or the actual as a link.

25 So what we're trying to provide Council

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1 the -- the information -- so in 2017, not only did we  
 2 have the IRP, but we had the PUC order acknowledging it.  
 3 And so now -- and I think it may very well  
 4 be because of the timing of the IRP process. And when  
 5 we got into the contested case, we're trying to verify  
 6 what was actually submitted.  
 7 Do we have the IRP?  
 8 Do we have an order?  
 9 What we do know we have is kind of a summary  
 10 of the Commission's comments, which Ms. Rackner noted.  
 11 But I think that is kind of important to what Todd is  
 12 summarizing and what you would like to footnote update.  
 13 So I don't know if we want to pause or  
 14 not --  
 15 SECRETARY CORNETT: Yeah. I kind of  
 16 purposely tried to keep it generalized so it would allow  
 17 us to fine-tune it later on.  
 18 That being said, is if Council wants to have  
 19 very clear language, we can wait to figure that out now  
 20 or you can go with the sort of generalized. We  
 21 recognize that it is in the record. We don't have the  
 22 actual, sort of, reference or specific language for it,  
 23 but we will get that.  
 24 And as Jesse said we will work with Jesse to  
 25 make sure that the findings and conclusions are written

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1 appropriately.  
 2 COUNCILMEMBER JENKINS: This is Hanley.  
 3 That works for me.  
 4 VICE CHAIR HOWE: I'm seeing enough head  
 5 nods that Council supports that.  
 6 SECRETARY CORNETT: So I will call the roll  
 7 on this.  
 8 Jordan Truitt.  
 9 COUNCILMEMBER TRUITT: Yes.  
 10 SECRETARY CORNETT: Hanley Jenkins.  
 11 COUNCILMEMBER JENKINS: Yes.  
 12 SECRETARY CORNETT: Kent Howe.  
 13 VICE CHAIR HOWE: Yes.  
 14 SECRETARY CORNETT: Cindy Condon.  
 15 COUNCILMEMBER CONDON: Yes.  
 16 SECRETARY CORNETT: Perry Chocktoot.  
 17 COUNCILMEMBER CHOCKTOOT: Yes.  
 18 SECRETARY CORNETT: I think I got everybody.  
 19 Did I get everybody?  
 20 COUNCILMEMBER BEIER: Ann Beier, yes.  
 21 SECRETARY CORNETT: It dropped over on a  
 22 page.  
 23 Ann Beier. Sorry, Councilmember Beier.  
 24 Thank you.  
 25 Again, for the record, Todd Cornett. Just a

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1 procedural check-in.  
 2 We were actually quite on time right now.  
 3 So we have, at least, a placeholder for our break from  
 4 9:20 to 9:30.  
 5 Councilmembers want to take a break, you  
 6 can. The next item is the public comment time period.  
 7 So we will recess the agenda item B, move to agenda item  
 8 C, and then return.  
 9 VICE CHAIR HOWE: Sounds good. We're on  
 10 break then until -- what shall we do? 9:30?  
 11 SECRETARY CORNETT: Whatever your choice is.  
 12 VICE CHAIR HOWE: Let's do 9:20. 9:25 is  
 13 what I meant to say. Sorry.  
 14 (A break was taken.)  
 15 VICE CHAIR HOWE: Okay. We're back in  
 16 order.  
 17 And we're continuing on with the next agenda  
 18 item, which is public comment.  
 19 Do we have anyone in the room that wishes to  
 20 provide public comment to the Council?  
 21 Yeah. Come on forward if there's anyone in  
 22 the room that wishes to provide public comment.  
 23 MR. CIMON: My name is Norm Cimon. I live  
 24 here in La Grande, Oregon. Thanks. I would like to  
 25 thank the Council for coming here for their -- their

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1 meeting. Thank you very much. Hi, Hanley.  
 2 So I understand that the Council are  
 3 regulators working within the framework established. I  
 4 would ask you now to start thinking seriously about that  
 5 framework in the future. It's going to change  
 6 dramatically. We should have started on this 20 years  
 7 ago. I think that's become abundantly clear to  
 8 everyone. What we're now seeing with the kind of  
 9 destructive changes in the climate regime across the  
 10 planet.  
 11 The way this is now rolling is with the  
 12 development finally of serious talk about a changing  
 13 infrastructure and now with the past issue of the  
 14 Inflation Reduction Act, what we have is an entire suite  
 15 of possibilities that will literally turn the grid  
 16 upside down and that is what I'm here to address.  
 17 Specifically, one of my questions for quite  
 18 a while has been -- and it is something that I did bring  
 19 related to the -- before the Commission. One of my  
 20 questions for quite a while. I've been -- what happens  
 21 when you start -- is it too loud?  
 22 So what happens when you start essentially  
 23 dividing distributed generation in hundreds and  
 24 thousands and tens of thousands locations.  
 25 It's a difficult question. It's also one

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1 that's now been tackled by some professional modelers.  
 2 And what we have is a situation where essentially power  
 3 and ancillary services can be delivered in a way that  
 4 can save upwards of a half a trillion dollars in about  
 5 25 years.  
 6 The work has been -- and I will pass this on  
 7 to the Council. The work has been done finally to  
 8 figure out what the grid starts to look like when you  
 9 turn it upside down.  
 10 And what it looks like is something vastly  
 11 different than what we have right now.  
 12 And because of that, the business models  
 13 that have been used over the years to ensure that rural  
 14 electrification would take hold have rapidly become  
 15 quite obsolete. What we're looking at is a situation  
 16 where there will be digital controls, digital control  
 17 surfs, smart meters, smart inverters essentially  
 18 providing the services and the power necessary on an  
 19 as-needed basis, literally with software running in the  
 20 background that will essentially provide market at the  
 21 realtime production of those services and the energy  
 22 itself.  
 23 That has the effect of essentially turning  
 24 the grid completely upside down and reworking both local  
 25 demand and long-distance demand.

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1 Finally, we have a way to start to approach  
 2 this. But, of course, what we're looking at is the  
 3 economic inertia that's built into the existing models.  
 4 Very difficult situation. We need to turn the grid  
 5 around and essentially the decisions that are going to  
 6 have to be made about the grid will look a lot more  
 7 regional and local than they will, say, over long  
 8 distance.  
 9 The -- that particular analysis, which  
 10 Hanley is looking through right now, is just  
 11 revolutionary. It's a completely new way of thinking  
 12 about how we're going to get our power.  
 13 One of the problems we have -- and it's a  
 14 huge one -- is that the utilities have never thought  
 15 about how they might essentially price and buy services  
 16 from their customers.  
 17 And by that, I mean, their residential and  
 18 commercial customers, because that's where this is going  
 19 to go.  
 20 What this shows quite clearly is that  
 21 essentially putting in rooftop solar, not just the very  
 22 large ones, but rooftop solar, which is the best place  
 23 we could possibly put this stuff in. Because we already  
 24 have those surfaces. We don't have to cover ground. We  
 25 don't have to, essentially, impact the ecology.

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1 Instead, what we can do is start using what we've got,  
 2 which is people's rooftops. That's, of course, exactly  
 3 what is now being incentivized in the bill that was just  
 4 passed. It's revolutionary. The details are just  
 5 amazing in that bill. It's going to change everything.  
 6 And so from the point of view of the kind of  
 7 regulatory framework that the Council now works under,  
 8 that's probably going to be completely turned upside  
 9 down.  
 10 In any case, I did want to bring that so you  
 11 can at least start to take a look at what I think is one  
 12 of the most important analyses that's been done. One  
 13 that finally starts to model the delivery of services  
 14 and power from what will be, as I said, literally tens  
 15 of thousands of locations.  
 16 Thank you for your time.  
 17 VICE CHAIR HOWE: Thank you, Norm.  
 18 I didn't get your last name. Norm, can you  
 19 give us your last name, please?  
 20 MR. CIMON: C-I-M-O-N.  
 21 Thank you.  
 22 MR. CIMON: I live 1208 First Street. I was  
 23 a systems analyst for the U.S. Forest Service. Thank  
 24 you.  
 25 MS. MARCH: Hi. My name is Anne March. I

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1 live at 206 Main Avenue here in La Grande.  
 2 And thank you for being here. For making  
 3 this trip out here. Many of you probably came from the  
 4 Portland area and drove on I-84 and that's what I'm  
 5 going to talk about today for a few minutes. I happened  
 6 to go that way last Thursday. I hadn't done that in a  
 7 long time. I got to Boardman. Guess what I saw? A lot  
 8 of new construction of power lines. Maybe you saw it  
 9 too. There's always been a lot there. There is a lot  
 10 more.  
 11 There are tall power lines, short power  
 12 lines, power lines of all shapes/sizes going every  
 13 direction. It's horrific. It's ugly. And if Boardman  
 14 ever wants to promote tourism, good luck.  
 15 So I sat there thinking how did this happen?  
 16 How could this happen?  
 17 Well, it's probably the Morrow County lack  
 18 of planning department. It also may involve EFSC. I  
 19 don't know. It may involve Oregon Department of Energy.  
 20 I don't know. But it is not visionary.  
 21 Now, when you contrast this to our beautiful  
 22 state -- and, for example, we have open beaches that  
 23 can't be developed. That was because of visionary  
 24 leadership. We have land-use planning that's  
 25 restrictive; not always popular. But due to visionary

1 leadership has preserved our state in a way that the  
2 state I come from doesn't have that. And it's developed  
3 all over.

4 So we have some great things in place in  
5 Oregon. This -- this cannot be a failure of ours to be  
6 looking at developing in such a way that creates the  
7 kind of blight that you see as you drive around.

8 So there's a general comment.

9 So my feeling is, please think about being  
10 visionary leaders. Please think about burying power  
11 lines. Please think about promoting projects that  
12 promote rooftop solar.

13 As I drove past Boardman and the acres and  
14 acres of warehouses, there were no solar panels on those  
15 roofs in sight. That makes me sick.

16 We obviously need -- we need lines. We all  
17 use power. But we need to be looking at upgrading  
18 existing lines and not increasing our human footprint  
19 all over this beautiful state of ours. So those are my  
20 comments. Thank you very much for listening.

21 VICE CHAIR HOWE: Thank you, Ms. March.

22 Are there others in the audience that would  
23 like to testify? Provide public comment. Come on  
24 forward.

25 MR. HORST: Hello. My name is Joe Horst. I

1 here. And I'm really glad you have come to this side of  
2 the state. My name is Sandy Ryman. I live at 604 M  
3 Avenue. And Ryman is spelled R-y-m-a-n, if you need  
4 that.

5 I really want to pick up on a comment which  
6 Anne March had made about potentially burying the lines.

7 And if you folks decide that this project is  
8 really needed, really something you need to go through  
9 with, then I think that buried lines becomes important.

10 Ever since this project started, I've really  
11 relied on the University of Pittsburgh website because  
12 they have a school of electrical engineering at the  
13 University of Pittsburgh and they have a center for  
14 energy and the grid institute at the Swanson School of  
15 Engineering.

16 But both they and the US Department of  
17 Energy have noted that severe weather and climate change  
18 is the leading cause of grid disturbance, particularly  
19 at the distribution level. But it causes very -- by  
20 region and weather vegetation, vegetation management and  
21 other management practices can really impact what occurs  
22 with electrical lines.

23 And there's certain regions of the country  
24 which are typically affected by weather events.

25 And the regions of the country which are

1 live right up here on 86 Hawthorn Drive. I just wanted  
2 to make -- I'm kind of making an observation between --  
3 and I'm not -- I'm not real up on how a lot of this  
4 works, but I've noticed that when it comes -- I  
5 understand that, you know, the Oregon Department of  
6 Energy and Council, they need funding and that's  
7 important to them and I totally get that.

8 But sometimes it's just -- I kind of get the  
9 impression that maybe the funding takes a front seat to  
10 the citizens of Oregon as opposed -- you know, and I  
11 think that sometimes it's -- you know, the citizens of  
12 Oregon seem to get a backseat, you know, to the funding.

13 And I think it's -- sometimes some of these  
14 things are pretty important to us, and I just think  
15 that -- that the Council and the -- and the Department  
16 should maybe just take -- you know, give us a little  
17 more consideration and realize the funding is very  
18 important, but maybe not as important as we are  
19 sometimes.

20 So that's all I've got to say.

21 VICE CHAIR HOWE: Thank you for your  
22 comment.

23 Others interested in testifying or providing  
24 public comment?

25 MS. RYMAN: Hi. Thank you all for being

1 severely affected are the Pacific Northwest, California,  
2 and Texas. And I think if you guys just think back over  
3 the last few years, you would agree that the Department  
4 of Energy has that accurate.

5 And over -- you know, the West has really  
6 seen many outages due to lightening and wildfires and  
7 overall, extreme wind and temperature, can make a  
8 difference.

9 So there's five factors to be considered.  
10 The lightening, wildfires, extreme cold, extreme winds,  
11 and vegetation growth. And those are all factors that  
12 would contribute to long-term maintenance of these lines  
13 for Idaho Power. US --

14 SECRETARY CORNETT: Ms. Ryman, just as a  
15 clarification for you and everybody else, you can  
16 certainly speak generally. But the public comment time  
17 period for the proposed order and the proposed contested  
18 case order on this project are closed. So please do not  
19 speak specifically about this project.

20 MS. RYMAN: I will not speak specifically  
21 about this project then. I will talk about that, you  
22 know, this is a relative weakness for building  
23 long-distance high-voltage electrical transmission lines  
24 due to those factors that I have just noted.

25 And that's the main thing that I wanted to

1 say, is I would like to look at consideration -- strong  
2 consideration that if this project were to go ahead that  
3 there would be a look at using the public right-of-way  
4 access along the interstate system to bury these lines  
5 rather than having them be submitted -- subjected to the  
6 changes that occur weather-wise in this region. Okay.  
7 That's what I wanted to note. Thank you.

8 VICE CHAIR HOWE: Thank you for your  
9 comments, Ms. Ryman.

10 Are there others that would like to comment?

11 MS. MEAD: Good morning and thank you.  
12 My name is Margaret L. Mead. I live at  
13 57744 Foothill Road, La Grande.

14 We often hear that a picture is worth a  
15 thousand words. Most of us have taken photos of an  
16 awesome scene and then become disappointed when the  
17 image isn't what we saw because there's no way to  
18 capture the enormity, the reality in a photo. Or we've  
19 taken a photo and then it's ruined because we have some  
20 power lines running through it. And that's not the  
21 scenery we want to be showing others.

22 And sometimes we've seen photos like through  
23 all different media, and -- and then when we've seen the  
24 place in reality, Grand Canyon, for an example, or  
25 Yellowstone Park, we see those in real life and we have

1 What is the process?

2 And once I started looking into that, I had  
3 a lot of concerns. I just thought, oh, man.

4 My understanding is that this Council  
5 receives its information for making decisions primarily  
6 from two sources; one would be Idaho Power itself, the  
7 other would be Oregon Department of Energy.

8 My understanding is that the statutes  
9 require developers to compensate the Oregon Department  
10 of Energy for the cost and the salaries and expenses  
11 that go into developing a project and that Idaho Power  
12 at this point has paid -- or the Department of Energy --  
13 more than \$4 million towards the work that has been done  
14 on this project.

15 VICE CHAIR HOWE: Ms. Mead, you need to  
16 be -- or I'm sorry, Ms. Morrison, you need to be  
17 speaking in generalities as opposed to this project.

18 MS. MORRISON: Okay. I am speaking -- I am  
19 speaking in generalities.

20 My question is when this Council is  
21 receiving information primarily from the utility  
22 involved who has an interest in building --  
23 building/constructing this -- a development and from the  
24 Department of Energy, which is receiving funding from  
25 the developer in question, how is the Department of

1 a totally different reaction. Therefore, we often make  
2 a real effort to see for ourselves what the lay of the  
3 land is. The actual scene is often very different from  
4 what a flat, one-dimension image depicts.

5 Juries often go to the scene of the crime to  
6 get a real feel and sense of the place. So I would like  
7 to invite you -- that when you're in our beautiful  
8 valley, you take an hour or so from your very full  
9 schedule and check out -- look at what we have here.  
10 See why people are so, you know, enamored of living in  
11 this very special place. Thank you.

12 VICE CHAIR HOWE: Thank you for your  
13 comments, Ms. Mead.

14 Are there others that wish to provide public  
15 comment?

16 MS. MORRISON: Hi. My name is Anne  
17 Morrison. I'm a retired attorney. I live here in  
18 La Grande.

19 I am really a latecomer to these issues. I  
20 know that most of you and many of the people who object  
21 to B2H have been working on these issues for years and  
22 years. It is only in recent months that I have started  
23 looking at these issues.

24 And as an attorney, my interest has been:  
25 How are these decisions even made?

1 Energy acting as an independent party?

2 I've worked in state government. I know  
3 that one of the balls that every state agency constantly  
4 has in the air is the issue of finance, funding, and  
5 where their money is coming from.

6 So my concern is that the information that  
7 comes to this Council comes from two people -- two  
8 parties that are interested in the development of this  
9 property.

10 Oregon Department of Energy receives  
11 significant money from Idaho Power to work on this  
12 project -- to work on any project. And when holding a  
13 utility to account and requiring a utility to comply  
14 with regulations would cut off a significant stream of  
15 funding to that agency, how is this Council receiving  
16 objective information?

17 How -- how -- when both of the parties that  
18 are informing this Council have an investment in seeing  
19 a project go forward, who is representing the public  
20 interest in a situation like this?

21 A second concern that I had when I started  
22 looking into these issue is I started to look at the  
23 make of this Council. And we have seven members on this  
24 Council. From the profiles that are presented by the  
25 Department of Energy, most of the people on this Council

1 work full-time or have significant other volunteer  
 2 interests or members of other boards.  
 3 This Council is making billion-dollar  
 4 decisions on the -- on behalf of the State of Oregon.  
 5 This Council has people with expertise in two of the 16  
 6 areas in which this Council must make decisions. There  
 7 are -- there are issues of scenic value, of cultural and  
 8 historic value, Wildlife protection. Of -- well, the  
 9 Council will know, but there is 16 issues. Each of them  
 10 is very technical, each of them requires a great deal of  
 11 expertise.  
 12 But on this Council, there are people who  
 13 are familiar who have background expertise in only two  
 14 of those areas, which would be cultural resources and  
 15 land use planning.  
 16 The remainder of councilmembers that I as --  
 17 based on their profiles, do not have background in the  
 18 areas of siting, requiring developers to post adequate  
 19 bonds, waste management, weed management, or many other  
 20 issues that this Council must address. And that is a  
 21 significant concern for me.  
 22 Because if we have a Council here that does  
 23 not have the kind of background that is needed to  
 24 address these issues, the Council is entirely dependent  
 25 on the information coming from the two vested parties;

1 division and that kind of hostility and that kind of  
 2 sense out of Eastern Oregon that our interests are not  
 3 being considered, our values are not being taken into  
 4 account, that it is important for this Council to be  
 5 aware that making decisions to impose energy facilities  
 6 over the objections, the strenuous objections of the  
 7 people who will be affected is one more manifestation of  
 8 Western Oregoners ignoring the feelings, the sentiments,  
 9 the values of people who actually live here. And I  
 10 guess that's my entire comment. So thank you.  
 11 VICE CHAIR HOWE: Thank you, Ms. Morrison.  
 12 Are there others that wish to comment?  
 13 Please come forward.  
 14 MR. LEVENTHAL: Hi. I'm Tim Leventhal. I'm  
 15 a resident of La Grande and the former speaker has  
 16 pretty much stolen my thunder, so I just have a few  
 17 brief notes to support what she said.  
 18 And I find it interesting that the budget  
 19 for the Oregon Department of Energy is paid for by  
 20 developers, which run into millions of dollars.  
 21 Then after the developers are given the  
 22 go-ahead to proceed, the Department of Energy continues  
 23 to get paid by the -- by the energy entity.  
 24 So it appears the Oregon Department of  
 25 Energy has a vested interest in the utility succeeding

1 the utility and the Department of Energy.  
 2 I am acquainted with Mr. Jenkins, because  
 3 it's a small community. But my understanding is that  
 4 Mr. Jenkins was originally appointed to this Council  
 5 over the objections -- over significant objections from  
 6 this community from people who were aware of his  
 7 background and ethical issues in this community.  
 8 By statute, councillors are required or  
 9 allowed to serve only two consecutive terms of four  
 10 years. Mr. Jenkins, as I understand it, is now serving  
 11 his tenth year on this Council.  
 12 All of these things cause me to question the  
 13 legitimacy of this entire process.  
 14 I guess the last thing that I would say is  
 15 most of you are not from Eastern Oregon. You may or may  
 16 not be aware that there is significant -- significant  
 17 anger, significant hostility, significant resentment in  
 18 this part of the state based on the fact that decisions  
 19 are made for this part of this state by people in  
 20 Western Oregon who do not live here, who may have  
 21 different values, who may have different attitudes on  
 22 things. It has caused -- it's a significant rift. You  
 23 may be aware that there's actually an organization that  
 24 is trying to take the Eastern Oregon counties and break  
 25 away to join Idaho. I think the context of that kind of

1 no matter the consequences of the outcome or the welfare  
 2 of the livability of the state or the people who live  
 3 here.  
 4 And since the former speaker articulated  
 5 much better than I can, I'll end with that. Thank you.  
 6 VICE CHAIR HOWE: Thank you, Mr. Leventhal.  
 7 Are there others that wish to provide  
 8 comment to the Council?  
 9 MS. GILBERT: Irene Gilbert. 2310 Adam  
 10 Avenue. And I wanted to discuss this.  
 11 This is a newspaper article just within the  
 12 last week, I'd say. Says, "Upcoming investigation: How  
 13 an airborne blade exposed broader problems at PGE's  
 14 flagship wind farm."  
 15 And I'm sure most of you are familiar with  
 16 this. The bottom line is, I worked for Oregon OSHA for  
 17 a dozen years before I retired. And I did -- I trained  
 18 OSHA staff on safety and health issues. I also did a  
 19 lot of customized training for employers.  
 20 And when it comes to things like safety  
 21 inspections, what I used to train people, our staff, was  
 22 go in and look and see what their plans look like.  
 23 Check and see what their lock-out tag-out program is,  
 24 their confined space program, because those plans are  
 25 what dictates whether or not an agency or an employer is



1 going to have a successful safety program or they're  
2 not.

3 So if the plan is inadequate, the outcome is  
4 going to be inadequate. So once you have a good plan,  
5 really, you're just looking at are is management  
6 enforcing the plan and are there consequences when  
7 people don't do what they are supposed to do?

8 So when you come to a situation like this  
9 where for years this wind farm has been spewing bolts  
10 and nuts and pieces of the -- of the turbines all over  
11 the ground and oil leaking. That tells me that the PGE  
12 did not have a good plan for maintaining and managing  
13 their equipment.

14 So I'm concerned because this development  
15 was approved by this Council. And the plans were  
16 developed by the Oregon Department of Energy. So now  
17 you have a development here that not only I'm sure has  
18 inadequate plans, but there hasn't been any monitoring  
19 to show that they are actually following those plans.

20 And I just bring this up because there's  
21 been some discussion about the fact that the Council  
22 tends to approve, basically, site certificates that are  
23 not complete because of -- you can't approve a standard  
24 without knowing what the plans are that are -- that are  
25 going to be implemented in order to meet that standard.

1 In fact, if you read the plain language of  
2 the rules, it says those plans are supposed to be in  
3 final form before you can even issue a site certificate  
4 because they are supposed to be attached and included  
5 with the site certificate.

6 So anyway, that's sort of my spiel about my  
7 concern about how -- how the Council is abdicating their  
8 responsibility for approving final plans that are  
9 required for -- for a site certificate to be issued.

10 A couple other things that I was going to --  
11 to mention. And it kind of goes -- I was thinking about  
12 this because one of the prior commenters -- because I  
13 sat in a -- in a legislative meeting where they were  
14 talking about wind energy. And the discussion was how  
15 many acres of land would it take in order to meet  
16 Oregon's renewable energy standard if we were relying on  
17 wind energy.

18 And, of course, the figure was huge. And  
19 one of the -- one of the representatives said -- was  
20 asked "Where are you going to put all these wind farms?"

21 This is -- you know, hundreds of thousands  
22 of acres to put in these wind farms. And she said --  
23 and this is virtually a quote. She said, "Well, there's  
24 a lot of land in Eastern Oregon."

25 So, you know, when the comment about --

1 So when Council turns over the development  
2 of a draft partial plan to the Energy Facility Siting  
3 Council you're basically turning over the responsibility  
4 for an adequate plan to a group of people who are funded  
5 by the people wanting to develop these energy  
6 facilities. And I believe that that's contrary -- I  
7 know it's contrary to what the statutes and the rules  
8 say.

9 Because to comply with the statutes, it  
10 says, Council must review plans, determine they meet the  
11 standard requirements, and be included in the site  
12 certificate.

13 Those are statutory requirements. So when  
14 you turn over the final plan to another entity, you're  
15 not meeting your commitment to have approved final plan.  
16 And actually, while the statute does allow for  
17 delegation to the Oregon Department of Energy, it does  
18 not delegate -- it does not allow Council to delegate  
19 the decision about eligibility to the Council. And  
20 that's what is occurring when you do that.

21 469.300, 469.370, 469.401, 469.405 -- all  
22 these reference that Council is being the only entity  
23 that is able to issue site certificates, approve site  
24 certificates. You need to be taking responsibility for  
25 that final approval of any kind of plan.

1 about conflicts between energy development and what's  
2 happening in Eastern Oregon compared to what's happening  
3 in the valley, there is really a lack of understanding  
4 of the value of this part of the world to the people who  
5 live in this part of the world.

6 Another, just a brief comment is that when  
7 developers are not supporting of energy that is  
8 location -- that's being created at the location where  
9 it's used and avoiding the need for high voltage  
10 transmission, I don't believe they are meeting their  
11 responsibility to the public.

12 And right now, I know Idaho Power has before  
13 the PUC a requirement or a request that they not have to  
14 reimburse people with rooftop energy only half of what  
15 they are reimbursing other people who are getting -- who  
16 they are getting energy from.

17 So the headline in the paper was that --  
18 that Idaho Power undervalues or believes that rooftop  
19 energy has less value than -- than any other -- than the  
20 other resources.

21 So -- so I -- I encourage you to encourage  
22 developers to be supporting these kinds of things that  
23 really are important in terms of -- of minimizing the  
24 need for these -- for transmission lines or for just a  
25 megadevelopments of any kind as far as renewable energy.

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1 Oregon right now is producing more renewable  
 2 energy between the dams and the wind farms and the solar  
 3 than we use -- than our total use of our energy a year.  
 4 So we are net exporters of renewable energy. And this  
 5 is in the Oregon Department of Energy's report to the  
 6 legislature that they are required to do biannually. So  
 7 it is not something I am just making up here.  
 8 When we keep creating energy in Oregon and  
 9 sending it to other states, we are -- we are agreeing to  
 10 destroy resources in this state. And so it -- I think  
 11 makes it even more important that the mitigation that's  
 12 being required of these developers who are using Oregon  
 13 resources be reasonable and actually address the impacts  
 14 that are happening. And part of that is going to show  
 15 up in these plans that are being shuffled off to the  
 16 Oregon Department of Energy to complete. So that's my  
 17 comment. Thank you very much.  
 18 VICE CHAIR HOWE: Thank you, Ms. Gilbert.  
 19 Is there any other public comment? Come  
 20 forward, please.  
 21 MR. KREIDER: Good morning, all. My name is  
 22 Jim Kreider. 60366 Marvin Road, lovely La Grande,  
 23 Oregon.  
 24 I'll be quick today. I just have a front  
 25 and back, double spaced.

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1 First, I would like to welcome you to  
 2 La Grande. And I'm here to talk about environmental  
 3 justice and the public process in Oregon.  
 4 As I believe you know, in 2008, the Oregon  
 5 legislature passed Senate Bill 420 creating the  
 6 Environmental Justice Task Force.  
 7 In 2022, the legislature, again, passed  
 8 House Bill 4077, which renamed the task force to the  
 9 Environmental Justice Council and broadened the scope of  
 10 its work.  
 11 The Environmental Justice Council is to work  
 12 with the State's natural resource agencies to develop  
 13 environmental justice policies. ODOE was added to the  
 14 last of natural resource agencies in HB 4077 in 2022.  
 15 Now, the scope of the Commission's work is  
 16 outlined in the bill. And that, basically, is to advise  
 17 and provide by a biannual report to the Governor on  
 18 environmental justice issues; advise natural resource  
 19 agencies on environmental justice issues, including  
 20 community concerns and the public participation process;  
 21 (c) identify, in cooperation with natural resource  
 22 agencies environmental justice communities; (d) meet  
 23 with environment justice communities and make  
 24 recommendations to the Governor concerning the needs  
 25 raised by these communities; (e) define environmental

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1 justice issues in the state; and (f) upon the request of  
 2 a natural resource agency, provide consultation and  
 3 review of a natural resource agency's proposed  
 4 administrative rules under ORS 183.333.  
 5 And (2) the council may form workgroups or  
 6 consult with stakeholders as necessary to carry out the  
 7 duties of the council.  
 8 Additionally, the council is to develop an  
 9 environmental justice mapping tool that documents  
 10 environmental health, socioeconomic and other factors  
 11 that affect environmental justice communities.  
 12 Now, an environmental justice community  
 13 includes communities of color, communities experiencing  
 14 lower incomes, tribal communities, rural communities,  
 15 coastal communities, and communications with limited  
 16 infrastructure and other communities traditionally  
 17 underrepresented in the public process and adversely  
 18 harmed by environmental and health hazards, including  
 19 but not limited to seniors, youths, and persons with  
 20 disabilities.  
 21 Now, I submit to you that, in my opinion,  
 22 ODOE and the Energy Facility Siting Council can do a  
 23 better job of meeting the intent of Senate Bill 420 and  
 24 House Bill 4077. You do a very good job of outreach and  
 25 public meetings and coming to the public. But like most

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1 state agencies, you don't seek out the environmental  
 2 justice communities that will be significantly impacted  
 3 by your decisions.  
 4 The proceedings of the Department are  
 5 inherently skewed in favor of the developer. Simply  
 6 put, the developer has the money and the lawyers and the  
 7 Department and the public have neither.  
 8 However, the Department bills the developer  
 9 for all their work. The public cannot.  
 10 Now, I lost my place.  
 11 If the working public wishes to have a voice  
 12 that is truly heard, significant technical research and  
 13 representation at all meetings are the usual avenues to  
 14 be heard. This requires specialized technical skills in  
 15 most circumstances and that requires money to hire  
 16 experts, something the general public does not have a  
 17 lot of.  
 18 I'd like to suggest that the ODOE and their  
 19 billing to the developer include an intervener fund that  
 20 the public can request funds from so that they can  
 21 retain the proper technical experts and attorneys to  
 22 meet and engage the developer on equal terms.  
 23 Consider the public's considerable time,  
 24 effort, technical research, and fundraising required to  
 25 participate in this multi-year marathon that you're

1 considering today. And I can speak from personal  
2 experience; it is life-absorbing. It is -- you have to  
3 be dedicated. And the public have kids to raise. They  
4 have jobs to go to. If it wasn't for us retired folks,  
5 you wouldn't be here today discussing this.

6 So the public needs to have the ability and  
7 the funding to express themselves to you with the  
8 technical expertise and knowledge to play on a level  
9 field.

10 Now, the Oregon Public Utility Commission is  
11 in the process of implementing intervenor funding with  
12 community organizations, and I'm involved in that  
13 process.

14 As a member of the Environmental Justice  
15 Council, I would be more than willing to assist ODOE in  
16 developing such a program.

17 And those are my comments. Thank you.

18 VICE CHAIR HOWE: Thank you, Mr. Kreider.

19 Is there anyone else that wishes to provide  
20 public comment?

21 MR. BARRY: Good morning. My name is Peter  
22 Barry. My family property where we grew -- we all live  
23 is nearby. And we also have property in Wallowa County  
24 and Baker County. And we're happy to call this place  
25 home. And thank you for coming to listen to us. And I

1 And in the B2H case -- I know I'm not  
2 supposed to talk about it specifically, but this is  
3 just -- shows the situation is the law, which is good, I  
4 think, that says -- whoever developer -- must have a --  
5 a lead agency do a comprehensive study.

6 In this case, I think it was two years and  
7 \$2 million. They don't have to follow it. In fact, in  
8 this case, they didn't. But not to, you know, be  
9 specific. But they don't have to follow it. So there's  
10 this great idea. Have -- have an agency get tons of  
11 scientists and look at all the factors should we -- you  
12 know, not should we do it, but if we are going to do  
13 this, where should it go?

14 The developers, by our laws, do not have to  
15 follow this -- this multi-year, multi-million-dollar  
16 study. So we do the study. It's just a waste of time,  
17 basically.

18 And as Jim said, the only people who are  
19 advocating for the people, the public and the children,  
20 and the environment and the future are members of the  
21 public that have no expertise and volunteer their most  
22 precious resource, their time. They give up time with  
23 their kids, their grandkids, their pets, reading the  
24 books they want to read, travelling where they want to  
25 travel because they feel obligated to do their best to

1 would totally support the comments by Mr. Kreider.

2 Being a member of the public in dealing with  
3 you guys and dealing with this process is -- is  
4 unbelievably frustrating, and we feel like complete  
5 underdogs, completely outgunned and like this system is  
6 truly -- and I don't say this lightly -- but truly  
7 corrupt.

8 We know a local lawyer that was here who  
9 then worked with the state legislature that helped  
10 rewrite the laws in Oregon that favor the developers, as  
11 Jim just elucidated.

12 And so -- and this is, of course, common  
13 across the country and across the nation and other  
14 nations, but the people with money, the corporations,  
15 they rewrite the laws to favor themselves. That's the  
16 case. I don't think there's no argument about that  
17 whatsoever.

18 And the system is not only corrupt in that  
19 sense, but that we somehow have abdicated our basic  
20 responsibility, let for-profit corporations that want  
21 maximum profit at least cost to themselves, they get to  
22 make proposals and say, oh, we're going to put this  
23 here. We're going to put that there. And then we all  
24 have to jump through these endless hoops, a decade of  
25 hoops, because they make a proposal.

1 try to do their duty as a -- as a member of a democracy.

2 And so we're -- we just feel completely  
3 outgunned. And Jim's idea, it's well behind the times.  
4 We should have -- how do we hire lawyers? We're  
5 fundraising nonstop, 5 bucks here, 50 bucks there, 100  
6 bucks there, to try to go up against legions of lawyers  
7 and PR people and experts.

8 And, again, the system, I would say, is  
9 corrupt, because as Jim said, it's true the -- the  
10 developers, the for-profit corporations work with ODOE,  
11 who should be serving the public.

12 We pay -- we pay for the agencies and the  
13 government and willingly do that because we need it.  
14 But the developers have this cozy relationship with  
15 ODOE. We don't. How can we? How can we possibly be  
16 close to all of these lawyers and experts that have  
17 these tens of thousands of pages and are just checking  
18 off the boxes.

19 And I guess my -- my main point to you is  
20 you have absolutely no obligation to these for-profit  
21 corporations who just want to make a buck. I used to  
22 think as I grew up that utilities are great. We all  
23 love electricity. I love electricity. But these  
24 utilities that provide us water, electricity, whatever,  
25 they are public service organizations; right? Well,

1 turns out they're not. They are not. They are largely  
 2 for-profit corporations.  
 3 And one proposal, since you guys are the  
 4 experts in the state, I would really urge you -- since  
 5 you know how this system works better than I do, that we  
 6 change the system so there's a state map that has a  
 7 bunch of red areas where we're not going to do anything.  
 8 No wind farms, no pipelines, no electrical transmission  
 9 lines or anything like that, because they are our  
 10 precious resources. We're not going to do any of that  
 11 next to Crater Lake, I hope, or other places like that.  
 12 Right?  
 13 And we should have energy corridors --  
 14 stipulated energy corridors where things can go. Like,  
 15 this is probably a good place for solar farms. No one  
 16 wants one in their backyard. But they are a great idea.  
 17 And I think probably some other people testified. This  
 18 is 2022. Not in rural electrification land anymore in  
 19 1920, which was such a great idea then.  
 20 We're in microgrid, resiliency, and besides,  
 21 new technology and new ideas and we shouldn't be  
 22 thinking of old tech, you know, just stringing up more  
 23 lines that are actually unbelievably inefficient in  
 24 terms of waste of electricity going through the lines,  
 25 but we also live in a high-risk environment where

1 it's important that the Administrative Law Judge, the  
 2 hearings officer, there be another one so the same  
 3 hearings officer isn't hearing appeals to their own  
 4 rulings. That just seems inappropriate in a democracy  
 5 and I wouldn't want to go to a court case if that was --  
 6 that's how it was.  
 7 Again, I'd just like to reiterate. We feel  
 8 like as the public they are representing ourselves and  
 9 our own personal interests and those of our communities  
 10 and those of our state and of the future for an  
 11 intelligent, energy future for everybody that comes  
 12 after us. We feel at the mercy of for-profit  
 13 corporations, like Pacific Power that's owned by one of  
 14 the richest men in the world, Warren Buffett. He's  
 15 telling us what our future is going to be? Is that how  
 16 this system should work?  
 17 So we're at their mercy. Or I would say --  
 18 their lack of mercy. Because all they care about is the  
 19 bottom line. Their accountants invent this stuff. And  
 20 so it's not mercy. It's mercenary. And it's not fair  
 21 to Oregon. It's not fair to the public. It's not fair  
 22 to our great-grandkids. And I think we can do a much  
 23 better job.  
 24 So I would just urge you, feel no  
 25 obligation. In fact, hold corporations to the very,

1 various types of wars are sadly likely and earthquakes  
 2 and so on and big grid is not the way to go.  
 3 Local energy production -- like, I have a  
 4 place up in Wallowa County. And now they are taking the  
 5 canals for the water distribution and they are putting  
 6 turbines in there and they are making enough electricity  
 7 to run all of the pivots. Great idea. Local solutions.  
 8 And we have all this technology now and we're talking  
 9 about. You guys didn't invent it. I didn't invent.  
 10 Somebody said, I know. Let's build a pipeline across  
 11 Oregon. Let's build a transmission line across Oregon  
 12 because we can make money. Not to serve the people.  
 13 Not because it's the best idea.  
 14 And so my -- my point is that -- mostly,  
 15 that you have no obligation to check off these boxes and  
 16 rubber stamp these proposals.  
 17 And I know bureaucratically that that's how  
 18 it goes. There is, like, we've got to do this; got to  
 19 do this; jump through the hoops; sign it off; next  
 20 project.  
 21 And you guys, I know, are up to your  
 22 eyeballs in that. I've never seen a binder that thick  
 23 in my life. Oh, my.  
 24 I'll try to wrap up here.  
 25 One very specific thing, too, is I think

1 very, very highest standards, because that's what we  
 2 expect of you and hope from you.  
 3 So thank you very much for listening.  
 4 VICE CHAIR HOWE: Thank you, Mr. Barry.  
 5 Anyone else that wants to comment?  
 6 MS. RAY: Hi. My name is Annie Ray, and I  
 7 live in Portland now. But for 30 years, I did live out  
 8 here. My children played basketball in this gym and I  
 9 went to college when Mr. Gilbert was the President of  
 10 Eastern Oregon State College and there were public  
 11 hearings held then addressing concerns about Idaho  
 12 Power.  
 13 So Idaho Power has a long, long history  
 14 here. And they wanted to build a dam to block the Snake  
 15 River. There would be no Hells Canyon. There would be  
 16 no free-flowing river at all if the people in this  
 17 community hadn't stood up to Idaho Power. And Mark  
 18 Hatfield and Bob Packwood presided and it was right here  
 19 on this campus.  
 20 And the rules were made that you couldn't  
 21 wear a logo or even a basketball cap that said "SOS,  
 22 Save Our Snake." People were arrested for wearing a  
 23 baseball cap, you know, a basic First Amendment right.  
 24 So, in some ways, we have come a long way.  
 25 We can have our signs and say our piece. However, our

1 speech is still restricted by obfuscated processes and  
2 procedures that say, no, you cannot speak. We won't  
3 hear that. That's not allowed here. That is against  
4 the rules. And don't you dare wear a baseball cap that  
5 says "SOS" or we will throw you in the back of a police  
6 car and rough you up.

7 So we have seen it all. And Idaho Power did  
8 not keep their word about building fish ladders. I  
9 don't need to go into all of the history. A lot of  
10 people have very hard feelings about the -- the history  
11 of Idaho Power on this landscape.

12 And if we didn't stand up and if we did not  
13 have the visionary leadership of Packwood and Hatfield  
14 and the others, you know, over time -- and I'm old  
15 enough. I saw it with my own eyes. There's been such a  
16 turnover. I mean, there always is. The nature of  
17 history marches on. And people weren't here. All the  
18 staff is different. All the -- you know, community  
19 comes and goes.

20 But those of us who are old enough and were  
21 there recognize what would have been lost had the people  
22 not been courageous and willing to put themselves at  
23 great discomfort to try to do the right thing.

24 And so I feel like the history of this place  
25 in this room on this campus in this town within these

1 standards and, again, it's just check, check, limited,  
2 limited, like you are just with blinders on.

3 And it's very, very frustrating. State  
4 agencies are underfunded. There's rules are that are  
5 very outdated. There's lists that don't get kept  
6 up-to-date. And it's -- you know, it's really  
7 unfortunate. But we need you guys. I mean, us and the  
8 public, we need folks in the regulatory arena as  
9 yourselves to protect us.

10 I mean, how else can we do this?

11 If State agencies are underfunded, but you  
12 guys are the Council, maybe you guys can step up and  
13 step out. You know, I -- I just -- it's just really a  
14 difficult situation and we need your protection.  
15 Because who else are we going to turn to?

16 And -- but it's even more than just needing  
17 protection and asking you guys for support in that kind  
18 of a lookout for us.

19 You have a huge opportunity to be champions  
20 of Oregon's energy policies in the future and not just  
21 bureaucrats. Check. Check. Check. Actually get out  
22 in front of this and be the champions of the future.

23 Many people talked about our beautiful  
24 state. We're known for being a green state. We know we  
25 have to wean ourselves from fossil fuels. We have to

1 rivers within these mountains continue to be the  
2 foundation of what we're all about here.

3 And that we need to continue, you know, do  
4 not give up because Idaho Power has different staff.  
5 They have different money. They keep on doing their  
6 thing. However, the land is still here.

7 And that's what I wanted to bear witness to  
8 today. Thanks for having this public hearing.

9 VICE CHAIR HOWE: Thank you, Ms. Ray.  
10 Anyone else to comment?

11 MS. KREIDER: Hi. Thanks for having us.  
12 This is Fuji Kreider. Living in La Grande. I wasn't  
13 sure I was going to speak, but given all the  
14 conversation, I think I had to.

15 I just wanted to say that from all these  
16 meetings with you guys and even other meetings -- I'll  
17 sit a little closer. Thanks, Hanley -- for various  
18 rulemakings and other meetings we've been at and all. I  
19 often feel like you're basically -- and I'm sitting  
20 in -- like, it is democracy by checklist. So we had a  
21 public hearing. Check. We have a public comment  
22 period. Check. We have this. Check. Check. Check.

23 And I just encourage you to not -- maybe you  
24 don't feel this way, but it feels this way to the  
25 public, that you're hiding behind these rules and these

1 decarbonize the grid. All of this stuff. You know,  
2 we're not all hicks out here. We have a vision for the  
3 future.

4 Tomorrow afternoon you're going to have  
5 another meeting. I don't know if I'm going to make it  
6 or be able to after this marathon we've been through.  
7 Maybe by Friday if I read your 13-page piece, I'll get  
8 something to you by Friday.

9 But if I don't, I'll tell you this. I'm  
10 giving you my input now. The federal dollars should go.  
11 We have these -- huge opportunity. You guys are good --  
12 you have a huge opportunity here to look to the future.  
13 Okay. We could -- yeah. You know, the stuff we've been  
14 talking about since 2015, all the IRP meetings and  
15 everything up --

16 THE COURT REPORTER: We lost audio.

17 COUNCILMEMBER CHOCKTOOT: For the record,  
18 this is Perry Chocktoot. I lost audio also.

19 (Recess.)

20 VICE CHAIR HOWE: Okay. I'm going to bring  
21 the Council back to -- from recess and we're continuing  
22 on with the public comment. And we're going to check  
23 the phone lines, as well as people on the webinar, to  
24 see if there's anyone that wants to provide comment.

25 MR. ADAMS: So if you would like to make a

1 comment, please raise your hand on the webinar. I don't  
 2 see anybody yet.  
 3 VICE CHAIR HOWE: Anyone on the webinar  
 4 wishes to make comment, please raise your hand.  
 5 MR. ADAMS: We have attendees, but I don't  
 6 see any hands raised. So it doesn't look like anyone  
 7 who is on the Webex wishes to make a comment.  
 8 VICE CHAIR HOWE: Okay. Do you have a way  
 9 to check the folks on -- that might be on the phone?  
 10 MR. ADAMS: We don't have any phone  
 11 attendees right now.  
 12 VICE CHAIR HOWE: Okay. One last time,  
 13 anyone in the audience wish to make comment that hasn't?  
 14 Going once. Going twice.  
 15 Okay. I think we'll close the public  
 16 comment. And we'll move back to our review of the  
 17 proposed order and proposed contested case order on the  
 18 need standards 1 and 3.  
 19 And I'll turn it over to Ms. Tardaewether  
 20 and Counsel Ratcliffe.  
 21 MS. TARDAEWETHER: For the record, Kellen  
 22 Tardaewether. I'm getting back. Logged in and I'll  
 23 pull up -- I'll get the PowerPoint up, ready. But I'm  
 24 going to pass this off to Jesse. Just to -- we just  
 25 wanted to clarify. We did the straw poll and we just

1 encompass both the reliability and the least-cost, then  
 2 I think we're okay. And then we would move on to the  
 3 public services.  
 4 VICE CHAIR HOWE: I'm seeing all heads nod.  
 5 Except I can't see Mr. Chocktoot.  
 6 Councillor Chocktoot.  
 7 COUNCILMEMBER CHOCKTOOT: I can hear you.  
 8 VICE CHAIR HOWE: Okay. Are you in  
 9 agreement with where we're at as far as the straw poll  
 10 that we took earlier was clear?  
 11 COUNCILMEMBER CHOCKTOOT: I wasn't a part of  
 12 your straw poll, so I have to abstain.  
 13 VICE CHAIR HOWE: Yeah, I think so.  
 14 COUNCILMEMBER CHOCKTOOT: There was a period  
 15 of time where I couldn't hear you.  
 16 SECRETARY CORNETT: Yeah. Councilmember  
 17 Chocktoot -- for the record, Todd Cornett.  
 18 So this was going back to prior to the  
 19 public comment period we did the need standard. And so  
 20 I did call your name and I thought you responded on that  
 21 as well.  
 22 COUNCILMEMBER CHOCKTOOT: Okay. I thought  
 23 it was a vote you just took while we were off.  
 24 SECRETARY CORNETT: No. Yeah. We  
 25 apologize. We didn't realize that we had kicked off.

1 wanted to clarify some matters.  
 2 MR. RATCLIFFE: This is Jesse Ratcliffe.  
 3 And so when we had left the need standard, we --  
 4 Secretary Cornett had given you a straw poll subject.  
 5 And -- but after we went on break here, we realized that  
 6 we just wanted to make sure that it was very clear that  
 7 when we're talking about the proposed order. So we have  
 8 the two contested case issues.  
 9 But on the proposed order piece of it, that  
 10 that doesn't include both the least-cost rule and the  
 11 system reliable rule. And that because the proposed  
 12 order deals with both of those issues, when the straw  
 13 poll was put to you, it was intended to encompass both  
 14 of those things.  
 15 Those both have to do with need.  
 16 So just to -- we're -- our goal here,  
 17 basically, is to try to leave this meeting with any  
 18 direction that you all have for the staff or for me so  
 19 that we can come back. And so if we see an area of  
 20 uncertainty, we just want to make sure that we're  
 21 clearing it up.  
 22 So this is just a quick opportunity that if  
 23 anyone felt like that wasn't clear enough and we needed  
 24 to go through another straw poll round, we can do that  
 25 now. If everyone understood that that was intended to

1 But when the webinar shut down, we were on public  
 2 comment period. So there has not been a straw poll  
 3 since the need standard.  
 4 COUNCILMEMBER CHOCKTOOT: All right. Okay.  
 5 I support it. I support it.  
 6 SECRETARY CORNETT: Thank you.  
 7 COUNCILMEMBER CHOCKTOOT: Thank you for that  
 8 clarification.  
 9 VICE CHAIR HOWE: I think that Council is  
 10 clear then.  
 11 MR. RATCLIFFE: Thank you.  
 12 MS. TARDAEWETHER: For the record, Kellen  
 13 Tardaewether.  
 14 Could you pass me the ball, please?  
 15 No. We're working on getting the  
 16 PowerPoint -- okay.  
 17 COUNCILMEMBER JENKINS: Mr. Chair, this is  
 18 Hanley.  
 19 Kellen, can you start with the next issue?  
 20 MS. TARDAEWETHER: Absolutely. I'm going to  
 21 start the next standard. It's the public services  
 22 standard. And I will -- we are just -- to do a schedule  
 23 check from our estimated agenda, we are about 45 minutes  
 24 behind. So I'm just going to try to move quickly  
 25 through my portion and share my screen.

1 Here we go. Okay. Now we can go.  
 2 In July, we touched on the public services  
 3 standard or I referenced it because we also cut -- we  
 4 covered waste minimization and water rights. And  
 5 there's this overlap. So I did kind of talk about  
 6 public services in July. But -- but again, the lens  
 7 through those standards was a different -- from the lens  
 8 of public services.

9 Under the public services standard, there  
 10 must be a demonstration of minimizing impacts or that  
 11 it's not likely, taking into account mitigation, that  
 12 there be significant adverse impacts on the ability of  
 13 public and private service providers to provide their  
 14 service.

15 And there's the list of public and private  
 16 service providers at the bottom of the standard. This  
 17 also corresponds with the information in Division 21  
 18 that they are required to submit -- that the applicant  
 19 is required to submit in their application.

20 So there's a list of water service  
 21 providers. It's estimated that approximately just under  
 22 55 million gallons of water would be used for  
 23 construction of the facility, and a lot of that is for  
 24 the construction -- and watering of roads. Dust -- dust  
 25 minimization and a lot of the -- of the groundwork and

1 This is the vehicle trips, the estimated  
 2 vehicle trips. This includes light-duty construction  
 3 trucks and heavy-duty construction trucks, as well as  
 4 personal vehicles from construction workers.

5 And so that is just under 1300 maximum daily  
 6 trips associated with the construction spread. There's  
 7 also a very lengthy table in the proposed order that  
 8 breaks out the -- because we talk about a construction  
 9 spread and just in the -- generally, in constructing a  
 10 very long linear facility, it's going to happen in  
 11 segments.

12 And so -- so in the traffic impact table, we  
 13 talk about kind of north to south or south to north of  
 14 breaking out. And it kind of shakes out in a per County  
 15 and some of it. Some spreads. There's an overlap in  
 16 the County but it's basically per -- per county of  
 17 constructing where in a maximum scenario where the  
 18 maximum amount of workers and trucks and people are  
 19 on-site, what are those traffic impacts in that area.

20 So -- and that table also has and includes  
 21 ratios of estimating, based on existing traffic volumes  
 22 with the additional traffic.

23 And the -- the -- the recommendation from  
 24 those tables is that taking into account mitigation,  
 25 which are items and best management practices included

1 these are -- this is the worst-case water scenario --  
 2 worst-case scenario for impacts.

3 But -- and then as we discussed under water  
 4 rights, but here the lens under public services is that  
 5 the applicant provided evidence from these water service  
 6 providers that they would be able to continue to provide  
 7 their service, providing water, and be able to supply  
 8 water for the construction of the facility.

9 The operational aspect of the -- of water  
 10 would just be at the Long Horn substation, which would  
 11 be supplied from the Port of Morrow.

12 Housing. Here it's a little bit hard to see  
 13 on my screen. But this is a summary table that was  
 14 generated in the proposed order. And what the applicant  
 15 looked at is housing availability in each county. They  
 16 looked at temporary housing, hotels, and RV parks,  
 17 places where temporary workers that would come in to  
 18 construct the facility would be able to use.

19 And the Department recommends that with the  
 20 construction of the facility there would -- it would not  
 21 significantly impact the ability of housing providers to  
 22 provide housing.

23 This table is a little bit small on the  
 24 screen as well. It's a derivative of a -- of the  
 25 proposed order table as well.

1 in the draft traffic management plan, taking into  
 2 account mitigation that the impacts per those spreads  
 3 would not significantly impact the service providers.

4 So the service providers are generally  
 5 public works departments. People who maintain roads.  
 6 We look at road conditions a lot. You can also look at  
 7 law enforcement personnel. Anybody that's on-site that  
 8 would be impacted by increased volume.

9 So we have this recommended public services  
 10 condition two which is a county-specific transportation  
 11 management plan.

12 The condition and the plan requires that the  
 13 applicant, prior to construction, coordinate with the  
 14 department and the affected county in the finalization  
 15 of these plans.

16 And it -- it is a draft plan.

17 So -- but there are several best management  
 18 practices on -- on items to reduce impacts from traffic.

19 So we have flagging pilot vehicles, hours of  
 20 operation. One of the most important aspects that would  
 21 be finalized are -- are the actual routes that would be  
 22 used based on the final transmission line routes  
 23 selected.

24 So this kind of goes on to the -- part of  
 25 the process of finalizing plans. As we're aware, the

1 applicant is proposing the proposed route and several  
2 alternative routes. If we run the assumption or the  
3 scenario that Council approves all of those or approves  
4 the proposed route and then in one area, one alternative  
5 route and then denies another one, it allows the  
6 applicant the opportunity to select its final route out  
7 of the approved routes.

8 So, for instance, in Malheur County we have  
9 one area where there is several alternatives in one  
10 area. Same thing with Morrow County. Morrow County  
11 along the Bombing Range Road, there's actually two  
12 alternatives in the proposed route where ultimately one  
13 would be selected, which means that that would be then  
14 the final route which then is finalized, then you have  
15 to look at which transportation routes are going to be  
16 used for that. So that is some of the items that would  
17 be finalized as part of that traffic management plan.

18 Recommended public services condition three  
19 also has a helicopter use plan that would be -- that  
20 would be submitted. Because as we're aware, there is  
21 helicopter use proposed in some areas, particularly  
22 where there's limitations on site access and to  
23 transport crews and stringing transmission lines.

24 And I am going to stop there.  
25 Did you have anything you wanted to add?

1 significant adverse impact to the ability of public and  
2 private firefighter's ability to provide fire protection  
3 services.

4 The standard -- the hearing officer ruled,  
5 though, that the standard does not require that IPC  
6 prove that the proposed facility cannot or will not  
7 cause a fire.

8 She found that Mr. Cooper correctly  
9 identified that it would take the La Grande Rural Fire  
10 Protection District more than four to eight minutes,  
11 which was the response time identified in the Exhibit U  
12 of the application to respond to a fire near Morgan  
13 Lake.

14 She concluded, however, that in the context  
15 of the overall analysis of the issue, that that did not  
16 affect the outcome because Idaho Power, in its  
17 application, had acknowledged that response times would  
18 vary.

19 There was additionally evidence about the --  
20 the likelihood of fires and the ability of the agencies  
21 to respond in other ways. So the findings there were  
22 that although fires are not uncommon in the project  
23 area, the fire protection agencies are able to contain  
24 small fires quickly.

25 Some of the evidence that was provided on

1 MR. RATCLIFFE: So this is Jesse Ratcliffe,  
2 for the record, again. And what we're going to be  
3 moving to in terms of the contested case issues and  
4 exceptions is issue PS-4. The party is Mr. Cooper.

5 The issue raised in the contested case was  
6 related specifically -- (audio disruption) -- the risk  
7 of wildfire arising out of operation of the proposed  
8 facility. The ability of local fire fight --

9 THE COURT REPORTER: We don't have a very  
10 good connection you keep breaking and cutting in and  
11 out.

12 (Discussion on webinar connectivity.)

13 MR. RATCLIFFE: So since you probably didn't  
14 catch the initial part of that. I was just reading out  
15 the -- the issue that had been raised by Mr. Cooper  
16 pertaining to fire protection. Whether the applicant  
17 adequately analyzed the risk of wildfire arising out of  
18 operation of the proposed facility and the ability of  
19 local firefighting service providers to respond to  
20 fires.

21 So the hearing officer addressed this in her  
22 opinion and first set out what the standard -- the  
23 broader public services standard requires in this  
24 particular case, requires that the Council find that the  
25 proposed facility would not be likely to result in a

1 this point, so Idaho Power had provided 27 years of data  
2 from the wild land fire decision support system for  
3 fires within 50 miles of the proposed facility.

4 The data included fire size and cause, as  
5 particularly relevant here. It showed that roughly 1.35  
6 percent of fires were caused by power lines.

7 Idaho Power evaluated the probability of  
8 fire to be contained in -- in an initial response based  
9 on size and intensity.

10 And the hearing officer concluded that it  
11 can be shown that fires within the project area are --  
12 are capable of being contained when they are still  
13 small.

14 There are a number of conditions that the  
15 hearing officer noted that bear on the responsiveness of  
16 the fire protection agencies. Those include the fire  
17 suppression plan, which is a component of public  
18 services condition six; the right-of-way clearing  
19 assessment, which is a component of land use condition  
20 16; and the vegetation management plan, which is a  
21 component of fish and wildlife condition two.

22 She found that all of these will work  
23 together to reduce the risk of project-related fires.

24 Hearing officer noted that the La Grande  
25 fire protection district has mutual aid agreements with



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1 both the City of La Grande and the Department of  
 2 Forestry. Both of these entities are closer to Morgan  
 3 Lake Park and primarily responsible for Morgan Lake  
 4 Park. And just really briefly for the Councilmembers  
 5 who may not be familiar with what a "mutual aid  
 6 agreement" is.  
 7 It's pretty much what it sounds like. It's  
 8 a fire protection or other public safety entities that  
 9 are agreeing to help each other out when help is needed.  
 10 And there are parameters put on that and an  
 11 understanding of who's supposed to do what when if there  
 12 is an emergency that needs responding to.  
 13 The hearing officer also concluded that  
 14 aerial firefighting dispatch center located at the  
 15 La Grande airport would be capable of supporting the  
 16 fire response.  
 17 And, finally, the hearing officer had  
 18 recommended amendments to the public service condition  
 19 six. This is the one, again, that -- that deals with  
 20 the fire suppression plan.  
 21 She recommended that additional fire  
 22 suppression plan requirements include an evaluation of  
 23 seasonal work restrictions, on-site firefighting  
 24 equipment, and necessary fire protection resources based  
 25 on an evaluation of sensitive seasonal conditions and

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1 current information regarding response times from the --  
 2 La Grande Rural Fire Protection District.  
 3 So that's the summary of the hearing  
 4 officer's findings there.  
 5 And we can go to Mr. Cooper's oral argument  
 6 which, I believe, is recorded testimony.  
 7 (Played recorded testimony of Mr. Cooper.)  
 8 "I am Petitioner Matt Cooper addressing  
 9 issue PS-4, fire protection. I live at  
 10 the base of Mill Creek Canyon, less than  
 11 two miles below Morgan Lake Park. I  
 12 have lived and recreated in La Grande  
 13 for 31 years. Our home was recently  
 14 identified as being in a wildland-urban  
 15 interface or WUI, and being high risk  
 16 for wildfire by the Oregon Department of  
 17 Forestry.  
 18 MR. ADAMS: You can hear it up there?  
 19 Crystal, were you able to hear the recorded  
 20 testimony?  
 21 THE COURT REPORTER: The last thing I heard  
 22 was "Oregon Department of Forestry."  
 23 MR. ADAMS: Yeah. Okay. Then you're  
 24 hearing it. I'll restart it.  
 25 (Played recorded testimony of Mr. Cooper.)

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1 "Some neighbors are now being denied  
 2 insurance on their homes. It is ironic  
 3 that Idaho Power proposes to build a  
 4 power line through this same area. I  
 5 request the Council deny the site  
 6 certificate or remand the proposed  
 7 contested case order. Alternatively,  
 8 underground the route through the Morgan  
 9 Lake region, which is cited in a 2005  
 10 planning document as the number one WUI  
 11 in the county. I raise one exception.  
 12 The ALJ erred in not including the  
 13 Department's recommended amendment to  
 14 recommended public services condition  
 15 six regarding accuracy of response times  
 16 presented in the ASC Exhibit U, Table  
 17 U-10. The Department was correct in its  
 18 recommended provisions especially  
 19 recommendation number 2, identify  
 20 updated information from the La Grande  
 21 rural fire protection district on the  
 22 number of full-time and volunteer  
 23 employees, number and type of equipment  
 24 and vehicles, and response times to the  
 25 facility. Though only raising one

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1 exception, I strongly disagree with  
 2 Judge Webster's decision, which took  
 3 Idaho Power's statements at face value  
 4 and barely acknowledged my closing  
 5 arguments. IPCs closing brief relies  
 6 heavily on expert witnesses, especially  
 7 Berkeley resident, Chris Lautenberger,  
 8 who admitted under cross-examination  
 9 that he has never visited this area.  
 10 IPC statements are simplistic, blithe,  
 11 and overly broad. For example, they say  
 12 the transmission fire would not spread  
 13 into La Grande because winds travel from  
 14 the north during fire season. And fire  
 15 always travels uphill. My evidence  
 16 shows that as early as the 1860 fires  
 17 swept down the Mill Creek Canyon, both  
 18 northward and downhill. IPC states that  
 19 500 kilovolt lines and steel  
 20 transmission towers rarely cause fires,  
 21 yet their witnesses admit that there are  
 22 five documented fires caused by these  
 23 lines, one apparently caused by a Mylar  
 24 balloon. My evidence demonstrates that  
 25 IPC's originally stated response times

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1 fire in this region, four to eight  
 2 minutes, were grossly understated. A  
 3 more accurate estimate would be 17 to 23  
 4 minutes. With the dry and windy  
 5 conditions that prevail here in summer,  
 6 even a few minutes could be crucial.  
 7 IPC claims that it does not matter that  
 8 the La Grande rural would take so long  
 9 to respond as they have mutual aid  
 10 agreements with the Department of  
 11 Forestry and the City of La Grande. But  
 12 they have produced no evidence on the  
 13 response times of these other agencies.  
 14 Morgan Lake Road is a single-lane, 17  
 15 percent grade gravel road and is the  
 16 only viable route in or out of the  
 17 region. How long would a city fire  
 18 truck take and would they be blocked by  
 19 residents trying to flee the fire?  
 20 There is no emergency evacuation plan  
 21 for this area. Bottom line is that the  
 22 risk analysis provided by IPC is  
 23 inadequate. And when requests are made  
 24 to upgrade their analysis, they are  
 25 still not complying. Even if the OPUC

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1 just two months ago, the agency told IPC  
 2 to go back and fix their plans. IPC  
 3 seems to have little interest in the  
 4 real risk of wildland fire in Eastern  
 5 Oregon. I request that the Council  
 6 remand this issue or deny the site  
 7 certificate."  
 8 (End of recorded argument.)  
 9 MS. PEASE: Okay. Thank you.  
 10 Good morning. For the record, this is  
 11 Jocelyn Pease for Idaho Power Company.  
 12 Mr. Cooper, in his oral argument, it was  
 13 much more expansive than what we he'd filed in his  
 14 exception document. I would like to first focus on his  
 15 arguments and his exceptions. This is the exceptions  
 16 hearing.  
 17 So I would first note that he commented that  
 18 the hearing officer had erred by not including a  
 19 proposed language in the recommended public services  
 20 condition. In fact, that language that he was objecting  
 21 to was adopted and incorporated into the hearing  
 22 officer's proposed contested case order. So that issue  
 23 has been resolved.  
 24 Mr. Cooper had also raised arguments about  
 25 the response time being four to eight minutes. That is

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1 not really an issue. It's moot because the -- the  
 2 recommended public services condition six was ultimately  
 3 updated to require Idaho Power to update the response  
 4 times that were included in a table in the proposed  
 5 order, PS-9.  
 6 I would also just comment more generally in  
 7 response to Mr. Cooper's arguments that Idaho Power  
 8 provided evidence in connection with the -- both the ASC  
 9 and through the contested case process that a 500 kV  
 10 transmission line, like the project, is not likely to  
 11 cause a fire and, therefore, will not result in any  
 12 significant adverse impact to the availability of fire  
 13 protection agencies to provide fire protection services;  
 14 and, moreover, in the unlikely event of a fire at or  
 15 near the project site, the evidence in the record  
 16 demonstrates that the fire response organizations are  
 17 capable of controlling that fire.  
 18 In connection with Mr. Cooper's assertion  
 19 regarding the Wildfire Mitigation Plan, I would note  
 20 that there's evidence in the record from the contested  
 21 case hearing from Idaho Power's witnesses explaining  
 22 that the Wildfire Mitigation Plan is a living and  
 23 breathing document that will be updated in accordance  
 24 with the PUC's regulations periodically, as is the  
 25 public safety power shutoff plan that's included with

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1 that Wildfire Mitigation Plan.  
 2 Idaho Power is responsible to the Public  
 3 Utility Commission for providing plans that are in  
 4 compliance with the Public Utility Commission's  
 5 regulations and will continue to do so.  
 6 And those plans will apply to the project  
 7 when the project is constructed. Thank you.  
 8 VICE CHAIR HOWE: Thank you, Ms. Pease.  
 9 Are there any questions from Council?  
 10 Okay.  
 11 MR. ROWE: Patrick Rowe, Department of  
 12 Justice on behalf of the Department of Energy.  
 13 Largely, similar comments as provided by  
 14 Ms. Pease, this is an exceptions hearing. And  
 15 Mr. Cooper's exception was pretty narrow. It was that  
 16 the hearing officer did not include the Department's  
 17 proposed amendments to public services condition six  
 18 related to the La Grande rural fire protection district  
 19 response times. That's not accurate.  
 20 As Mr. Ratcliffe pointed out and Ms. Pease  
 21 pointed out, the hearing officer did include the  
 22 Department's recommended amendment. It's on page 227 of  
 23 the contested case order. I don't know if Mr. Cooper  
 24 just overlooked that but on page 227 of the proposed  
 25 contested case order in second amended recommended

1 public services condition six, that includes the  
2 Department's recommendations and it specifically  
3 includes the language about updating the table to  
4 include the response times from the La Grande Rural Fire  
5 Protection District.

6 That -- that condition largely talks about a  
7 construction plan, so the fire suppression plan is  
8 related to risks of fire during construction.

9 So one other thing I would like to point out  
10 with regard to Mr. Cooper's concerns about wildfire --  
11 which really go beyond the scope of his exception but  
12 I'll address it -- is recommended public services  
13 condition seven.

14 Ms. Pease referenced Idaho Power's Wildfire  
15 Mitigation Plan. That plan addresses the risks that  
16 wildfire may pose during operations.

17 So that's the plan -- that's the condition  
18 that would, again, address risk during operations. It  
19 requires a Wildfire Mitigation Plan and it addresses the  
20 underlying issue of whether the applicant adequately  
21 analyzed the risk of wildfire arising out of operations.

22 So you've got second amended recommended  
23 public services condition six addresses the exception  
24 Mr. Cooper made, includes -- requires updated response  
25 times from the La Grande Rural Fire Protection District,

1 own condition.

2 COUNCILMEMBER CONDON: Okay.

3 MR. ROWE: You will be relying on PUC for  
4 other projects to which the new wildfire rule applies.

5 COUNCILMEMBER CONDON: Okay. Thank you very  
6 much and I have another question.

7 And it's related to the second amended --  
8 recommended public services six, the first paragraph.

9 And the additional language, "The plan  
10 finalization process shall consider (a)(i)(a)(ii) unless  
11 otherwise identified by a land management agency or  
12 other participating review agency."

13 And does the plan finalization process  
14 include approval? I mean, are we approving -- is there  
15 an approval of the plan?

16 I don't see approval here. I'm sure it's  
17 there somewhere, but does the Department approve this  
18 plan, this final plan?

19 Does that make sense?

20 MR. ROWE: I'm following -- Sarah, maybe we  
21 can tag team on this one. I --

22 MS. TARDAEWETHER: For the record, Kellen  
23 Tardaewether. Let me pull this up here real quick.

24 MS. ESTERSON: I think it's intended, but  
25 you are correct. It doesn't specifically say "approve,"

1 and you have recommended public services condition seven  
2 requires a Wildfire Mitigation Plan which will address  
3 the risk of wildfire to the facility during operations.

4 VICE CHAIR HOWE: Thank you, Mr. Rowe.  
5 Any questions from Council?  
6 Councillor Condon.

7 COUNCILMEMBER CONDON: Councilmember Condon,  
8 here. Just -- I just want to make sure I'm clear on  
9 this.

10 The Wildfire Mitigation Plan that you talked  
11 to, I understand it's outside the exception. But that's  
12 really regulated by the PUC. As I understood it from --

13 MR. ROWE: PUC is requiring it. And -- you  
14 know, we just passed the wildfire rules. Wildfire rules  
15 essentially say if PUC approves somebody's Wildfire  
16 Mitigation Plan that's good for our purposes.

17 But those rules don't apply to this project.  
18 But they do have a Wildfire Mitigation Plan that is  
19 required -- or would be required if you adopt  
20 recommended public services condition seven.

21 COUNCILMEMBER CONDON: Right. I'm trying to  
22 clarify just our reliance on the PUC with respect to  
23 the --

24 MR. ROWE: In this instance, you are relying  
25 on the recommended public services condition seven, your

1 where in other conditions we would include that. I  
2 think the omission is not intentional. So if you wanted  
3 to ad "approval."

4 COUNCILMEMBER CONDON: I'd recommend adding  
5 "approval."

6 VICE CHAIR HOWE: Yes, Councillor Beier.

7 COUNCILMEMBER BEIER: So condition six  
8 relates to construction activities, yes.

9 So the plan language is pretty general about  
10 risk and evaluation. So often we're seeing red flag  
11 warnings that say, you know, don't -- don't operate in  
12 the forest. I'm wondering if the plan requirements are  
13 that specific.

14 Many of the national forests have, you know,  
15 you can't cut wood during these conditions.

16 Are there conditions during construction  
17 that would be that specific to avoid wildfire, as  
18 opposed to condition seven during operation?

19 I just -- we never see the guts of these  
20 plans, so it's hard to know what they include and what  
21 they don't include.

22 It's -- it's general enough that I think it  
23 would fall under that condition, but I just want to make  
24 sure if the federal government is saying thou shalt not  
25 operate on forest land, that these certificates would

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1 kind of align with that.  
 2 And again, just during construction, because  
 3 we know vehicles coming and going and parking on dry  
 4 grass, not a good thing.  
 5 MS. ESTERSON: So we will be covering an  
 6 issue tomorrow that's -- it's called LU-9 that's  
 7 specific to the question of red flag warning.  
 8 But the fire suppression plan that would be  
 9 finalized prior to construction under public services  
 10 condition six does have specifics. And it's the  
 11 specifics are about worker training, restrictions, areas  
 12 where vehicles can park, the type of fire response and  
 13 fire prevention equipment that has to be on-site during  
 14 construction.  
 15 MR. RATCLIFFE: So I believe we had a  
 16 suggestion from Councilmember Condon on the table to  
 17 specifically -- to make it explicit that approval is  
 18 required as part of this condition.  
 19 VICE CHAIR HOWE: Do we need a straw poll on  
 20 that or just head nods and then Secretary Cornett does  
 21 the straw poll on public service standards four and six?  
 22 SECRETARY CORNETT: For the record, Todd  
 23 Cornett.  
 24 That was going to be my exact same question,  
 25 which is, do you want to do a single straw poll or PS-4

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1 or do you want to wait or just do it all combined at the  
 2 end of PS-6? Standard PS-4 and PS-6.  
 3 And I have the language, so I can include it  
 4 either now or later on, just depends on Council  
 5 preference.  
 6 COUNCILMEMBER JENKINS: I'd like to do these  
 7 piecemeal. This is Hanley.  
 8 Do you have a suggestion, either of you --  
 9 Cindy or Todd -- have a suggestion as to where to add  
 10 the approval language? Is it in six?  
 11 SECRETARY CORNETT: It would be condition  
 12 six.  
 13 COUNCILMEMBER JENKINS: Yeah.  
 14 COUNCILMEMBER CONDON: This is Councilmember  
 15 Condon. I'd defer to Todd.  
 16 Mine was questioned first, so if approval --  
 17 if there's not an approval process, what I'm -- what I'm  
 18 concerned about is that as I read this, there's a  
 19 submission of a plan. And that checks a box without any  
 20 reviewer approval. And I know that's not what's  
 21 intended. So whatever wording would be best.  
 22 SECRETARY CORNETT: Yeah. For the record,  
 23 Todd Cornett.  
 24 Again, on this one, I don't have anything  
 25 specific to say right now. We can articulate the intent

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1 and generate the language. I think the direction is, in  
 2 this case, very clear from Council. Or at least I feel  
 3 very clear on it.  
 4 COUNCILMEMBER JENKINS: Used to say -- this  
 5 is Hanley. It looks like it used to say "submit for  
 6 review and approval by the Department in consultation  
 7 with the county planning departments."  
 8 Looks like it was there.  
 9 Are you suggesting that it be added back in?  
 10 VICE CHAIR HOWE: Yeah. I think staff --  
 11 SECRETARY CORNETT: Yeah. And I'm ready to  
 12 articulate the straw poll, if you're ready.  
 13 VICE CHAIR HOWE: We're ready.  
 14 So this would be for issue PS-4: Agree with  
 15 findings of fact, conclusions of law, and conditions of  
 16 approval in the proposed contested case order pertaining  
 17 to PS-4 with the following modification.  
 18 Change condition six to require approval  
 19 for -- require review and Department and approval.  
 20 COUNCILMEMBER JENKINS: Thank you. Good.  
 21 SECRETARY CORNETT: Is that clear?  
 22 COUNCILMEMBER JENKINS: That captures it.  
 23 SECRETARY CORNETT: Okay. Cindy Condon.  
 24 COUNCILMEMBER CONDON: Yes.  
 25 SECRETARY CORNETT: Jordan Truitt.

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1 COUNCILMEMBER TRUITT: Yes.  
 2 SECRETARY CORNETT: Ann Beier.  
 3 COUNCILMEMBER BEIER: Yes.  
 4 SECRETARY CORNETT: Hanley Jenkins.  
 5 COUNCILMEMBER JENKINS: Yes.  
 6 SECRETARY CORNETT: Perry Chocktoot.  
 7 COUNCILMEMBER CHOCKTOOT: Yes.  
 8 SECRETARY CORNETT: Kent Howe.  
 9 VICE CHAIR HOWE: Yes.  
 10 SECRETARY CORNETT: Okay. Thank you,  
 11 Council.  
 12 MR. RATCLIFFE: Okay. So, again, the public  
 13 services standard is composed of a number of different  
 14 public services that are being looked at as Kellen  
 15 described for us.  
 16 So our next exception issue from the  
 17 proposed contested case order is from Mr. Horst. It's  
 18 issue PS-6, and this is a traffic safety issue.  
 19 Whether the applicant adequately evaluated  
 20 the potential traffic impacts and modifications needed  
 21 on Hawthorne Drive and Modelaire Drive. It's in  
 22 parentheses, "Hawthorne Loop."  
 23 The hearing officer addressed this in her  
 24 opinion. She found that Hawthorne Loop roads are paved  
 25 and maintained by the City of La Grande. These roads

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1 are not proposed by Idaho Power in the application for  
 2 site certificate to be modified and are, therefore,  
 3 outside the site boundary.  
 4 She also noted rebuttal testimony that had  
 5 been provided by Idaho Power's expert witness, which  
 6 stated that substantial modifications may be necessary  
 7 on privately owned portions of Hawthorne Drive, but that  
 8 it is unlikely.  
 9 Idaho Power's expert witness had reviewed  
 10 aerial imagery and testified that the private access  
 11 portion of the road is generally 15 to 23 feet wide with  
 12 dirt and gravel surfacing, with horizontal curves  
 13 ranging from 60 to 75 feet radii. Idaho Power  
 14 generally needs 14-foot-wide road surface and 16- to  
 15 20-foot-wide turn radius, therefore substantial  
 16 modifications are not anticipated.  
 17 Actions identified for the private portion  
 18 of the road include blading to maintain the surface and  
 19 water for dust control but no widening or slope  
 20 reinforcement is anticipated.  
 21 Idaho Power indicates that a helicopter  
 22 would likely be used to airlift materials and equipment  
 23 to avoid tight-turning conditions.  
 24 So the hearing officer went on to find that  
 25 the Council doesn't have authority to address limited

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1 parties' claims that these roads require substantial  
 2 modifications for safety or are inadequate for  
 3 construction vehicle use because of geologic hazards.  
 4 What the hearing officer cited to in support  
 5 of this is a prior decision of the Council from the  
 6 Wheatridge case, which at that time the Council decided  
 7 if a related or supporting facility -- and a road would,  
 8 you know, fall into that, if -- if it was included. If  
 9 a related or supporting facility is not proposed by the  
 10 applicant and the application for site certificate, it  
 11 cannot be reviewed or required to be reviewed by the  
 12 Council.  
 13 So the hearing officer also looked at  
 14 traffic control measures that Idaho Power had proposed,  
 15 including pilot vehicles, traffic control flaggers,  
 16 warning lights, signs and barriers, all of these things  
 17 are going to be addressed under the traffic plan which  
 18 is a component of public services condition number two.  
 19 These measures will be vetted as part of the  
 20 finalization of that plan not only by the Department,  
 21 but also in consultation with Union County and the City  
 22 of La Grande as applicable, depending on which roads are  
 23 in which jurisdiction.  
 24 And we have just a couple of more parts of  
 25 this. The -- one of them is dealing with geologic

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1 hazard where Idaho Power's expert witness had noted that  
 2 where substantial road modifications are necessary in an  
 3 area of geologic hazard, Idaho Power would complete  
 4 engineering and consult with a licensed civil engineer  
 5 to ensure the design of the modification accounts for  
 6 the potential geologic hazards and protects public  
 7 health and safety.  
 8 Along those lines, Idaho Power proposed a  
 9 condition in response to the issue, which the hearing  
 10 officer recommended be included in the final order. She  
 11 included it in her proposed contested case order. The  
 12 new condition states that prior to construction or road  
 13 modification in any area designated as a geologic hazard  
 14 by Oregon Department of Geology and Mineral Industries,  
 15 data and maps, for example, as landslide or debris flow  
 16 fan or by relevant local zoning ordinance and maps.  
 17 The site certificate holder and/or its  
 18 construction contractors will consult with a licensed  
 19 civil engineer to assess the proposed construction or  
 20 road design in relation to potential geologic hazards.  
 21 So again, that was the new condition language proposed  
 22 by Idaho Power adopted by the hearing officer in the  
 23 proposed contested case order.  
 24 So that is my summary of where the proposed  
 25 contested case order stands on this issue.

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1 And with that, it's time for Mr. Horst's  
 2 oral argument.  
 3 MR. HORST: Start the clock on me. I just  
 4 want to say one thing real quick is that we get -- you  
 5 know, sit around and say, hey, we've got nothing better  
 6 to do than give Idaho Power a bunch of problems.  
 7 You know, I run an auto repair business.  
 8 We're a hundred dollars an hour. I've spent hundreds of  
 9 hours on this. So I take this very seriously. So with  
 10 that said, I'm -- I'm basically ready any time.  
 11 So the -- I want to start off by what Jesse  
 12 had just said there. He said a lot of things, which  
 13 means there was a lot of issues.  
 14 On this particular contested case, there was  
 15 13 safety issues I have with Hawthorne Drive. I didn't  
 16 have right -- I have four contested cases. I had to  
 17 kind of pick and choose. I did not have time to write  
 18 exceptions for all four cases, so I picked the two more  
 19 important ones and replied to those.  
 20 Our primary goal was to get Mill Creek --  
 21 the Mill Creek route completely off the application  
 22 altogether. There's absolutely too many issues. It's a  
 23 very steep hill. The lower part has no sidewalks. They  
 24 should not -- this shouldn't have even been on the plan  
 25 to begin with.

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1 In several letters from Idaho Power to the  
 2 City of La Grande, the City of La Grande specifically  
 3 said the La Grande City Council strongly requests IPC  
 4 remove the proposed routes from their application of the  
 5 two routes identified in the application, the applicant  
 6 selected the one that is most impactful to the City of  
 7 La Grande as their proposed route.  
 8 They cited the existing geological fault,  
 9 the steepness with and condition of the city streets  
 10 that would need to be used to access this route.  
 11 They -- there was -- there's a couple of  
 12 misinterpretations.  
 13 The -- the dirt paved steep portion of the  
 14 road has some sharp corners that are completely blind.  
 15 You can make one vehicle can get around it, but if you  
 16 meet another one coming around any of those three big  
 17 corners, it's not wide enough for two cars.  
 18 So you can't -- you can't stop on a downhill  
 19 gravel road quickly. So those are some serious issues.  
 20 The City of La Grande also requested and  
 21 required traffic and safety plan by Idaho Power prior to  
 22 using this route. The judge said in her findings, Idaho  
 23 Power's traffic plan required by recommended public  
 24 services condition two adequately addresses traffic  
 25 safety concerns. Idaho Power has not submitted a safety

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1 plan for this area at this point in time.  
 2 On March 24th, 2020, Mark Stokes of Idaho  
 3 Power wrote a letter to several of us on the Mill Creek  
 4 route, specifically, said the following:  
 5 "Over the past two years, the community has  
 6 shown the preference the Morgan Lake route alternative.  
 7 That's why we're pursuing it instead of the Mill Creek  
 8 route. Since your property is near the Mill Creek  
 9 route, you no longer have to take any further action."  
 10 I've had three other interactions with Idaho  
 11 Power and they have told me that every single time; yet,  
 12 here we still are.  
 13 I'm asking the Council to -- not just to --  
 14 to just remove this route completely. It should not be  
 15 there. There's too many issues. We've been told that  
 16 they're not going to use it. And several of the --  
 17 several of the other contested case people dropped their  
 18 cases just for this reason.  
 19 If no other reason, do it for the safety of  
 20 the children that have to walk down a very steep  
 21 Modelaire and Hawthorne Drive with absolutely no  
 22 sidewalks anywhere in the entire housing project and  
 23 there's only one way in and out of this housing project  
 24 with no sidewalks. And then they have to walk across a  
 25 busy street to get to the first sidewalks in the whole

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1 area.  
 2 So again, I -- I highly recommend or request  
 3 that the Council remove this route completely.  
 4 There's -- all the other routes are better. This does  
 5 not need to be there.  
 6 Thank you for your time.  
 7 VICE CHAIR HOWE: Thank you, Mr. Horst.  
 8 Are there any questions from Council?  
 9 MR. HORST: All right. Thank you.  
 10 VICE CHAIR HOWE: Thank you.  
 11 MS. RACKNER: Good morning, again. Lisa  
 12 Rackner, for the record.  
 13 The purposed access road of Hawthorne  
 14 Drive/Modelaire Drive those make -- the paved portions  
 15 make up Hawthorne Loop. And the unpaved portion of  
 16 Hawthorne Drive have been the subject of some  
 17 controversy in this case.  
 18 In its application, the company did include  
 19 the unpaved portion of Hawthorne Drive within the site  
 20 boundary because we conservatively estimated that there  
 21 may need to be some substantial modifications, but  
 22 concluded that no modifications would be required for  
 23 the paved portion.  
 24 And it is explained by -- in the testimony  
 25 of the company's expert, Luke Grebe, for the

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1 application. The company did perform a desktop review  
 2 of access roads knowing that it would need to finalize  
 3 transportation -- excuse me, traffic management plans  
 4 after final route selection.  
 5 However, in response to concerns raised  
 6 during the contested case, Mr. Grebe did go back out to  
 7 Hawthorne Loop and confirmed his conclusion that no  
 8 substantial modifications would be required there. With  
 9 respect to Hawthorne Drive, he didn't have access to  
 10 that portion of the road and did look at aerial --  
 11 aerial photographs of the area.  
 12 Again, that secondary review that Mr. Grebe  
 13 performed confirmed his view that no substantial  
 14 modifications would actually be required on either the  
 15 paved or the unpaved portions of Hawthorne Drive and  
 16 Hawthorne Loop.  
 17 He did detail in his testimony the safety  
 18 measures that the company would adopt to ensure safe  
 19 passage for vehicles and pedestrians and animals, those  
 20 include coordinating with nearby property owners,  
 21 implementing one-way traffic, using flaggers and pilot  
 22 spotter vehicles, and placing substantial barriers for  
 23 pedestrians.  
 24 Regardless, and probably most importantly,  
 25 as the hearing officer pointed out in her order, this

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1 recommended site conditions will ensure that the  
 2 company's final access, control and traffic safety plans  
 3 will not -- will not only need to meet ODOE's approval  
 4 but will also need to meet the approval of all of the  
 5 state, local, and county jurisdictions, including Union  
 6 County and the City of La Grande.  
 7 In his exceptions, Mr. Horst is arguing that  
 8 the company -- that the hearing officer failed to  
 9 consider the City of La Grande's opposition to the Mill  
 10 Creek route.  
 11 That's not correct. The hearing officer did  
 12 consider that opposition. However, she correctly found  
 13 that the arguments relying on that opposition fell  
 14 outside the scope of issue PS-6, which was specific to  
 15 the evaluation that Idaho Power performed for Hawthorne  
 16 Drive and Modelaire Drive.  
 17 Furthermore, the hearing officer correctly  
 18 noted that Idaho Power's route selection was outside the  
 19 Council's jurisdiction; therefore, it couldn't consider  
 20 the appropriateness of including the Mill Creek route in  
 21 the application.  
 22 Looks like I'm up. But I am available for  
 23 questions.  
 24 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 25 Any questions from Council?

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1 Okay. Thank you.  
 2 MR. ROWE: Patrick Rowe, Department of  
 3 Justice on behalf of the Department of Energy. The  
 4 Department suggests that Council rely on  
 5 public service -- the recommended public services  
 6 condition two.  
 7 As Ms. Rackner noted, under that condition  
 8 there is a formal reviewing agency process that would  
 9 require all local and state agencies to review the draft  
 10 traffic safety plan.  
 11 So if you haven't already, if you had -- if  
 12 you're not happy with that, the Department is  
 13 comfortable with it. But if Council are not happy with  
 14 the way that condition is written, now would be the  
 15 opportunity to give the Department instruction on that.  
 16 Also, Idaho Power, during the course of the  
 17 contested case, recommended a new public services  
 18 condition that addresses properties within geologic  
 19 hazard zones. Under that condition, which Idaho Power  
 20 proposed and the hearing officer included in the  
 21 proposed contested case order, Idaho Power would be  
 22 required to consult with a licensed civil engineer to  
 23 assess proposed construction or road design in relation  
 24 to potential geologic hazards in that area.  
 25 So it's the Department's position that those

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1 two conditions address traffic safety risks and it's  
 2 comfortable with those conditions and recommends Council  
 3 adopt them in the final order.  
 4 VICE CHAIR HOWE: Thank you, Counsel Rowe.  
 5 Any questions from Council? Okay.  
 6 Oh, Councillor Condon.  
 7 COUNCILMEMBER CONDON: Thank you.  
 8 Councilmember Condon here.  
 9 Just so I'm clear on recommended condition  
 10 two certainly calls for review by the County. This kind  
 11 of goes back to my previous.  
 12 So the -- all jurisdictions have to approve.  
 13 I don't -- again, I don't see approval in here. I know  
 14 it says "consult," but is there an active approval?  
 15 After review --  
 16 MS. ESTERSON: Are you looking at the  
 17 condition language in the proposed order?  
 18 COUNCILMEMBER CONDON: Yes.  
 19 MS. ESTERSON: Okay. So -- so it has -- the  
 20 plan has the formal agency review process in it, which  
 21 there -- that process is the same for all these  
 22 mitigation plans where we would coordinate within a  
 23 specific time frame comments and review.  
 24 And again, if there's a dispute in that --  
 25 whatever participating reviewing agency is, they can

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1 bring it to Council to get through that. And then the  
 2 condition does say they have to have measures as  
 3 approved by the Department.  
 4 If you look under sub (a).  
 5 COUNCILMEMBER CONDON: So this is  
 6 Councilmember Condon --  
 7 MS. ESTERSON: And sub (c) as well, the  
 8 final transportation and traffic plan must be approved  
 9 by the Department in consultation with each county or  
 10 jurisdiction prior to construction.  
 11 COUNCILMEMBER CONDON: Okay. Thank you.  
 12 And I see the Department approval. It's  
 13 just the other jurisdictions.  
 14 Is it an active approval process that -- I  
 15 mean, I guess --  
 16 MS. ESTERSON: I think that we would have to  
 17 demonstrate that we have consulted with these entities  
 18 in order to approve and that their feedback has been  
 19 incorporated as appropriate.  
 20 COUNCILMEMBER CONDON: Okay. Sorry. Just  
 21 one more level.  
 22 So yesterday we talked about an issue that  
 23 silence meant approval.  
 24 And so -- I mean, it's a completely  
 25 different issue. But is it the same process here?

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1 MS. ESTERSON: I mean, we -- we wouldn't be  
 2 able to force the local governments and state agencies  
 3 to participate and comment. But we are doing everything  
 4 we can to make sure that they have the resources to  
 5 participate in this reviewing agency process.  
 6 So if they don't comment at all and then  
 7 they don't work with us to make sure that if they need  
 8 resources that they have those in place -- I mean, it's  
 9 possible that they don't comment and yes, we move  
 10 forward. But we would be obligated to show that we  
 11 tried.  
 12 COUNCILMEMBER CONDON: Thank you.  
 13 MS. TARDAEWETHER: For the record, Kellen  
 14 Tardaewether.  
 15 Up on the screen here, we've -- it's in  
 16 redline, and the Department has added this agency review  
 17 process in the beginning of several of the plans that  
 18 are attached to the proposed order.  
 19 For instance, on the fire management plan  
 20 that we just talked about, this is what -- this is that  
 21 agency review process that the condition was talking  
 22 about.  
 23 So I can slowly just scroll through this.  
 24 But we've added this to several plans which is kind  
 25 of -- rather than just saying approve in coordination or

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1 consultation with such and such agency, this is really  
 2 kind of a prescriptive prior to finalization the  
 3 certificate holder is going to reach out. We're all  
 4 going to get together. We're going to talk about it.  
 5 We're going to do meetings. So I'll just scroll through  
 6 this. But this is that -- this is what those conditions  
 7 are referencing.  
 8 And it's in redline because we added it on  
 9 in the front of the plan, of several plans.  
 10 VICE CHAIR HOWE: Yes, Councillor Beier.  
 11 COUNCILMEMBER BEIER: For the record, this  
 12 is Councillor Beier. If we can be consistent in our  
 13 application of this to any plans that require outside  
 14 consultation, so whether it's traffic safety or fire  
 15 suppression or noxious weed control, that we're pretty  
 16 consistent in the direction we're giving to the  
 17 consulting agencies, that gives the Council and the  
 18 public some certainty that the same process will be  
 19 followed.  
 20 I don't mean to make extra work for you, but  
 21 it might actually make things easier in the long-term if  
 22 we have that consistent language. And I don't know,  
 23 legally, how we insert that review, but smarter people  
 24 than I can figure that out.  
 25 MS. ESTERSON: And that is exactly what

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1 we've done. This is built into all of the substantive  
 2 mitigation plans. They are all substantive.  
 3 COUNCILMEMBER CONDON: Councilmember Condon  
 4 here. What is -- where is this document?  
 5 (Off-record discussion.)  
 6 MS. ESTERSON: So this is attachment --  
 7 attachment U-2 of the proposed order. Okay. So -- so  
 8 what do you have -- do you have the proposed order or --  
 9 COUNCILMEMBER CONDON: Not with attachments.  
 10 Sorry.  
 11 MS. ESTERSON: Okay.  
 12 COUNCILMEMBER CONDON: Sorry. But just for  
 13 future reference, I just wanted to know where it came  
 14 from. It's not in any of our materials here.  
 15 MS. ESTERSON: Right. Right. So all of the  
 16 conditions that have this process in it are part of a  
 17 plan that's attached to the proposed order and then you  
 18 can find it by reference to the attachment.  
 19 COUNCILMEMBER CONDON: Thank you.  
 20 VICE CHAIR HOWE: Okay. So we've gone  
 21 through public service standard six.  
 22 Counsel Ratcliffe, do we need to --  
 23 MR. RATCLIFFE: Yeah. So where we're at  
 24 then is -- because we have the larger public services  
 25 standard and how the proposed order treated that, we

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1 haven't taken a straw poll on that yet because we had  
 2 this other issue to get to first under the umbrella of  
 3 the public services standard. So the next step is any  
 4 deliberation beyond what we've already had on this  
 5 particular contested case issue, and then a straw poll  
 6 on that issue and then, whether combined or separate, a  
 7 poll on the umbrella publish services issue as dealt  
 8 with in the proposed order.  
 9 VICE CHAIR HOWE: Okay. So from Council,  
 10 are there any additional comments, questions on public  
 11 service standard six?  
 12 Looks like we're comfortable where we're at.  
 13 So we're ready to do --  
 14 SECRETARY CORNETT: Okay. So for the  
 15 record, Todd Cornett.  
 16 I have a combined straw poll for the public  
 17 services standard in issue PS-6.  
 18 MR. RATCLIFFE: Okay.  
 19 SECRETARY CORNETT: So this would be agree  
 20 with the findings of fact, conclusions of law and  
 21 conditions of approval in the proposed order pertaining  
 22 to the public services standard that are not related to  
 23 issues in the contested and in the proposed contested  
 24 case order pertaining to PS-6.  
 25 Okay. Perry Chocktoot.



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1 COUNCILMEMBER CHOCKTOOT: Yes.  
 2 SECRETARY CORNETT: Hanley Jenkins.  
 3 COUNCILMEMBER JENKINS: Yes.  
 4 SECRETARY CORNETT: Kent Howe.  
 5 VICE CHAIR HOWE: Yes.  
 6 SECRETARY CORNETT: Cindy Condon.  
 7 COUNCILMEMBER CONDON: Yes.  
 8 SECRETARY CORNETT: Ann Beier.  
 9 COUNCILMEMBER BEIER: Yes.  
 10 SECRETARY CORNETT: Jordan Truitt.  
 11 COUNCILMEMBER TRUITT: Yes.  
 12 SECRETARY CORNETT: Thank you,  
 13 Councilmembers.  
 14 VICE CHAIR HOWE: And so now we need to roll  
 15 back to the propped order. No? We're done. Okay.  
 16 Okay. So the next category is historic  
 17 cultural archeological resource standard issues seven  
 18 and three.  
 19 Ms. Tardaewether.  
 20 MS. TARDAEWETHER: Testing. Thank you.  
 21 For the record, Kellen Tardaewether. The  
 22 Council's historic, cultural, and archeological  
 23 resources standard, I'm going to try -- I'm going to try  
 24 to go quick, but this -- it gets -- it gets pretty  
 25 complicated. This is a really big section in the

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1 proposed order. And so I'm just going to really try to  
 2 set Council up to understand what's in the proposed  
 3 order and for, you know, some background and just kind  
 4 of acclimating for the -- for the contested case issues.  
 5 Council has its historic, cultural, and  
 6 archaeological resources standard. I like to think  
 7 about this standard as it has buckets with filters in  
 8 them.  
 9 And so the question is, is that the Council  
 10 must find that the construction operation -- taking into  
 11 account mitigation -- are not likely to result in  
 12 significant adverse impacts and then we have our  
 13 buckets.  
 14 The first bucket, our resources, and we call  
 15 them sub (a) resources, these are resources that are  
 16 likely -- that are either listed or likely to be listed  
 17 and on the NRHP, which is the National Register of  
 18 Historic Places.  
 19 So what are those resources?  
 20 And I'm just going to give you real, like,  
 21 high-level specific to this project but an idea what  
 22 those resources are, are the resources that are of  
 23 historic or cultural importance to tribes.  
 24 Oregon Trail Resources. Other historic  
 25 aboveground resources, for example, a covered bridge or

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1 an older barn that meets the criteria. These are to  
 2 give Council an idea of some of the resources that would  
 3 get captured and protected underneath the sub (a).  
 4 Now, then there's some of those resources  
 5 that maybe they don't. Maybe once the evaluation is  
 6 done under (a), it actually doesn't meet the criteria.  
 7 It -- actually, it's not listed on the NRHP and it's not  
 8 likely to be listed on NRHP because it doesn't meet all  
 9 of those criteria. So it filters through into one of  
 10 the bottom buckets. So that's the (b) and (c) of the  
 11 standard.  
 12 And really, the difference there is we're  
 13 looking at resources. It's either archaeological sites  
 14 and objects on privately owned land and then we're just  
 15 looking at archaeological sites on public land. So  
 16 those are kind of out of (a).  
 17 We then go down to those two other buckets  
 18 for more potential protection for resources underneath  
 19 this Council standard.  
 20 I'm just going to take a minute, Council  
 21 does -- we've been talking about some definitions in  
 22 Council's rules.  
 23 Council does have a definition for  
 24 mitigation, which I think that would just be interesting  
 25 to keep in the back of our minds for some of the

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1 conversations.  
 2 And this is from OAR 345.001.0010(33).  
 3 Mitigation means one or more of the  
 4 following in order of priority: Avoidance,  
 5 minimization -- minimization, partial or complete  
 6 restoration of affected resource, preservation and  
 7 maintenance, partial or complete compensation for  
 8 replacement or comparable substitute for the resource or  
 9 implementing other measures as approved by Council.  
 10 And I can pull that up in our rules. I know  
 11 it's hard to memorize all of that.  
 12 And just as a note, as far as the, you know,  
 13 A, B, and C, this proposed facility does cross public  
 14 and private lands, lands that are owned by the federal  
 15 government. And the lead agency for the federal review  
 16 is the Bureau of Land Management. It also crosses some  
 17 portions of state-owned lands and then it, of course,  
 18 also crosses private property. So all of these are --  
 19 underneath the Council standard are triggered.  
 20 So that's kind of the background of the  
 21 standard for Council.  
 22 Now, there was an incredible amount of work  
 23 that was done to review this project. As we understand,  
 24 this project does have a federal nexus because there --  
 25 and it is subject to a NEPA review. It's also subject

1 to the Section 106 process, which is the federal --  
2 federal government's process of consultation with tribes  
3 about impacts to cultural resources.

4 So, functionally, all of the work that is  
5 going to be done and needs to be done for Council is  
6 also going to be done and needs to be done as part of  
7 the Section 106 process.

8 SHPO, Oregon SHPO really relies on a lead  
9 federal agency for the -- for their recommendations of  
10 eligible resources. SHPO -- so that is that if there is  
11 a clear federal nexus, SHPO really is going to rely on  
12 working with and through that Section 106 process.

13 So that said, really where -- for other  
14 Council projects, we expect the amount of work to be  
15 done underneath this standard to be done very early.  
16 And in the review of the application, we were well  
17 underway and really kind of reviewing a lot of these  
18 site forms, which are kind of the very detailed data  
19 form for each one of these hundreds and hundreds of  
20 resources.

21 Then what the proposed order discusses --  
22 and it discusses it in had the front end and it  
23 discusses it at length under this cultural end, is under  
24 469.370.13. This is one of Council's statutes. It  
25 talks about if there is this federal nexus and if there

1 your tables in the proposed order, what we did and what  
2 is -- is appropriate underneath Council's standard is  
3 that we -- because we are, essentially, pinning the  
4 outcome of the final eligibility to the Section 106, we  
5 assumed resources to be eligible. So we assumed that  
6 they would be.

7 Now, resources that were still kind of under  
8 review, they are labeled as unevaluated, which isn't a  
9 great label but it's what -- it's what SHPO came up  
10 with.

11 But that "unevaluated" is basically treating  
12 them as eligible as such they are either avoiding  
13 impacts or impacts would be mitigated.

14 So that's how that proposed -- the proposed  
15 order proposes these resources. They say "likely  
16 eligible." They were agreed to be likely eligible.

17 If we didn't get to that agreement, we  
18 assume that they are likely eligible with that  
19 unevaluated. And then go to the mitigation and all of  
20 this is going to be finalized at the outcome of the  
21 Section 106, which is very likely -- which is very  
22 likely that the BLM is probably not going to find all of  
23 those resources likely eligible.

24 So if they end up being, okay, no, these are  
25 not likely eligible, then they shake out into that B and

1 is a review and permitting done by a federal entity, to  
2 the extent practicable, to the maximum extent, Council  
3 should really align its process with the federal  
4 entity's process.

5 And that's an effort to duplicate -- to not  
6 have duplicative efforts, to use the same types of  
7 reporting.

8 So what the proposed order talks about is  
9 basically aligning Council's review with the outcome of  
10 the Section 106 which is just -- which is a longer  
11 process. It has been ongoing, and it's ongoing right  
12 now. Which the result is going to be with the lead  
13 federal agency making eligibility determinations for all  
14 of these resources which then get sent out to Oregon and  
15 Idaho SHPOs -- the State Historic Preservation Office --  
16 for those SHPO offices to review all of that information  
17 and concur or disagree with those eligibility  
18 determinations. And then that final -- upon that final  
19 and then in consultation with tribes, they discuss and  
20 agree on appropriate mitigation.

21 So that said, that is -- that is what --  
22 that is the structure of your proposed order. That's  
23 the structure of the conditions that talk about these  
24 resources.

25 Now, to get there, if you're looking through

1 C Council standard still. It is not like they just --  
2 they just go away and we don't look at them any more.  
3 Then they shake out and then we look at them in that B  
4 and C.

5 I hope that makes sentence. You are looking  
6 at me and nodding your head. So I'm going to take that  
7 and run with it.

8 Okay. So that is just kind of background.  
9 If you're looking to that section that's what it looks  
10 like.

11 So this is a hard table to read, but the  
12 takeaway here is that there were several analyses  
13 conducted for the cultural resources.

14 The area of direct effects is basically the  
15 site boundary, if a resource is directly impacted it  
16 means we are in the construction footprint. And then  
17 there is the APE which is the area of potential effects.  
18 And then there's the area -- the visual assessment area,  
19 which went out five miles for cultural resources.

20 Okay. So now, in this -- this section is  
21 long and there's lots of tables. Now, the tables in  
22 your proposed order do have a lot of information. It  
23 has your resource ID number. It gives you a general  
24 description of the resource.

25 And then it kind of talk -- and then they

1 also include -- it's like a bundling of information.  
 2 They also include potential avoidance or mitigation  
 3 measures in these tables.  
 4 So here there are two tables. I'm going to  
 5 not talk a lot about Oregon and national historic trails  
 6 because I'll let Jesse cover that.  
 7 But so we have a couple tables with those --  
 8 with those trails. We do have cultural and historic  
 9 condition one where there are not going to be -- which  
 10 is an avoidance of direct impacts to the Oregon Trail.  
 11 What does that mean?  
 12 It means there is not going to be a tower or  
 13 construction road constructed over the Oregon Trail.  
 14 But an indirect impact to the Oregon Trail would be,  
 15 say, if the transmission line is adjacent to or spanning  
 16 over it, that is an indirect impact to the Oregon Trail.  
 17 So that's -- there is that one condition.  
 18 For better or for worse, we identified these  
 19 as tribal resources. In archeological reports, some of  
 20 these resources are also called pre-contact resources.  
 21 They have different designations under tribal resources.  
 22 There's Historic Properties of Religious and Cultural  
 23 Significance to Indian Tribes or "HPRCSIT." We love  
 24 acronyms.  
 25 So the applicant worked closely with the

1 eligible historic properties of religious and cultural  
 2 significance identified by CTUIR."  
 3 So that -- that is that portion.  
 4 I know. There's a lot here and I'm flying  
 5 through.  
 6 So now -- those were -- we have -- under A  
 7 we have Oregon Trail. We have resources important and  
 8 identified to the tribes that could be potentially  
 9 eligible or eligible. And then we have all of these  
 10 other resources, which a lot of them are aboveground  
 11 resources. These examples here I click -- it is hard to  
 12 see this.  
 13 But it says "a railroad segment, a  
 14 homestead, a ranching, and historic archeological  
 15 sites."  
 16 So these are some of the examples of the  
 17 other items that would fall out in the protected under  
 18 A.  
 19 And then in this second column from the  
 20 left, it says "applicable EFSC standard," and this says  
 21 A or B. Right?  
 22 So if, ultimately, in Section 106, if this  
 23 doesn't get wrapped up in A as "likely eligible," then  
 24 it would be looked at under B of Council's standard.  
 25 And then we have potential impacts and management

1 Confederated Tribes of the Umatilla Indian Reservation,  
 2 "CTUIR," who is also the reviewing agency for Council.  
 3 The Department worked really closely with CTUIR as well.  
 4 The Warm Springs and Burns Paiute are also  
 5 reviewing agencies for Council. And we did work with  
 6 them. But they relied more on CTUIR's involvement as  
 7 maybe the more impacted tribe.  
 8 So there is the section in the proposed  
 9 order where we discuss this.  
 10 And -- it's a longtime going and a lot.  
 11 But, ultimately, what the representatives for the tribal  
 12 government provided -- in fact, I think it was tribal  
 13 counsel, was a letter confirming that they had been  
 14 working with the applicant on identifying resources,  
 15 evaluating resources, evaluating impacts, and agreeing  
 16 on mitigation. And so I'm going to read a quote from  
 17 the proposed order from that letter.  
 18 And it says, "The CTUIR is pleased to inform  
 19 ODOE and federal agencies that the CTUIR's concerns have  
 20 been addressed and will be mitigated by Idaho Power  
 21 pursuant to a confidential mitigation agreement between  
 22 the CTUIR and Idaho Power. Therefore, the construction  
 23 and operation of the proposed B2H project, taking into  
 24 account mitigation, are not likely to result in  
 25 significant adverse impacts to eligible or likely

1 comments in that final column.  
 2 And, again, I know that is hard to read, but  
 3 this is Table HCA-7 in your proposed order. And then  
 4 so -- then there's the resources that we evaluated that  
 5 may be -- currently, with current information be  
 6 evaluated under B and C of the Council standard.  
 7 One minute here. So -- so I mentioned  
 8 cultural historic resources condition one. I have HCA  
 9 or historic cultural and archeological  
 10 resources condition two. This condition is very  
 11 important. Jesse is going to talk about it.  
 12 But there are aspects of this condition that  
 13 weren't brought up in the contested case. But this is  
 14 the condition that requires the HPMP, the Historic  
 15 Properties Management Plan.  
 16 And what the Department did is we plucked  
 17 out all of those tables that we generated from that  
 18 proposed order, and we've added those to that HPMP and  
 19 we've added other tables from that proposed order  
 20 section into that HPMP and we also have made revisions.  
 21 This is the Council-specific HPMP that's  
 22 going to have to be finalized and trued up based on the  
 23 outcome of that Section 106 and submitted.  
 24 Part of that HPMP is -- it addresses  
 25 monitoring during construction. And they have a

1 complete cultural and archeological resources monitoring  
2 team that they will work with the tribes on --  
3 representation or requests from tribes for that. Part  
4 of that HPMP is also in the inadvertent discovery plan  
5 or the IDP which covers inadvertent fines when they --  
6 when construction is underway.

7 And I will stop there. And that was a lot.

8 MR. RATCLIFFE: We have a couple of issues  
9 under this standard. The first one is going to be  
10 HCA-7. The party is Williams and the issue is whether  
11 the applicant adequately evaluated a particular  
12 archeological resource site 6B2H-MC-10 on Mr. Williams'  
13 property.

14 And the proposed contested case order  
15 opinion on this started off with an issue that we've  
16 been hearing a fair bit about, you know, across  
17 standards. She found that the Historic, Cultural and  
18 Archeological Resources Standard does not require the  
19 applicant to complete a visual assessment and enhanced  
20 archeological survey prior to the issuance of a site  
21 certificate. A phased evaluation is allowable.

22 And this is, again, the kind of question  
23 that applies to a lot of the standards about the level  
24 of detail that is required prior to the site specific  
25 evaluation.

1 analysis area but is within the visual assessment  
2 analysis area.

3 And then the significant -- significance of  
4 visual impacts to archeological resources is a portion  
5 of the Historic Properties Management Plan which is a  
6 component of HCA condition two. And that this is going  
7 to be completed following site certificate approval.

8 So that is the summary of the hearing  
9 officer's conclusions and the proposed order. And we  
10 can now hear from Mr. Williams in oral argument.

11 MR. WILLIAMS: I'm John Williams. My  
12 contested case is HCA-7. And identified issue is  
13 whether applicant adequately evaluated resource site  
14 6B2H-MC-10 on Mr. Williams' property. This is only part  
15 of my stated concerns in HCA-7.

16 The proposed Morgan Lake route crosses my  
17 property west of Morgan Lake with two right-of-ways, one  
18 for the transmission line; another for an access road to  
19 it.

20 In 2016 an archeological survey crew walked  
21 the transmission line right-of-way and discovered site  
22 6B2H-MC-10 a pre-contact hunting blind some 5.14 meters  
23 from the right-of-way of the access road and then  
24 continued their survey finding no other sites.

25 Subsequently, I spent three hours with

1 And the only other thing I think I'll add on  
2 that piece at this point is just that -- again, with  
3 respect to all these standards, that Council is making a  
4 decision that's based on the preponderance of evidence,  
5 whether or not, based on the evidence of the record, it  
6 is more likely than not that the standard will be met.

7 And that is, you know, something that comes  
8 into play a lot when we're talking about the level of  
9 detail that is either available or feasible to be  
10 acquired prior to the site certificate decision.

11 So that comes up again here.

12 So the hearing officer looked at the site in  
13 question here, noted that it's documented as a hunting  
14 blind located on Mr. Williams' property. That it is not  
15 listed on the NRHP.

16 But, again, as we heard from Kellen,  
17 resources that are not evaluated for NRHP eligibility  
18 are assumed for the purposes of this process and the  
19 site certificate decision to be potentially eligible.  
20 And so they are considered as part of this.

21 Hearing officer concluded that the site may  
22 be indirectly impacted by the proposed facility in a  
23 visual sense and a setting sense if the Morgan Lake  
24 route is selected.

25 The site is not located within the direct

1 another archeologist and located at least three  
2 additional pre-contact resources: One within the  
3 transmission line right-of-way; one within the access  
4 road right-of-way; along with another site within the  
5 area of potential effect.

6 There would seem, according to both  
7 archeologists involved, more than enough pre-contact  
8 activity on the property for eligibility in the National  
9 Registry for Historic Places.

10 IPC was a signatory on the programmatic  
11 agreement regarding compliance with the National  
12 Historic Preservation Act.

13 I read it that commits it, among other  
14 things, to avoid adverse affect that may alter, directly  
15 or indirectly, any of the characteristics of the  
16 historic property that qualify the property for  
17 inclusion in the national register in a manner that  
18 would diminish the property's location, design, setting,  
19 materials, workmanship, feeling, or association.

20 Finally, Oregon Department of Energy's  
21 response to exception issue HCA-7 on the 15th of July  
22 this year, in its analysis they stated, second and  
23 contrary to Mr. Williams' contention, site 6B2H-MC-10 is  
24 not listed in the national historic -- NHRB.

25 This contention -- I never made this

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1 contention. It's a contention I never made or had.  
 2 Thank you.  
 3 VICE CHAIR HOWE: Thank you, Mr. Williams.  
 4 Are there any other questions from Council?  
 5 Okay. Thank you.  
 6 MS. RACKNER: Lisa Rackner, again, for the  
 7 record.  
 8 The gist of Mr. Williams' concerns is that  
 9 the company didn't evaluate all of the archeological  
 10 resources that are on his property. However, the  
 11 hearing officer did consider and properly rejected these  
 12 arguments.  
 13 First, Mr. Williams argues that the  
 14 company's analysis was complete because it failed to  
 15 properly evaluate -- and I'm only going to say this  
 16 once -- 6B2H-MC-10, which Mr. Williams had claimed was  
 17 on the national register. Sounds like maybe there's a  
 18 mutual understanding that it's not on the register.  
 19 But the reason that the company didn't  
 20 evaluate that resource was that it was outside the  
 21 direct analysis area, which was the area that the  
 22 company was looking at during the phase one part of its  
 23 surveys.  
 24 Mr. Williams is also claiming that there are  
 25 other archaeological sites on his property that the

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1 company didn't evaluate. Without more information, we  
 2 don't know whether or not that's true.  
 3 But regardless, as to what evaluation the  
 4 company did or did not perform to date, the most  
 5 important point here is that all archeological sites on  
 6 Mr. Williams' property will be fully assessed during the  
 7 enhanced archeological survey that will be conducted in  
 8 phase two.  
 9 During that phase, Idaho Power will consult  
 10 with Mr. Williams and assess the additional sites that  
 11 he believes are on his property. And if they do, in  
 12 fact, exist, they will work with the appropriate  
 13 authorities as well as Mr. Williams to figure out the  
 14 best way to protect them.  
 15 In addition, resource eligibility and  
 16 listings on the national register are also going to be  
 17 updated prior to construction as recommended by HCA  
 18 condition two so that any new additions to the register  
 19 will be given appropriate consideration.  
 20 You know, I think the -- I have a few more  
 21 seconds. I just want to say that I think the most  
 22 important piece here is that not only are we working  
 23 with a phased approach to the assessment of  
 24 archeological and cultural resources, but we're working  
 25 with the federal process as well.

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1 At the end of that process, EFSC's historic  
 2 properties and management plan will be updated, it will  
 3 be squared with the programmatic agreement that's  
 4 adopted under Section 106 analysis. And in the end, the  
 5 Council can be assured that all archeological resources  
 6 on Mr. Williams' property and elsewhere along the  
 7 alignment will be protected.  
 8 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 9 Is there any questions from Council?  
 10 Okay. Thanks.  
 11 MR. ROWE: Patrick Rowe, Department of  
 12 Justice on behalf of the Department of Energy.  
 13 We agree with the statements that  
 14 Ms. Rackner just made. The recommended historic  
 15 cultural resources condition one requires avoidance of  
 16 direct impacts to archeological resources.  
 17 And under the recommended condition two, the  
 18 applicant is required to finalize the Historic  
 19 Properties Management Plan. That will ensure that all  
 20 sites on Mr. Williams' property are evaluated in  
 21 conjunction with reviewing agencies and addressing a  
 22 common theme with the approval of the Department.  
 23 So again, as we've been discussing, if you  
 24 have any concerns about those conditions, please let us  
 25 know. But the Department believes that those conditions

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1 provide the protections for archeological resources on  
 2 Mr. Williams' property.  
 3 VICE CHAIR HOWE: Questions from Council?  
 4 Okay. Counsel Ratcliffe.  
 5 MR. RATCLIFFE: So just as a reminder where  
 6 we're at on the overall standard here, the Historic,  
 7 Cultural and Archeological Resources Standard, we have  
 8 two issues that were part of the contested case where  
 9 exceptions were filed. The other issue is HCA-3.  
 10 So the Council has some -- a choice to make  
 11 here whether or not you want to do any additional  
 12 deliberation on this issue and a straw poll on it now or  
 13 hold off until we've heard the other contested case  
 14 issue.  
 15 I'll also note the time, which is 12:10.  
 16 And I don't know, you know, when our next break is  
 17 planned for. But, you know, so that's just something  
 18 else to consider whether or not you want to go ahead and  
 19 do the deliberation on this issue now and take a straw  
 20 poll or hold off.  
 21 VICE CHAIR HOWE: This might be a good time  
 22 to go ahead and act on the straw poll for HC-7 -- HCA-7  
 23 and then have -- do our lunch break and then come back  
 24 and do HCA-3.  
 25 COUNCILMEMBER JENKINS: This is Hanley. I

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1 would agree with that. I see hands and thumbs up.  
 2 SECRETARY CORNETT: For the record, Todd  
 3 Cornett. So this is only going to be on HCA-7, not the  
 4 standard and not HCA-3. Just HCA-7.  
 5 So -- and what I have is agree with the  
 6 findings of fact, conditions -- findings of facts,  
 7 conclusions of law, and conditions of approval in the  
 8 proposed contested case order pertaining to issue HCA-7.  
 9 VICE CHAIR HOWE: Yes. Straw poll.  
 10 SECRETARY CORNETT: Okay. And if Council is  
 11 ready?  
 12 VICE CHAIR HOWE: We're ready.  
 13 SECRETARY CORNETT: Ann Beier.  
 14 COUNCILMEMBER BEIER: Yes.  
 15 VICE CHAIR HOWE: Perry Chocktoot.  
 16 COUNCILMEMBER CHOCKTOOT: Yes.  
 17 SECRETARY CORNETT: Cindy Condon.  
 18 COUNCILMEMBER CONDON: Yes.  
 19 SECRETARY CORNETT: Hanley Jenkins.  
 20 COUNCILMEMBER JENKINS: Yes.  
 21 SECRETARY CORNETT: Kent Howe.  
 22 VICE CHAIR HOWE: Yes.  
 23 SECRETARY CORNETT: Jordan Truitt.  
 24 COUNCILMEMBER TRUITT: Yes.  
 25 SECRETARY CORNETT: Thank you,

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1 Councilmembers.  
 2 VICE CHAIR HOWE: Okay. We're going to take  
 3 a 15-minute break to grab lunch. And we'll be back for  
 4 a working lunch at 12:30.  
 5 (A break was taken.)  
 6 MR. RATCLIFFE: Okay. So issue HCA-3 is one  
 7 that has been raised by two parties. Marlette and  
 8 Gilbert.  
 9 The issue is whether the historic cultural  
 10 and archaeological resources condition one, which  
 11 includes the HPMP and is related to mitigation for  
 12 crossings of Oregon Trail resources provides adequate  
 13 mitigation for visual impacts and sufficient detail to  
 14 allow for public participation.  
 15 So the hearing officer's opinion, a summary  
 16 of that. So as we discussed in reference to HCA-7. And  
 17 that, again, has come up with a number of other  
 18 standards. The hearing officer concluded that the  
 19 Historic, Cultural and Archeological Resources Standard  
 20 does not require that the applicant complete all tasks  
 21 that ensure that project impacts are avoided, minimized,  
 22 or mitigated prior to the issuance of a site  
 23 certificate.  
 24 She also found that the standard does not  
 25 mandate any specific methodology for assessing visual

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1 impacts. And that the BLM and SHPO methodologies, that  
 2 their guidance does not align exactly with the Council's  
 3 definition of significance.  
 4 That further -- that the Council --  
 5 Council's statutes and rules establish that the Council  
 6 may use information in the record to make findings and  
 7 impose conditions to ensure compliance with the  
 8 standard.  
 9 She found that the proposed facility would  
 10 not result in direct physical disturbance to any listed  
 11 of likely NRHP eligible Oregon Trail segment, however,  
 12 the proposed facility would cross or be visible from  
 13 Oregon Trail segments and, therefore, will indirectly  
 14 impact those resources.  
 15 She also found that Idaho Power is not  
 16 required to demonstrate completion or compliance with  
 17 the Section 106 process in order for the Council to make  
 18 findings of compliance under the Historic, Cultural and  
 19 Archeological Resources Standard.  
 20 The Council doesn't enforce compliance with  
 21 federal laws.  
 22 The methodology for evaluating the  
 23 significance of visual impacts is established in the  
 24 applicant's Visual Impacts to Historic Properties Study  
 25 Plan which incorporates aspects of the Bureau of Land

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1 Management and SHPO guidance.  
 2 She found that limited parties Marlette and  
 3 Gilbert did not provide persuasive evidence to support  
 4 their contention that the proposed facility will result  
 5 in significant adverse impacts to Oregon Trail resources  
 6 that cannot be mitigated.  
 7 Further, the Department's recommended HCA  
 8 condition two would require -- consistent with the  
 9 Council's definition of mitigation -- that mitigation  
 10 for all Oregon Trail segments with identified indirect  
 11 impact must include, first, a design modification which  
 12 includes a height reduction and a particular kind of  
 13 finish on the tower; and, second, restoration,  
 14 preservation, and maintenance or compensation to apply  
 15 within the affected area of the impact.  
 16 The scope and scale of mitigation must be  
 17 established prior to construction.  
 18 She finally found, in reference to a Court  
 19 of Appeals decision, that the limited parties had cited  
 20 a case called "Gould," that this decision does not  
 21 require further public review and the completion of the  
 22 HPMP prior to finalization to the plan and the Council's  
 23 approval of the site certificate.  
 24 And, finally, that one of the Council  
 25 statutes authorizes Council delegation of future review

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1 and approval to the Department.  
 2 So, again, that's summary of the findings  
 3 and conclusions reached by the hearing officer.  
 4 And, once again, we have two limited parties  
 5 who are going to be addressing this issue through oral  
 6 argument.  
 7 And whether Ms. Gilbert or Ms. Marlette want  
 8 to come up first is up to them.  
 9 Oh, is that a recording? Okay.  
 10 MS. GILBERT: Is this better?  
 11 Okay. Irene Gilbert. And this exception is  
 12 due to the denial of my contested case stating, in part,  
 13 the extent of damages to the public resources are not  
 14 identified in relation to the necessary mitigation and  
 15 most of the mitigation listed fails to apply to visual  
 16 impacts.  
 17 ODOE, Oregon Department of Energy, rules  
 18 state that mitigation must be specific and related to  
 19 the item being mitigated. The courts have also stated  
 20 that it must actually address the impact.  
 21 The Oregon Trail is a priceless  
 22 irreplaceable resource belonging to the citizens of the  
 23 County.  
 24 You six people are about to decide whether  
 25 or not you are going to allow Idaho Power to change the

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1 character of the resource for all future generations  
 2 without providing legitimate compensation for the  
 3 damages they will cause.  
 4 Council is being asked to allow the B2H  
 5 transmission line to be built between 125 feet to one  
 6 half mile from 25 percent of the Oregon Trail resources  
 7 in Oregon.  
 8 Meeting the standard requires the complete  
 9 application including specific identification of the  
 10 resources impacted, level of impact, and actual  
 11 mitigation that will be provided for damages that will  
 12 exist from now on.  
 13 I listed multiple rules, statutes, court  
 14 decisions, that are intended to protect the resource;  
 15 none of these are currently being required for the  
 16 developer.  
 17 Some areas of noncompliance, the proposed  
 18 order does not require the developer to submit an  
 19 amendment to the site certificate to add the information  
 20 regarding sites not yet surveyed and require mitigation  
 21 for the sites as required by the project order and  
 22 Council letter. The Council show -- told the public  
 23 that there would be an amendment and that would allow  
 24 for public discussion and disclosure for the -- the  
 25 areas that are not included.

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1 The file does not contain a preponderance of  
 2 the evidence that the construction and operation of the  
 3 facility will not result in impacts to the archeological  
 4 resources listed or likely to be listed in the National  
 5 Register of Historic Places.  
 6 The procedure allowing completion of the  
 7 Historic Properties Management Plan after a site  
 8 certificate is issued waives the state statute which  
 9 specifically state that you cannot waive state statutes.  
 10 The draft Historic Properties Management  
 11 Plan fails to show the developer will comply with the  
 12 requirements of the rule. The tables incorporated are  
 13 not specific. There are lots of general statements.  
 14 We'll do one of these six different possible mitigation  
 15 issues that does not meet the standard.  
 16 The Council is relying upon this Historic  
 17 Properties Management Plan but you have no idea what is  
 18 actually going to be included in it. And again, the  
 19 Council is not doing the final approval.  
 20 The -- the areas that are impacted by the  
 21 development that are not previously identified,  
 22 including those with indirect impacts and identified  
 23 specific mitigation being required to compensate for the  
 24 impacts as well as requiring Council review of the final  
 25 Historic Properties Management Plan are not included in

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1 the current order.  
 2 So my appeal should not have -- my contested  
 3 case should not have been denied. The Council should  
 4 ultimately take authority for deciding whether or not  
 5 this management plan actually is consistent with the  
 6 statutes and the rules.  
 7 VICE CHAIR HOWE: Thank you, Ms. Gilbert.  
 8 Are there any questions from the Council?  
 9 MS. GILBERT: And the statutes and all that  
 10 are included in my written materials. So please do  
 11 review them.  
 12 VICE CHAIR HOWE: Thank you.  
 13 MS. MARLETTE: I was not going to be --  
 14 never mind. I'm JoAnn Marlette and I've been involved  
 15 in this proposed transmission corridor since 2007, and  
 16 I'm a limited party to this contested case with issue  
 17 HCA-3.  
 18 My understanding is that the purpose of this  
 19 meeting is to make sure Idaho Power has met the EFSC  
 20 standards for compliance. The issue on hand is whether  
 21 Idaho Power adequately provided mitigation for visual  
 22 impacts and sufficient detail to allow for public  
 23 participation.  
 24 Visual effects on historic properties tend  
 25 to especially risk the alteration of characteristics

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1 that qualify a property for the National Register of  
 2 Historic Places when these effects diminish the  
 3 integrity of setting and/or feeling of that property.  
 4 The National Historic Oregon  
 5 Trail Interpretive Center's segments of the Oregon Trail  
 6 and the on-the-ground version of the pioneer experience  
 7 walking the trail will be damaged by the proposed B2H  
 8 utility corridor forever.  
 9 The interpretive center was designed so  
 10 visitors walking remnants of the Oregon Trail would see  
 11 the vast open space to the west as a pioneer saw them.  
 12 If this proposed utility corridor were  
 13 needed, appropriate mitigation is to require Idaho Power  
 14 to buy portions of the line that would visually impact  
 15 the historic Oregon Trail, as well as the viewshed in  
 16 front of NHOTIC.  
 17 In the cross-examination hearing in January,  
 18 Gayle Carbiener asked Idaho Power's witness, Dennis  
 19 Johnson of Power's engineers about line burial.  
 20 He said it was definitely feasible. Even  
 21 came up with a better placement for undergrounding where  
 22 the ends of the line would come up out of the ground  
 23 in a less visible and less obstructive way. That meant  
 24 the line would be buried for approximately 1.7 miles  
 25 which, as stated above, is feasible.

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1 Idaho Power claims that burying the line is  
 2 more expensive. But who is paying for this line anyway?  
 3 Yes, we the rate payers.  
 4 It's the least that Idaho Power should do  
 5 for the people of Baker County and the State of Oregon  
 6 who cherish the pioneer history of our historic Oregon  
 7 Trail and region.  
 8 The burying of this 500 kV line is not  
 9 nearly as expensive as the burial of another 500 kV line  
 10 in Chino Hills, California, which many have testified  
 11 and brought technical information into this case. At  
 12 Chino Hills, they went under a shopping mall, a freeway,  
 13 and an entire neighborhood, yet Idaho Power says they  
 14 can't just do it. Shame on them.  
 15 Not only has the public not had access to  
 16 the information required to decide if the developers  
 17 will be providing adequate mitigation for the impacts to  
 18 the historic resources, but the Council has not received  
 19 anything but general statements regarding the kinds of  
 20 mitigation that may be required. Definitely not  
 21 adequate to make a decision that the development  
 22 complies with historic cultural and archeological  
 23 standards.  
 24 EFSC should not allow an  
 25 out-of-state utility to tear up Oregon's history to

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1 benefit Idaho Power administrators and shareholders.  
 2 Please reverse or remand the ALJ's decision on this  
 3 issue. Thank you.  
 4 VICE CHAIR HOWE: Ms. Marlette.  
 5 Any questions from Council?  
 6 Okay. Thank you.  
 7 MS. MARLETTE: You're welcome.  
 8 MS. RACKNER: Again, Lisa Rackner for the  
 9 record.  
 10 In their exceptions regarding HCA-3,  
 11 Ms. Gilbert and Ms. Marlette make numerous arguments  
 12 about Idaho Power assessment of impacts to the Oregon  
 13 Trail and proposed mitigation methods. In three minutes  
 14 I can't respond to them all, but I respond to their  
 15 primary arguments.  
 16 And first, I just want to -- first, I want  
 17 to emphasize that Idaho Power's analysis of visual  
 18 impacts to the Oregon Trail and potential mitigation was  
 19 detailed and comprehensive. The company performed  
 20 detailed analyses of both direct and indirect impacts  
 21 that included extensive database and literature  
 22 research, desktop review, and intensive level field  
 23 surveys of the direct analysis area and the visual  
 24 impact areas.  
 25 With respect to the company's methodology

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1 for assessing visual impacts, Idaho Power crafted an  
 2 approach in coordination with SHPO, the BLM, and ODOE to  
 3 properly address EFSC's standards. The company crafted  
 4 this hybrid methodology because BLM's visual impact  
 5 methods were not necessarily aligned with the definition  
 6 of significant impacts under EFSC's rules.  
 7 Furthermore, although not required by the  
 8 Council's rules, Idaho Power also performed a cumulative  
 9 impact assessment of visual impacts to trail resources.  
 10 Similarly Idaho Power's proposed mitigation measures  
 11 under EFSC's -- under the EFSC Historic Properties  
 12 Management Plan are sufficiently detailed to allow for  
 13 public participation and they are reasonable and  
 14 appropriate under EFSC's cultural resources standard.  
 15 In particular, mitigation regarding the  
 16 height and color of transmission towers, as well as  
 17 print publication and media for education, these are all  
 18 accepted methods to address visual impacts from  
 19 transmission towers.  
 20 And with respect to the proposal that --  
 21 that Idaho Power underground the line in front of NHOTIC  
 22 to eliminate impacts, this Council has already  
 23 determined in the Wheatridge case that it lacks the  
 24 jurisdiction to order a -- an applicant to underground a  
 25 line because the job of EFSC is to rule on whether or



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1 not the proposed route meets your standards as opposed  
 2 to some hypothetical route, such as undergrounding.  
 3 So regardless, on that issue, the Council  
 4 lacks jurisdiction to order undergrounding.  
 5 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 6 Any questions from Council?  
 7 Councillor Condon.  
 8 COUNCILMEMBER CONDON: Thank you.  
 9 Councilmember Condon. Thanks again for being at the  
 10 table.  
 11 A question with respect to the mitigation  
 12 and the signage and materials.  
 13 Can you speak a little bit more about how  
 14 that is a -- satisfies the mitigation to the site issue?  
 15 MS. RACKNER: Certainly. So first of all,  
 16 the first rule of mitigation is to avoid.  
 17 And so if the company can't avoid any impact  
 18 at all on the visual side, then the next -- then it will  
 19 first consider the approaches that are very specific to  
 20 the visual impact.  
 21 And so the tools in the company's tool kit  
 22 have to do with non-reflective surfaces of the -- of the  
 23 transmission towers themselves, micro-siting to avoiding  
 24 skylining or, you know, to move them slightly to reduce  
 25 that impact.

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1 And also lowering tower heights. So it does  
 2 have a number of tools in its tool kit to try to reduce  
 3 visual impacts.  
 4 The other, you know -- the other kind of  
 5 runners-up, I would say, such as educational materials,  
 6 those -- you are right, those don't directly reduce a  
 7 visual impact, but they do provide other benefits to the  
 8 trail.  
 9 So educational materials, signage, all of  
 10 those mitigation approaches, they are designed to  
 11 enhance -- to overall enhance the viewer's perception  
 12 and experience of the trail, which is, I think, in the  
 13 end, overall, what we're trying to do is reduce the  
 14 impact and enhance the viewer's experience of the trail.  
 15 VICE CHAIR HOWE: Any other questions from  
 16 Council?  
 17 Okay. Thank you, Ms. Rackner.  
 18 Counsel Rowe.  
 19 MR. ROWE: Patrick Rowe, Department of  
 20 Justice on behalf of the Oregon Department of Energy.  
 21 First, I'd like to address a couple of  
 22 comments that Ms. Gilbert made in her oral testimony.  
 23 She suggested that Council would be waiving  
 24 statutes. I'm not certain what statute or rule she  
 25 might have in mind. But the point of this exercise is

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1 to establish whether or not the applicant has complied  
 2 with the historic and cultural resources standard.  
 3 The Department is recommending that the  
 4 Council find that they have met that standard. Not  
 5 recommending that Council waive that standard.  
 6 Recommending that the applicant meets it one of the ways  
 7 that they will meet it is through preparation of the  
 8 Historic Properties Management Plan.  
 9 Ms. Gilbert suggested that that condition  
 10 would not require Department approval. That's not  
 11 accurate. We've already reviewed that condition once.  
 12 But I'll point it out to you again.  
 13 That is on page 506 of the proposed order.  
 14 It's recommended historic cultural and archeological  
 15 resources condition two. Very first paragraph says that  
 16 "The plan has to be prepared, submitted to the  
 17 Department, submitted to SHPO, applicable tribal  
 18 governments, vote for review, and Department approval,"  
 19 end quote.  
 20 So it will be submitted to reviewing  
 21 agencies. The Department will consult with them and  
 22 must be subject to the Department's approval.  
 23 This -- a common theme has been concerns  
 24 expressed about Council delegating future review and  
 25 approval of plans to the Department. That is expressly

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1 allowed in statute. Legislature has authorized this  
 2 Council to do just that.  
 3 In ORS 469.402 delegation of review of  
 4 future action required by site certificate -- I'm just  
 5 going to read this.  
 6 But, again, the statute is 469.402.  
 7 "If the Energy Facility Siting Council  
 8 elects to impose conditions on a site certificate or an  
 9 amended site certificate that requires subsequent review  
 10 and approval of a future action, the Council may  
 11 delegate the future review and approval to the State  
 12 Department of Energy if, in the Council's discretion,  
 13 the delegation is warranted under the circumstances of  
 14 the case."  
 15 Getting short on time.  
 16 In short, we agree with the ALJ's ruling in  
 17 Department's response to these exceptions. It did  
 18 recommend supplementation of the proposed contested case  
 19 order to include additional facts on the record.  
 20 Again, that is in our written response.  
 21 Those facts relate to the ongoing pre-construction role  
 22 that third-party entities would have in reviewing the  
 23 HPMP, including the Oregon Historic Trails Association  
 24 and the Oregon Historic Trails Advisory Council.  
 25 Recognizing that my time is out, again,

1 we're recommending that you supplement the PCCO. And  
2 any one of you could take a quick look at our written  
3 response and include that in a straw poll.

4 COUNCILMEMBER JENKINS: This is Hanley.  
5 Patrick, where is that? Is it in your  
6 response to the exception?

7 MR. ROWE: Our response to exceptions under  
8 HCA-3.

9 COUNCILMEMBER JENKINS: So it's fact 68?

10 MR. ROWE: I would note one scrivener's  
11 error in our exception response.

12 On page 4 we refer to the Oregon Historic  
13 Trails Association with the acronym "OCTA." That should  
14 read Oregon/California Trails Association. With the  
15 acronym "OCTA."

16 VICE CHAIR HOWE: Any other questions from  
17 Council?

18 COUNCILMEMBER CONDON: Cindy Condon, for the  
19 record.

20 Mr. Rowe, can you please read that last  
21 phrase on the statute that you just read? Or the last  
22 sentence of the --

23 MR. ROWE: Sure. Again, ORS 469.402.

24 "The Council may delegate the future review  
25 and approval to the State Department of Energy if in the

1 MR. ROWE: I think that would be at your  
2 discretion. If you think the issue is such that you  
3 want to revisit it and you want to be the -- the  
4 approving body, then that would be at your discretion to  
5 do that.

6 COUNCILMEMBER CONDON: Thank you.

7 COUNCILMEMBER CHOCKTOOT: For the record,  
8 this is Perry Chocktoot. I would just like to let you  
9 know how it actually works is you have an archeologist  
10 do a study and find cultural resources, which are  
11 basically nonrenewable.

12 Once they are destroyed, they are destroyed.

13 And they are put on the record. They are put on the  
14 register, on the federal register. But cultural  
15 resources will not stop a project. They basically file  
16 for a permit through SHPO and they figure the site has  
17 been captured through its being recorded. So it still  
18 can be impacted just with acquiring a permit.

19 Thank you.

20 VICE CHAIR HOWE: Perry Chocktoot.

21 COUNCILMEMBER CHOCKTOOT: Yes.

22 COUNCILMEMBER BEIER: Chair Howe, I had a  
23 follow-up to Councillor Condon's.

24 We had a precedent where the Council has  
25 taken and instead of delegating responsibility to the

1 Council's discretion the delegation is warranted under  
2 the circumstances of the case."

3 COUNCILMEMBER CONDON: So my question is  
4 would you give an example of circumstances that wouldn't  
5 allow for that? For delegation.

6 MR. ROWE: I would -- in a general -- not an  
7 example, but conceptually, a general reason not to would  
8 be if all of the information is presently available to  
9 the applicant, that there's no reason to wait. And --  
10 and wait for future analysis or Department approval if  
11 they have everything they need right now and can conduct  
12 the analysis without -- without waiting until after  
13 issuance of the site certificate, that would be a reason  
14 not to.

15 COUNCILMEMBER CONDON: And I think I'm  
16 specifically back to the approval.

17 Because we -- the Council would be  
18 delegating approval to the Department as well.

19 And the circumstances of that where just an  
20 example that we couldn't do that.

21 MR. ROWE: So do you mean that you would  
22 wait for future analysis to be done but rather than  
23 delegate approval to the Department, you retain the  
24 authority?

25 COUNCILMEMBER CONDON: Yes.

1 Department, kept that final approval. And also, thank  
2 you to -- for the clarification on how cultural  
3 resources are handled.

4 MR. ROWE: Councilmember Beier, I can't  
5 provide such an example. But I can defer to folks who  
6 have longer institutional knowledge than I do, such as  
7 Secretary Cornett or even Jesse Ratcliffe who has been  
8 involved with this body longer than I have. They might  
9 have examples they can think of, but I do not.

10 COUNCILMEMBER BEIER: Just curious.

11 MR. RATCLIFFE: This is Jesse Ratcliffe, for  
12 the record.

13 One thing I'd like to point out is in this  
14 proceeding, with respect to the bond authority, the  
15 Council has retained authority to modify that as we've  
16 discussed.

17 So it's slightly different but, you know,  
18 fundamentally it's still the notion that the Council is  
19 retaining a final say.

20 MS. ESTERSON: Just to add --

21 VICE CHAIR HOWE: We call that a precedent,  
22 though. It's an example.

23 MS. ESTERSON: The -- there are numerous  
24 site certificates that are -- have a condition that's  
25 similar to what you did yesterday where if a developer

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1 or certificate holder wants to adjust that bond amount,  
 2 it has to be reviewed and approved by Council.  
 3 So you'll -- that's a pretty consistent one.  
 4 I think that's the closest example. We have a couple  
 5 others where we would have a condition that says if you  
 6 run into this circumstance an amendment is going to be  
 7 required. And so that immediately kicks it back to  
 8 Council.  
 9 It is not exactly the same, but it's,  
 10 like -- it's kind of a delegation of an uncertainty that  
 11 immediately would force it through the process.  
 12 VICE CHAIR HOWE: Okay. So Historic,  
 13 Cultural Archeological Resource Standard three, what's  
 14 the Council's pleasure on dealing with the proposed  
 15 order and the proposed contested case order either  
 16 individually or separately?  
 17 SECRETARY CORNETT: Mr. Vice Chair, for the  
 18 record, Todd Cornett.  
 19 I do have proposed straw poll language which  
 20 would be a combination which would include the language  
 21 which Patrick had read earlier if that's what the  
 22 Council is interested in. So I can read that --  
 23 VICE CHAIR HOWE: Yes, please.  
 24 SECRETARY CORNETT: -- and let me know if  
 25 you are in agreement.

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1 So it would be to "agree with the findings  
 2 of fact, conclusions of law, and conditions of approval  
 3 in the proposed order pertaining to the Historic and  
 4 Cultural Resources Standard that are not related to the  
 5 issues in the contested case and in the proposed  
 6 contested case order pertaining to issue HCA-3 with the  
 7 following modifications: Supplement the proposed  
 8 contested case order to include additional facts from  
 9 the record. Those facts relate to ongoing  
 10 pre-construction role of the Oregon/California Historic  
 11 Trails Association, and Oregon Historic Trails Advisory  
 12 Council in evaluating Oregon Trail resources, impacts,  
 13 and mitigation."  
 14 I believe that's what the language was.  
 15 With, again, the correction of including "California,"  
 16 as stated in the Department's response.  
 17 I think we got it.  
 18 VICE CHAIR HOWE: Okay. How's the Council?  
 19 Are we ready for straw poll?  
 20 SECRETARY CORNETT: Okay.  
 21 Perry Chocktoot.  
 22 COUNCILMEMBER CHOCKTOOT: Yes.  
 23 SECRETARY CORNETT: Ann Beier.  
 24 COUNCILMEMBER BEIER: Yes.  
 25 SECRETARY CORNETT: Cindy Condon.

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1 COUNCILMEMBER CONDON: Yes.  
 2 SECRETARY CORNETT: Hanley Jenkins.  
 3 COUNCILMEMBER JENKINS: Yes.  
 4 SECRETARY CORNETT: Kent Howe.  
 5 VICE CHAIR HOWE: Yes.  
 6 SECRETARY CORNETT: Jordan Truitt.  
 7 COUNCILMEMBER TRUITT: Yes.  
 8 Thank you, Councilmembers.  
 9 Okay. Now we're moved to the Scenic  
 10 Resources Standard and Protected Area Standard issues  
 11 SR-3, -7, -5, and -6.  
 12 Councillor Condon.  
 13 COUNCILMEMBER CONDON: Sorry.  
 14 Chair Howe and Members of the Council, I  
 15 apologize.  
 16 Can we go back to the condition -- the  
 17 historic -- historic and cultural condition number two?  
 18 And I just had it up here. And I have lost  
 19 it.  
 20 Kellen, is there any chance you can --  
 21 MR. ROWE: In the proposed order, it's page  
 22 506.  
 23 COUNCILMEMBER CONDON: 506. Okay. And I --  
 24 this is Cindy Condon again.  
 25 In -- at line 27 -- and it's in explanation,

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1 I think, but there is a statement that "will" was  
 2 changed to "would."  
 3 To me that changes the meaning considerably.  
 4 And I'm curious what that change was  
 5 intended to do? Because, personally, I think it should  
 6 be "will" or "must" or "shall," as opposed to "would."  
 7 MS. ESTERSON: So we generally try to use  
 8 "would" because it hasn't been approved yet.  
 9 "They would." Once approved, "they will."  
 10 So it's just a tense trying -- so as not to  
 11 be presumptive that it is going to get approved.  
 12 COUNCILMEMBER CONDON: This is Cindy, again.  
 13 I think to make it clear, if the sentence  
 14 finished -- finished with the "if."  
 15 So "they would do this if." It would make  
 16 it clearer. Or even better yet, "must do it, if  
 17 approved by the Council."  
 18 Apologies.  
 19 VICE CHAIR HOWE: Do we need to take any  
 20 more formal action on that? Or that's -- head nods.  
 21 Okay. So, Ms. Tardaewether, I guess we're  
 22 ready to go back to -- where were we? Oh, yeah. The  
 23 scenic resources.  
 24 MS. TARDAEWETHER: For the record, Kellen  
 25 Tardaewether, Oregon Department of Energy.

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1 Find my notes here.  
 2 I have -- I am starting with the Protected  
 3 Area Standard in this overview.  
 4 As Council and other folks familiar with the  
 5 contested case understand scenic resources and protected  
 6 area issues that were properly raised kind of got  
 7 bundled together.  
 8 And I think that that worked through the  
 9 contested case, but as -- as we've had the conversation  
 10 with Council, the lens that Council applies through each  
 11 standard changes just a little bit.  
 12 So we are -- I'm going to do my portion --  
 13 I'm going to go through protected areas and then scenic.  
 14 But Council -- but there are these differences of -- of  
 15 what is being asked under each standard. And then when  
 16 we pass it over to Jesse, there's kind of this bundling  
 17 of the issue and it has, you know -- it relates to both  
 18 of those standards.  
 19 So anyhow, we'll just -- we will go through  
 20 it.  
 21 And -- and in the proposed order, as we've  
 22 talked about in other examples, the one off the top of  
 23 my head is yesterday under threatened and endangered  
 24 species, part of the findings and recommendation  
 25 underneath that standard was a condition that we said

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1 was imposed over here under Fish and Wildlife Habitat  
 2 Standard.  
 3 So same thing over here. There's conditions  
 4 that are imposed under the Scenic Resources Standard but  
 5 then maybe under "protected areas" we point to four as a  
 6 recommended mitigation or condition approval that helps  
 7 assist in meeting that standard.  
 8 So, with that said, I know Council is  
 9 familiar with protected areas, because we've been  
 10 looking at the rulemaking for it.  
 11 As it stands now, we're looking at the  
 12 current protected areas standard on the books. I don't  
 13 have it all here. Council has looked at it kind of  
 14 after this preamble of protected areas, there's a list  
 15 of the types of protected areas.  
 16 As Council can imagine, for a long linear  
 17 facility with an analysis area of 20 miles, there was a  
 18 lot of protected areas evaluated for this facility.  
 19 So -- and I pointed out under the historic,  
 20 cultural archeological resources, Council does have a  
 21 definition for "mitigation."  
 22 Council does also have a definition for  
 23 "significant."  
 24 And this appears in almost all of your  
 25 standards.

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1 And so I'm just going it read it here pretty  
 2 quickly. Sorry, Crystal. And it's having an important  
 3 consequence either alone or in combination with other  
 4 factors based on the magnitude and likelihood of the  
 5 impact on the affected human population or natural  
 6 resource or on the importance of the natural resource  
 7 affected, considering the context of the action or  
 8 impact, its intensity, and the degree to which possible  
 9 impacts are caused by the proposed action.  
 10 Nothing in this definition is intended to  
 11 require a statistical analysis of the magnitude or  
 12 likelihood of a particular impact.  
 13 I know -- so -- but we love -- we love words  
 14 and so this is what we do. We go through the rules and  
 15 then we, like, apply this. And how does this make sense  
 16 with the particular question going back to the standard?  
 17 But, Council, we can also come back to this  
 18 in another standard if we're really asking what a  
 19 significant adverse impact is.  
 20 The next -- I am going off of a PDF right  
 21 now. So in my PowerPoint, I kind of had these staggered  
 22 so you could see them a little bit more.  
 23 And, again, these are just snippets from  
 24 tables in your proposed order. So -- because we have a  
 25 lot of protected areas. So these are the list of the

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1 protected areas and the definition of the protected  
 2 areas.  
 3 I know it's hard to see here.  
 4 And then it is the type of category. And  
 5 then over on the far right column, we have the distance  
 6 from the proposed route or the applicable alternative  
 7 route and the county that it's in.  
 8 Underneath the Protected Areas Standard -- I  
 9 don't know why these are not advancing -- Council  
 10 evaluates noise, traffic, water, and wastewater disposal  
 11 and visual impacts.  
 12 So underneath the sub provisions of -- and  
 13 I'm going to paraphrase here, which is -- pretty  
 14 interesting because we don't -- we don't see this that  
 15 often, but the Council's Protected Areas Standard does  
 16 contemplate and allow crossing protected areas.  
 17 So protected areas that are listed underneath the  
 18 standard.  
 19 And one of those provisions is that if,  
 20 functionally, the proposed facility is collocated with  
 21 an existing utility right-of-way, such is the case with  
 22 the proposed route in the area of -- of Ladd Marsh.  
 23 That's right here in Union County, not too far away.  
 24 So we have recommended protected areas  
 25 condition one because Ladd Marsh is a wildlife

1 management area that is managed by ODF&W. ODF&W  
2 provided comments and the provisions under this  
3 condition, protected area condition one, incorporate  
4 requests from ODF&W in coordinating activities with  
5 ODF&W. And that was the proposed route.

6 And then there's also the Morgan Lake  
7 alternative, which did have a public comment earlier and  
8 I know when I talked about -- this may help.

9 And forgive me, I forgot who raised it. But  
10 we were talking about the proposed route and the Mill  
11 Creek route. And then there's the Morgan Lake  
12 alternative.

13 So here we are, beautiful La Grande, Union  
14 County. And so this is the proposed route.

15 Now, this route in the BLM's NEPA review was  
16 called the "Mill Creek Route." So when somebody says  
17 "Mill Creek Route" for EFSC and in our EFSC speech, it's  
18 the proposed route. And then there's the Morgan Lake  
19 alternative. So that is -- I just wanted to kind of  
20 paint that picture in our minds.

21 So for this Ladd Marsh, the condition one  
22 applies to the proposed route. And then for the Morgan  
23 Lake alternative, if the Morgan Lake alternative is  
24 selected, then there is -- there is this overlap.  
25

Because we talked about the site boundary.

1 It's possible that we took out "proposed" because  
2 conditions are supposed -- conditions generally read, it  
3 has -- it says certificate holder. The conditions are  
4 written under the assumption that it -- this is going to  
5 end up being the site certificate condition.

6 So rather than "applicant," it says  
7 "certificate holder."

8 Rather than "proposed facility" they say  
9 "facility."

10 Does that look like what that edit was made?

11 COUNCILMEMBER CONDON: It just seems like  
12 this condition would apply no matter what route.

13 And is that -- is that appropriate? I mean,  
14 no matter which route was --

15 The reason I'm asking the question is,  
16 Kellen, you said it would only affect the proposed  
17 route. So I'm trying to distinguish between -- if an  
18 alternative route were chosen.

19 MS. TARDAEWETHER: If we can look into that.  
20 I think we need to look at a map. Or we --

21 So, yeah, no. I misspoke in my  
22 presentation.

23 So, correct -- and maybe it would be  
24 helpful. I can pull up a more succinct MAP set because  
25 the one MAP set that I pulled up is -- isn't very

1 We talked about the site boundary being the micro-siting  
2 corridor.

3 And so -- but we know that the actual  
4 right-of-way for the transmission line is going to be  
5 smaller than the 500-foot site boundary. So what this  
6 condition two is -- because that Morgan Lake alternative  
7 is not within a utility corridor, what this condition  
8 two does is it -- it basically -- it does not allow or  
9 requires them to site the final right-of-way outside of  
10 the boundaries of the protected area, because there's  
11 just a little bit of overlap. Like, in a map of the  
12 site boundary, it clips a corner. So this condition is  
13 saying that none of your facility components can be  
14 sited inside this protected area.

15 Yes, Councilmember Condon.

16 COUNCILMEMBER CONDON: Kellen, I just want  
17 to make sure I'm following you.

18 So if I'm reading in the proposed order --  
19 maybe I shouldn't be reading the proposed order right  
20 now. But the recommended protected areas condition one.

21 So "proposed" facility has been struck from  
22 there. It doesn't -- it's not proposed. It's just the  
23 facility regardless of route in the reading of it.

24 MS. TARDAEWETHER: Sarah is going to find --  
25 because I don't want to bumble around too much here.

1 detailed.

2 So this does apply to -- to the facility.  
3 Right?

4 But then, it's like, where it separates  
5 off -- so here in the findings, a small segment of the  
6 site boundary for the Morgan Lake alternative. So I can  
7 actually pull this up here, which will kind of show us  
8 where they break off. Where the proposed route kind of  
9 separates from the Morgan Lake alternative. And that is  
10 the portion that this condition applies to.

11 I'll try to pull up that MAP set.

12 Sarah's computer is frozen here. So let me  
13 see. Where is this at?

14 COUNCILMEMBER JENKINS: So, Mr. Chair, this  
15 is Hanley. My question is to Cindy.

16 Are you referring to condition number two?

17 COUNCILMEMBER CONDON: One. I'm really  
18 trying to make the distinction between "facility" and  
19 the "facility route."

20 You know, they are two different things in  
21 my mind, I guess. There's the transmission line  
22 wherever it is, which is the facility, no matter what  
23 route.

24 COUNCILMEMBER JENKINS: So isn't one  
25 referring to, essentially, towers not the power line?

1 COUNCILMEMBER CONDON: Well, it references  
2 "facility."

3 I didn't know that "facility" is limited.  
4 I'm just trying to be clear.

5 MS. TARDAEWETHER: My understanding is -- I  
6 would have to -- to be totally clear, I need to find the  
7 MAP set. Because we have to go -- we have to go to the  
8 location where -- we have to find Ladd Marsh just to  
9 be -- I think that it's the area where basically the  
10 proposed facility -- because it's all the proposed  
11 route, which is just the proposed facility.

12 And that -- until we get to a place where  
13 there is an alternative and then it's still the proposed  
14 route and then such and such alternative. And I believe  
15 in the Ladd Marsh area, this is the -- like, it happens  
16 kind of at the juncture where I think that -- so  
17 condition one, but -- but rather than just saying that  
18 off of memory, I would need to confirm that in a --  
19 yeah -- in -- with MAPs.

20 COUNCILMEMBER CONDON: Okay. If -- if  
21 it's -- this will apply no matter what route, then  
22 that's fine. I just want to understand it. Because I  
23 heard it as just this proposed route.

24 MS. TARDAEWETHER: Yeah, that's how I did  
25 frame it. Absolutely.

1 the Council's definition of "significant" is because the  
2 applicant and the Department and SHPO did work together  
3 on generating a very specific methodology that derived  
4 from, you know, BLM methodology and then Forest Service  
5 methodology from -- for visual impacts within forest  
6 areas and then wove in EFSC's definition of  
7 "significant" to make it more EFSC-ie, or maybe more  
8 catered to the Council's process. Because this is the  
9 lens that each of those standards evaluates impacts  
10 through.

11 So I'm not going to go into a lot of detail  
12 here. But, you know, in this slide, there is a -- an  
13 evaluation of the baseline conditions and then there's  
14 an assessment of the -- the impact likelihood and  
15 magnitude.

16 And then there's the consideration of  
17 intensity, causation, and context which weaves in the  
18 impact integrity -- intensity degree to which impacts  
19 the context and the potential significance.

20 So in each of these -- and we'll kind of  
21 keep this slide. This is very high level. It is more  
22 detailed. But in each of the applicable exhibits for  
23 each of these standards there are these impact tables.

24 So every resource that got swept up by  
25 protected areas scenic/recreation that got evaluated

1 COUNCILMEMBER CONDON: Thank you.

2 MS. TARDAEWETHER: So I am -- I don't know  
3 if we have an ongoing question. I don't know if we want  
4 me to find a MAP set or if I want to proceed.

5 Okay. Proceed. All right. Because I  
6 can -- I can come back. I'm almost there.

7 Okay. So that is an interesting component  
8 to the proposed order.

9 And I'm not going to go into -- because this  
10 is -- the gray area of -- of crossover with issues that  
11 people rose -- or had in the contested case. But the  
12 proposed order discusses the visual impacts -- visual  
13 impact methodology.

14 And I'm talking about this here under  
15 protected areas because that's where we talked about it  
16 in the proposed order. Because it's the first standard  
17 you get to, but the same visual impact assessment  
18 methodology applies for protected areas, scenic  
19 resources, and recreation.

20 So -- and -- and then it does also have  
21 some -- you know, some nexus when we get to kind of the  
22 discussion of mitigation under the cultural, because  
23 we're looking at the conditions for visual impact  
24 mitigation over and underneath that condition.

25 So -- and the reason why I brought up the --

1 underneath of those has these impact tables that this --  
2 for visual impacts, this was applied to and then there's  
3 this whole assessment baseline, evaluation of the  
4 magnitude, likelihood, then the application of -- of  
5 significance.

6 So that information is -- is in there. And  
7 then the proposed order summarizes it.

8 And then I have a slide -- I have a slide,  
9 but because I'm using a PDF, we're just going to kind of  
10 go to this slide.

11 I had a table that had -- just a snippet  
12 from the proposed order and it's a table of the  
13 protected areas with visual impacts. But then this  
14 is -- this picture is crossed over it. We'll just try  
15 to zoom this up here. And, you know -- I'm sorry, it's  
16 hard to see.

17 But this is just -- I thought this was just  
18 kind of some of the things that we look at or that are  
19 looked at in the application. And I know you can't  
20 really see those. I'll go in bigger. This is one --  
21 you know, just under two miles away and then we're kind  
22 of getting closer and then you can see transmission  
23 structures.

24 But this is one of the -- what I think is  
25 interesting about this -- and here we can start seeing

1 them -- is that you just look at the skyline behind it.  
2 Right? Your sky coloring, the topography changes, the  
3 color of the environment behind it, whether or not it's  
4 a forested area or not. And these are all aspects that  
5 were evaluated or applied in that visual impact  
6 assessment.

7 This visual simulation here isn't of a  
8 particular area. It just is a demonstration of --  
9 that -- the context and the -- the site-specific aspect  
10 of each of the sites evaluated, you know, matter and  
11 change the outcome of the visual impact assessment.

12 And that concludes my portion.  
13 Oh, except -- nope. Wait. No, I forgot.  
14 Wait. I just wanted to -- I just wanted it to.

15 Now I'm going to continue with scenic  
16 resources.

17 Okay. So for scenic resources, the analysis  
18 area, protected areas went out 20, for scenic resources  
19 we go out 10 miles. Scenic resources, as the standard  
20 explains to us are -- these are resources that have --  
21 identified as significant or important in land  
22 management plans from federal agencies, state agencies,  
23 tribal governments. So the task here for -- to evaluate  
24 scenic resources is it's several steps. We go through  
25 the management plans or the applicant and then the

1 looking at this and the designation of resources, this  
2 is what orients the applicant to do more.

3 Is there a particular resource under any of  
4 these standards where they need to go out and do more?

5 And there were photo simulations provided  
6 for some of the areas and that's where they -- their  
7 KOPs, it's a "key observation point."

8 And those are areas at a particular resource  
9 where photos were taken and then simulative towers would  
10 be drawn in to demonstrate the magnitude or intensity of  
11 visual impact.

12 Okay. And so there are conditions under  
13 scenic resources.

14 So condition two is -- and there are  
15 conditions that the applicant represents would minimize  
16 visual impacts at a particular area. And a lot of those  
17 are a particular type of tower and with a particular  
18 type of finish.

19 So here under scenic resources condition  
20 two, this is back to Ladd Marsh. We have some tower  
21 modifications which would be intended to reduce visual  
22 impacts. And then -- the scenic resources condition  
23 four is specific to Birch Creek area and this is another  
24 example where within this area they are proposing a  
25 design modification that's intended to reduce the visual

1 Department goes through the management plans and there  
2 are resources identified. And then we look at those  
3 resources as to whether or not they are -- are they  
4 managed for their scenic values and importance. And if  
5 so, then they are captured and evaluated underneath the  
6 Scenic Resources Standard.

7 There's 33 -- 33 important or significant  
8 scenic resources within the 10-mile analysis area that  
9 the Department concurred with in the proposed order and  
10 evaluated. Seven of them are crossed by the proposed  
11 facility.

12 And I have this -- we were just talking  
13 about visual impacts. Again, we're not looking at any  
14 particular -- this presentation, I'm not looking at any  
15 particular one. I'm just trying to orient Council to  
16 the information that's in the record and some of what  
17 the Department looked at in drafting the findings in  
18 their proposed orders.

19 So this is a visual impact, you know,  
20 assessment based on these visual impact assessments,  
21 you're like, what am I looking at here? So here these  
22 are different types of scenic resources. And the  
23 coloring is over here.

24 The pink is an area where one or more towers  
25 may be visible up to 10 miles. Okay. So then kind of

1 impacts at that area.

2 And then these areas, for instance, Birch  
3 Creek. Birch Creek gets captured under protected areas,  
4 it gets captured under scenic, and then it also gets --  
5 it is evaluated under the Historic, Cultural and  
6 Archeological Resources Standard.

7 So this is one of these areas that also that  
8 HPMP of that historic resources condition two, that HPMP  
9 is the mitigation in there will -- the final mitigation  
10 will also apply to this area as well. In addition to  
11 this condition.

12 And now I'm going to pass it off to you,  
13 Jesse.

14 MR. RATCLIFFE: Okay. So we'll be moving,  
15 first, to scenic resources issue number three. The  
16 limited party is Deschner.

17 The issue is whether the applicant  
18 adequately assessed the visual impact of the proposed  
19 project in the vicinity of the NHOTIC and properly  
20 determined the impact would be less than significant.

21 The hearing officer's proposed order on this  
22 issue stated that she concluded that the applicant  
23 accurately assessed the visual impact of the proposed  
24 project in the vicinity of NHOTIC and properly  
25 determined the impact would be less than significant as

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1 defined by Council rule.  
 2 The standard does not require a  
 3 demonstration of no impact. It requires a demonstration  
 4 of no significant impact and specifically allows for  
 5 consideration of mitigation.  
 6 And, again, as Kellen had referenced here  
 7 earlier, the Council rules do provide a definition of  
 8 "significant."  
 9 And in the context of this issue, the  
 10 hearing officer was noting that it's not appropriate as  
 11 a result to look to a dictionary definition to interpret  
 12 that term.  
 13 The hearing officer also concluded that the  
 14 applicant refined its visual impact assessment to  
 15 consider the Council's definition of "significant" as  
 16 requested by the Department in the application process.  
 17 She also found that the proposed facility  
 18 would be visible from the NHOTIC parcel. That would be  
 19 within -- at one point, within 123 feet of the parcel  
 20 boundary, but existing development within landscape and  
 21 design modifications and an additional mitigation that  
 22 with those mitigating factors that the evidence in the  
 23 record was sufficient to establish that the impacts  
 24 would be less than significant.  
 25 So that is the summary of the hearing

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1 officer's proposed contested case order with regard to  
 2 issue SR-3. And we can have oral argument from  
 3 Deschner.  
 4 MR. DESCHNER: I couldn't see the screen  
 5 yesterday so I brought my own. And that's my  
 6 presentation that you're holding.  
 7 That's my -- that's it. I don't know what  
 8 to tell you.  
 9 Any questions?  
 10 Thank you.  
 11 VICE CHAIR HOWE: Thanks.  
 12 SECRETARY CORNETT: For the record, Todd  
 13 Cornett.  
 14 Councilmember Chocktoot, so a handout was  
 15 submitted to us in the room. We're going to take a  
 16 picture of that and email it to you so you have it as  
 17 well.  
 18 MS. ESTERSON: For what it's worth, I do  
 19 believe it is in the written record as well.  
 20 COUNCILMEMBER CHOCKTOOT: Thank you.  
 21 MS. PEASE: Thank you. Good afternoon,  
 22 Councilmembers. For the record, this is Jocelyn Pease  
 23 for Idaho Power Company.  
 24 And in response to Mr. Deschner's written  
 25 exceptions, I wanted to just highlight a few points.

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1 The detailed analysis in Exhibits L, R, and  
 2 T of Idaho Power's application for site certificate  
 3 demonstrate that Idaho Power adequately assessed visual  
 4 impacts to the NHOTIC and demonstrated that those  
 5 impacts will be less than significant.  
 6 Mr. Deschner's challenges to the proposed  
 7 contested case order are all either unsupported by  
 8 evidence in the record or misapplied the applicable  
 9 Council standards.  
 10 In his exceptions filing, Mr. Deschner  
 11 repeatedly argues that Idaho Power has not adequately  
 12 mitigated the project's visual impacts to the NHOTIC  
 13 because the project will be visible.  
 14 Idaho Power is not required under any EFSC  
 15 standard to demonstrate that the project will result in  
 16 zero impacts. If there were a zero impact standard, no  
 17 energy facilities could ever be developed in Oregon.  
 18 Rather, Idaho Power must demonstrate that  
 19 the facilities -- that the construction operation of the  
 20 project is not likely to result in a significant adverse  
 21 impact.  
 22 Accordingly, Mr. Deschner's contention that  
 23 the towers will still be visible does not prove by a  
 24 preponderance of evidence in the record that visual  
 25 impacts from those towers are inconsistent with the

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1 applicable siting standards.  
 2 Mr. Deschner also argues that the project  
 3 towers have not been mitigated because they will be  
 4 taller than existing transmission towers.  
 5 However, Idaho Power's expert witness,  
 6 Louise Kling, provided testimony and evidence  
 7 demonstrating that the project will be co-dominant with  
 8 the existing features on the landscape, including the  
 9 existing transmission line.  
 10 And I would point out that in the proposed  
 11 order there are conditions regarding the -- the NHOTIC,  
 12 the transmission line in the NHOTIC, which would require  
 13 that the towers be -- be H frames, that they be built to  
 14 a certain height to be 130 feet or less to reduce the  
 15 visual impacts and also that they be -- that they use a  
 16 certain finish so that there would be less reflection or  
 17 glare.  
 18 So based on those conditions, the Council  
 19 can find that Idaho Power has met the standard in this  
 20 case.  
 21 VICE CHAIR HOWE: Thank you, Ms. Pease.  
 22 Any questions from Council?  
 23 MR. ROWE: Patrick Rowe, Department of  
 24 Justice on behalf of the Department of Energy.  
 25 I just want to re-read the issue statement



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1 for this issue, since in the contested case, it's issue  
 2 SR-3, whether the applicant adequately addressed the  
 3 visual impact of the proposed project in the vicinity of  
 4 the NHOTIC -- National Historic Oregon Trail  
 5 Interpretive Center -- and properly determined the  
 6 impact would be less than significant.  
 7 So that's really asking two questions: Did  
 8 Idaho Power adequately assess the visual impact of the  
 9 line near NHOTIC; and, second, is it proper to conclude  
 10 that impact will be less than significant?  
 11 Mr. Deschner's exceptions to the ALJ's  
 12 proposed contested case order focused on that second  
 13 question, whether it's proper to conclude that the  
 14 impact will be less than significant.  
 15 Mr. Deschner clearly disagrees with the  
 16 ALJ's conclusion. We agree with Idaho Power that he  
 17 hasn't shown that the ALJ failed to consider relevant  
 18 evidence or make conclusions based on substantial  
 19 evidence.  
 20 The Department believes that there's a  
 21 preponderance of evidence -- again, that's the  
 22 standard -- that supports a conclusion that the impact  
 23 with mitigation will be less than significant.  
 24 And, again, those conditions are the  
 25 recommended scenic resource conditions -- three on page

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1 417 and four on page 423.  
 2 So the Department, again, is recommending  
 3 that you find compliance with the standard with those --  
 4 with the mitigation outlined in those conditions.  
 5 As I've noted with other conditions that the  
 6 Department has proposed, if Council believes that the  
 7 condition should be revised or supplemented in any way,  
 8 now would be the time to let us know.  
 9 THE COURT: Thank you, Counsel Rowe.  
 10 Any questions from the Council?  
 11 COUNCILMEMBER CHOCKTOOT: For the record,  
 12 this is Perry Chocktoot. And I'm reviewing the picture  
 13 that was sent to me. I had a couple questions.  
 14 Why -- why is it inside a window inside a  
 15 home? When the real impacts happen when you go out and  
 16 see the grid as a whole and hear the noise that it  
 17 makes?  
 18 MR. ROWE: So, Councilmember Chocktoot, I  
 19 think that question would probably be best asked of  
 20 Mr. Deschner since he was the one who submitted the  
 21 photo.  
 22 So he's -- you're welcome to have him come  
 23 back up and answer the question, if you would like.  
 24 COUNCILMEMBER CHOCKTOOT: That's okay. Just  
 25 hoping to have the meeting move along a little quicker.

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1 COUNCILMEMBER JENKINS: Which is in between  
 2 milepost 197.9 and 199.1, is that the visual impact  
 3 area?  
 4 Is that why that distance was selected in  
 5 the condition?  
 6 MS. TARDAEWETHER: For the record, Kellen,  
 7 Tardaewether. Yes, let me find this condition.  
 8 COUNCILMEMBER JENKINS: Line 13 of condition  
 9 number four. Or am I in the wrong place?  
 10 MS. TARDAEWETHER: I think it's condition  
 11 two.  
 12 One minute. Yes. In short, that would have  
 13 been in the areas where there are a limitation on the  
 14 mileposts for certain height restrictions or tower  
 15 types. It's because that's what is estimated to be the  
 16 visual impact area.  
 17 And you said it's 3. Scenic Resources 3.  
 18 Yeah, scenic three.  
 19 VICE CHAIR HOWE: Sarah? I don't read lips.  
 20 MS. ESTERSON: You referenced scenic  
 21 resources condition four. That applies to a different  
 22 resource.  
 23 Scenic resources condition three is that it  
 24 applies to the NHOTIC. The same question applies it  
 25 references.

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1 MR. ROWE: And that's my error. I  
 2 referenced when I was discussing it both three and four.  
 3 So thanks for that clarification, Sarah.  
 4 COUNCILMEMBER JENKINS: The milepost  
 5 distances are different in three than they are in four.  
 6 That's okay. It's the same principle.  
 7 MS. TARDAEWETHER: I'm -- I'm sorry to -- to  
 8 interject, Council.  
 9 Whit just indicated that he actually would  
 10 like his recording to play.  
 11 He was providing the visual -- the picture  
 12 was a supplement to go with his recording that he  
 13 submitted.  
 14 So thank you for saying that. And I  
 15 apologize that wasn't clear.  
 16 (Audio played.)  
 17 "I am Petitioner Whit Deschner. Dear  
 18 Councilmembers. Thank you for the  
 19 three- minute boundary to boil down why  
 20 the ALJ has erred in ignoring this  
 21 issue, allowing Idaho Power to proceed  
 22 in ruining NHOTIC's viewshed. Clearly,  
 23 any power line seen from the  
 24 interpretive center will have a  
 25 significant impact on the visitor,

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1 period. And that gathering from a  
 2 buffet of impact studies, Idaho Power  
 3 concludes that their project's scenic  
 4 impact will be less than significant.  
 5 IP themselves conducted this study. No  
 6 independent entity or no Oregon or  
 7 visitors' opinions were sought. IP's  
 8 own attorney conducted the visual impact  
 9 assessment and made the conclusion of  
 10 less than significant. IPC further  
 11 backs their argument by proposing that  
 12 they have special finishes that  
 13 virtually hide the pylons and conductors  
 14 and we need not to worry. ALJ erred in  
 15 taking this at face value. Dulling the  
 16 metal finish of conductors and towers  
 17 does not make the towers less than  
 18 significant, especially when one of the  
 19 towers is only 125 feet from Panorama  
 20 Point, the best vista at the  
 21 interpretive center. Ms. Kling, IP's  
 22 expert witness, makes the accusation  
 23 that photos I submitted were not  
 24 representative of the project and yet  
 25 the photos submitted by IP were

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1 impossible to locate exactly where the  
 2 towers would go. NHOTIC was a community  
 3 project. Built for the people and by  
 4 the people who appreciate the pioneer  
 5 history of our historic Oregon Trail and  
 6 region and by people proud of the new  
 7 tourism economy that has developed since  
 8 the decline of our natural resources  
 9 economy. They deserve better than to be  
 10 steam-rolled by a private for-profit  
 11 corporation who does not even reside  
 12 here. The people also deserve to be  
 13 protected by a regulating governing  
 14 body, one that is looking out for the  
 15 people not sympathetic to outside  
 16 interests. These towers will be seen  
 17 from and about the interpretive center  
 18 no matter what. This is more than a  
 19 significant visual impact. I urge the  
 20 Council to -- I urge the Council to  
 21 consider these significant human impacts  
 22 and to deny the site certificate or  
 23 remand the issue. Thank you.  
 24 MS. PEASE: Afternoon Councilmembers. There  
 25 were just a few points there that I wanted to respond to

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1 regarding Mr. Deschner's point that Idaho Power did not  
 2 ask for any subjective input. I would note that there's  
 3 no requirement in the Council's standards that Idaho  
 4 Power asked for that input.  
 5 And in making certain assumptions regarding  
 6 the potential impact associated with the project, Idaho  
 7 Power had conservatively assumed that folks would value  
 8 the resource and had, thus, assumed that there would  
 9 be -- that if asked that that folks would have -- would  
 10 indicate that they have concern for the resource.  
 11 Mr. Deschner also commented that Idaho  
 12 Power's attorney conducted the analysis. While there  
 13 were attorneys that were involved through the  
 14 application process, Idaho Power used an expert witness,  
 15 Louise Kling, who has many years of visual impact  
 16 analysis and is an expert in her field to perform the  
 17 analysis and did so with consultation with the Oregon  
 18 Department of Energy as well.  
 19 And finally, to the comment that the photo  
 20 that Mr. Deschner had shared is not representative -- I  
 21 believe the point that Idaho Power's witness was making  
 22 was that in performing a visual impacts analysis, there  
 23 are certain parameters that are used to be able to -- to  
 24 apply that analysis, which involves an observation  
 25 point, determining the -- the perspective of the viewer

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1 and I think the critique was that the -- the image that  
 2 Mr. Deschner had shared didn't have those same features.  
 3 There wasn't any perspective as to where the photo was  
 4 taken or what's being represented or where it would be  
 5 within the NHOTIC. And so that is my brief response.  
 6 Thank you.  
 7 VICE CHAIR HOWE: Any questions from  
 8 Council?  
 9 Council Condon.  
 10 COUNCILMEMBER CONDON: Cindy Condon, for the  
 11 record.  
 12 I'm not sure who to address this to, but I  
 13 think it might be the Department.  
 14 So the applicant has certainly made it clear  
 15 that they will minimize impacts and mitigate impacts.  
 16 And once built, if the -- if the impact is  
 17 more significant -- I mean, is found to be more  
 18 significant, then it's a hundred years of -- or in  
 19 perpetuity that the impact exists.  
 20 Is there any look back or -- you know, if  
 21 the result is something more than what was  
 22 promised/expected, what's the consequence of that?  
 23 Or is there consequence?  
 24 Does that just become the definition of  
 25 significant?

1 MS. PEASE: That question is a little  
2 difficult to answer, obviously. But there were multiple  
3 visual simulations provided for what the proposed  
4 facility would look like at different viewpoints at  
5 NHOTIC. And so that should be the impact assessment.  
6 And so I -- if -- if you're asking if it is more  
7 impactful from the perspective of the viewer, is there  
8 reach-back in mitigation?

9 I mean, I guess then where we pivot over, if  
10 you recall, on the HCA issues that the -- the  
11 enhanced -- what was it called? The visual -- the  
12 formal -- the second phase of the analysis that includes  
13 the visual assessment is continuing and will go through  
14 pre-construction where then all these entities are going  
15 to be assessing the significance of the -- you know, the  
16 impact and then what the mitigation would be.

17 So -- and again, visual impacts under the  
18 definition of significance for cultural. It's not a  
19 direct one-to-one.

20 So you have to account for the benefits of  
21 the mitigation that would come out of it, whether it's  
22 recordation of fully evaluating the resource, an  
23 interpretive sign, an interpretive display at a cultural  
24 center. There's a myriad of things that they would  
25 do -- but that would be then what is -- so the question

1 And then if there's somewhere in the  
2 materials that gives me a nice analysis of the different  
3 kinds of towers because I think I know what an H frame  
4 looks like, but I'm not sure, and versus a lattice or  
5 what all the options are for towers, knowing that there  
6 are electrical standards for what kind of towers are  
7 needed to support the voltage.

8 So just -- coming in very late to this  
9 process, getting a sense of the visual impacts and we  
10 can do this offline, but I think it's just important to  
11 think about. Thank you.

12 MS. TARDAEWETHER: So on that note, I can  
13 give you -- we touched on it in July a little bit. But  
14 in Exhibit B -- B has a description of the different  
15 types of towers. And it would have a description of the  
16 finishes. I have some. And that's kind of in that  
17 picture I pulled up in my presentation.

18 It was just to demonstrate with different  
19 type of topography or view depending on what the color  
20 and the skyline looks like in your background. Towers  
21 can be very visible or very hidden. And the applicant  
22 does represent different types of towers and different  
23 finishes to minimize or to reduce visual impacts in  
24 different areas.

25 Now, the question, specifically, is that,

1 is whether that mitigation is adequate. But that's  
2 coming out of the HPMP.

3 And so, no, we don't currently have  
4 something that says, well, what is the long -- you have  
5 to do a long-term evaluation. Almost like a -- yeah.

6 COUNCILMEMBER CONDON: Thank you.

7 It just seems to me like we're relying on,  
8 certainly hoped for results, and once it's built, it's  
9 built.

10 And so then does the mitigation become, you  
11 know, interpretive materials, brochures? I mean,  
12 certainly don't mitigate the properties that are seen on  
13 the landscape. They may do something else, but they  
14 don't mitigate that, and hence my question. So thanks.

15 COUNCILMEMBER BEIER: Question. Again, not  
16 sure who to direct this two about the finish on the  
17 structures. In some cases, I've had developers say the  
18 typical silver gray is less visible in certain skies  
19 than the -- I guess it's the weathered steel. And how  
20 that issue was weighed in terms of visibility.

21 Because in this part of the world where we  
22 have very big skies, how those towers project against a  
23 gray sky, today's sky, there will be different seasonal  
24 visual impacts and making sure that the finish chosen  
25 deals with that.

1 you know, were those proposed because they are very  
2 specific to the topography, the skyline, et cetera, to  
3 minimize at those specific areas?

4 I don't know if that information was in  
5 there. And I think that would be a really good, you  
6 know, question to ask the people that really know about  
7 transmission towers and finishes.

8 I have -- that, you could ask now.

9 But then I also have some of these visual  
10 simulations here of these up here. So these are some  
11 H frames. This is the existing landscape. And these --  
12 these are in exhibit -- Exhibit R for scenic resources.

13 So this is out in front of NHOTIC. And as  
14 Sarah mentioned, we also have Chris Clark on the line.  
15 And he's been helping through the contested case and  
16 he's been working on the scenic resources and protected  
17 areas sections.

18 And that -- I do believe that there were  
19 additional visual simulations submitted -- or  
20 evaluations. Our impact assessments submitted through  
21 the contested case in the NHOTIC area, so.

22 COUNCILMEMBER BEIER: And the question comes  
23 up only because we're so specific in these conditions.

24 MS. TARDAEWETHER: Correct.

25 COUNCILMEMBER BEIER: But I want to make

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1 sure that they are the proper conditions and that  
 2 we're -- the design really does fully take into effect  
 3 visual impacts. Not that there are no visual impacts.  
 4 The visual impacts aren't significant and  
 5 here's what's been done to mitigate. Is it the right  
 6 condition for mitigation?  
 7 MS. TARDAEWETHER: Thank you.  
 8 VICE CHAIR HOWE: So we've had the  
 9 presentation from -- from staff and then as well the --  
 10 heard the contested case positions and responses for  
 11 scenic resource three.  
 12 Are we ready to -- of a straw poll? Or do  
 13 we need further discussion on where we're at with this?  
 14 Scenic resource three.  
 15 SECRETARY CORNETT: For the record, Todd  
 16 Cornett.  
 17 So, Vice Chair Howe, so Council's options  
 18 are to conduct a straw poll on SR-3 right now, just that  
 19 issue or hold and wait and consolidate and do one  
 20 broader straw poll later on. The choice is yours.  
 21 COUNCILMEMBER JENKINS: I would prefer to do  
 22 these issue by issue so we don't get crossed.  
 23 SECRETARY CORNETT: Hearing no changes, no  
 24 alterations, I have "agree with the findings of fact,  
 25 conclusions of law, and conditions of approval in the

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1 proposed contested case order pertaining to issue SR-3."  
 2 Okay. Seeing head nods.  
 3 Hanley Jenkins.  
 4 COUNCILMEMBER JENKINS: Yes.  
 5 SECRETARY CORNETT: Perry Chocktoot.  
 6 COUNCILMEMBER CHOCKTOOT: Yes.  
 7 SECRETARY CORNETT: Kent Howe.  
 8 VICE CHAIR HOWE: Yes.  
 9 SECRETARY CORNETT: Ann Beier.  
 10 COUNCILMEMBER BEIER: (No audible response.)  
 11 SECRETARY CORNETT: Jordan Truitt.  
 12 COUNCILMEMBER TRUITT: Yes.  
 13 SECRETARY CORNETT: Cindy Condon.  
 14 COUNCILMEMBER CONDON: Yes.  
 15 SECRETARY CORNETT: Thank you,  
 16 Councilmembers.  
 17 MR. RATCLIFFE: Okay. The next issue up is  
 18 issue SR-7. And the parties here are Stop B2H and Lois  
 19 Barry.  
 20 The issue is whether the methods used to  
 21 determine the extent of an adverse impact of the  
 22 proposed facility on scenic resources, protected area,  
 23 and recreation along the Oregon Trail were flawed and  
 24 developed without peer-review and/or public input;  
 25 specifically, whether the applicant erred in applying

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1 numeric values to the adverse impact and whether the  
 2 applicant used unsatisfactory measurement locations or  
 3 observation points in its visual impact assessment.  
 4 So the summary of the hearing officer's  
 5 opinion on this issue, she concluded that the  
 6 methodology that the applicant used to determine the  
 7 extent of the adverse impact of the proposed facility on  
 8 scenic resources protected areas and recreation along  
 9 the trail was reasonable and appropriate.  
 10 Limited parties have not shown that the  
 11 methodology was flawed or that the company erred in  
 12 applying numeric values to the adverse impact or used  
 13 unsatisfactory measurement locations or observation  
 14 points in its visual impact assessment.  
 15 She found that Council's rules do not  
 16 require that an applicant employ a specific methodology  
 17 for assessing visual impacts. The applicant had no  
 18 legal obligation to collect constituent information to  
 19 demonstrate compliance with scenic resources, protected  
 20 areas, or the recreation standard.  
 21 She noted that the applicant explained its  
 22 method for assessing visual impacts in detail in the  
 23 Exhibit R to the complete application.  
 24 Specifically Attachment R-1.  
 25 That Idaho Power incorporated measures of

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1 the degree to which viewers subjectively value a visual  
 2 resource that were drawn from the Forest Service Scenery  
 3 Management System and the Bureau of Land Management's  
 4 Visual Resource Management System.  
 5 But assume that all viewers would be highly  
 6 sensitive to the resource change rather than collecting  
 7 specific viewer data. Because Idaho Power attached the  
 8 highest viewer sensitivity value to the resources  
 9 evaluated, the data collection on viewers' subjective  
 10 evaluations was not necessary to demonstrate that the  
 11 standard had been met.  
 12 There's no rule that requires an applicant  
 13 to have its impact assessment methodologies  
 14 peer-reviewed or subjected to public input.  
 15 Finally, the site certificate condition  
 16 requiring Idaho Power to underground the transmission  
 17 line for 1.7 miles in the area of NHOTIC was not  
 18 submitted in accordance with the set schedule.  
 19 But even if Stop B2H had submitted this in a  
 20 timely fashion, it was neither necessary nor appropriate  
 21 as, again, based on prior Council decision in the  
 22 Wheatridge application that the Council -- that that  
 23 would be outside the scope of the Council's jurisdiction  
 24 as -- as an alternative.  
 25 So, again, that's the summary of the hearing

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1 officer's proposed order.  
 2 And so we have both Lois Barry and Stop B2H  
 3 presenting on this. So whoever is ready to come up for  
 4 oral argument may do so.  
 5 MR. ANUTA: Karl Anuta appearing for Stop.  
 6 And I need to correct Mr. Ratcliffe on this  
 7 one. Actually, Ms. Barry is not presenting on this  
 8 particular issue. She did not accept on this one. But  
 9 I'll be happy to take an additional three minutes if you  
 10 would like to present further on the issue on her  
 11 behalf.  
 12 Let's start with the Wheatridge decision  
 13 issue.  
 14 Our position is simple. You're not  
 15 constrained by Wheatridge because the issue here is not  
 16 the site boundary. It's mitigation and a condition on  
 17 the approval in order to meet your significance  
 18 criteria.  
 19 You have absolute discretion to impose any  
 20 conditions that you think are necessary to meet the  
 21 standards, and that includes requiring undergrounding  
 22 because that is a condition required to reduce this  
 23 level of impact near the NHOTIC to less than  
 24 significant.  
 25 So the Wheatridge decision is a completely

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1 separate decision. Each facility has to be evaluated  
 2 for its own impacts and its own compliance with the  
 3 standards. And to the extent that Idaho Power or the  
 4 Department argues Wheatridge is binding on you, we  
 5 fundamentally disagree. That might be an example of a  
 6 place where you didn't require it. Or it might be an  
 7 example a place where the boundary issue was actually in  
 8 question. That's not the case here.  
 9 With regard to the methodology. The real  
 10 issue here is pretty straightforward. Idaho Power  
 11 admits its developed methodology, which it's a  
 12 consultant, Ms. Kling, developed with the attorneys for  
 13 Idaho Power and that was all who was involved in  
 14 developing it. She admits that it doesn't collect  
 15 subjective feelings of constituents about the impacts.  
 16 Our contention is simple. You have a significant  
 17 standard that requires you to evaluate the impact on  
 18 humans. That includes the subjective impacts in  
 19 addition to the impacts that Idaho Power did assess,  
 20 which is where are you standing and what can you see  
 21 from there?  
 22 But they did not -- they admit they did not  
 23 look at subjective impacts. They said they assumed  
 24 everyone had some subjective impacts. That doesn't tell  
 25 you anything about whether those impacts were or were

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1 not significant.  
 2 Simply saying, I'm standing here and I can  
 3 see X. And I assume that I'm a sensitive person, does  
 4 not assess compliance with the standard, which is  
 5 whether that impact is or is not significant.  
 6 The Idaho Power methodology that they  
 7 developed, which is unique for this proceeding, it never  
 8 existed before. It's pulled together from pieces of the  
 9 BLM and Forest Service materials. Did not include key  
 10 components of those two agency manuals and their  
 11 processes, specifically the subjective feeling  
 12 components, the constituent interviews of "how did it  
 13 affect you?"  
 14 And so to the extent that the PCCO claims  
 15 that in, for example, fact 199, that the manuals were  
 16 incorporated. No. Parts of the manuals were  
 17 incorporated, not all. The key component in those  
 18 holistic programs is missing.  
 19 The final point I would make is as to the  
 20 Idaho Power's contention that they did a significance  
 21 analysis by assuming everybody was sensitive.  
 22 Just because you use the word "significant"  
 23 and you make your analogy look -- or analysis look  
 24 somewhat like the BLM or the Forest Service methodology,  
 25 doesn't mean you actually assessed it.

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1 The question is for you as a Councillor, did  
 2 they actually look at what people would feel when they  
 3 saw this?  
 4 I'd go on if you gave me more time, but  
 5 that's probably where I should stop for now.  
 6 VICE CHAIR HOWE: Thank you, Mr. Anuta.  
 7 Any questions from Council?  
 8 Okay. Thank you.  
 9 MS. PEASE: Thank you. For the record, this  
 10 is Jocelyn Pease for Idaho Power.  
 11 And I would like to respond to several of  
 12 the points that Mr. Anuta had raised.  
 13 First, regarding the Wheatridge example.  
 14 My understanding is in that case it was not  
 15 necessarily a site boundary issue either. But instead  
 16 the Council appropriately considering that when you're  
 17 looking at undergrounding, it's a different facility  
 18 than what the applicant has proposed. And in this case,  
 19 undergrounding would be a different facility with  
 20 different elements, different components than an  
 21 overhead transmission line.  
 22 So we urge the Council to follow its prior  
 23 rationale and decision-making in the Wheatridge case  
 24 and -- and determine that undergrounding is not at issue  
 25 in this case. That the Council is here considering the

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1 facility as Idaho Power proposed it in its application  
 2 for site certificate.  
 3 Regarding Mr. Anuta's comments about Idaho  
 4 Power not collecting subjective input or -- or not  
 5 including portions of the Forest Service plans that  
 6 would relate to the subjective input from constituents.  
 7 I would first note that the EFSC standards  
 8 don't require the applicant to collect any subjective  
 9 input. And moreover, the documents that Mr. Anuta is  
 10 referring -- is referring to is a 1995 Forest Service  
 11 plan that that -- that relates to inventory level  
 12 planning. It does not relate to performing an impacts  
 13 analysis. Idaho Power's expert witness, Louise Kling,  
 14 provided extensive testimony on this subject at the  
 15 cross-examination hearing.  
 16 So the documents that Mr. Anuta is referring  
 17 to are not even relevant to an impacts analysis.  
 18 Finally, regarding the methodology being  
 19 a -- sort of a combination of different pieces of Forest  
 20 Service plans and taking into account the Council's  
 21 definition of significant.  
 22 I would note that in earlier iterations of  
 23 Idaho Power's analysis it had focused primarily on the  
 24 federal planning documents.  
 25 And in response to that initial analysis,

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1 ODOE issued an RAI to Idaho Power directing Idaho Power  
 2 to more closely look at the Council's definition of  
 3 "significant."  
 4 And it's based on that guidance from ODOE  
 5 that Idaho Power had worked closely with its counsel to  
 6 understand the Council's definition of "significant" and  
 7 to tailor its analysis to meet that definition.  
 8 And I think that is all I will say for that.  
 9 So thank you.  
 10 VICE CHAIR HOWE: Any --  
 11 MS. PEASE: I will be available for  
 12 questions, if there are any.  
 13 VICE CHAIR HOWE: Any questions from  
 14 Council?  
 15 COUNCILMEMBER CONDON: Councilmember Condon.  
 16 Thank you, once again, for being to the  
 17 table.  
 18 Just a question. Given that "significant,"  
 19 which we were shown earlier, certainly has that human --  
 20 human piece to it and given that this issue is of  
 21 importance to a community, was it viewed as unnecessary?  
 22 I mean, I realize the standard does not  
 23 require it. But you could step out of the requirements  
 24 and speak to the community. And was there -- was there  
 25 just a decision not -- not to do that?

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1 I'm just curious.  
 2 MS. PEASE: What Idaho Power endeavored to  
 3 do with this analysis was to create a methodology that  
 4 was repeatable and somewhat objective. And so for that  
 5 reason, there -- there are process steps that another  
 6 visual resources expert could apply and be able to reach  
 7 a similar conclusion.  
 8 So the effort here was to create a method  
 9 that -- that could be repeated and could produce the  
 10 same results. And so as it would relate to subjective  
 11 input, the -- I can't speak exactly to what the decision  
 12 was or wasn't made, but my understanding is that the  
 13 method took into account that subjective element by  
 14 assuming a high degree of impact. Or assuming that  
 15 people care a lot about the resource.  
 16 I mean, as it would relate to the  
 17 inventorying document that I mentioned, I mean, that  
 18 could help to inform as to whether a resource should be  
 19 or should not be identified as important.  
 20 In this case, we were assuming that it was  
 21 very important to the community.  
 22 COUNCILMEMBER CONDON: Thank you.  
 23 VICE CHAIR HOWE: Any other questions?  
 24 COUNCILMEMBER JENKINS: Yeah. This is  
 25 Hanley. The question is for Jocelyn, so don't run off.

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1 So to continue the line of Cindy's  
 2 questioning about the presumption that all viewers found  
 3 the -- the impact from the resource to be significant,  
 4 that's all viewers. It's not the guy that doesn't care.  
 5 Everyone was assumed to find the impact to be  
 6 significant.  
 7 MS. PEASE: I think I would phrase that  
 8 slightly differently. Not so much that everyone --  
 9 all -- all potential viewers would view it as  
 10 significant. Instead that the resource is important.  
 11 COUNCILMEMBER JENKINS: Important.  
 12 MS. PEASE: Right. And so it relates to --  
 13 COUNCILMEMBER JENKINS: Resources.  
 14 MS. PEASE: I think as Mr. Anuta had  
 15 referenced sort of the subjective feelings that one  
 16 might have about a resource.  
 17 Is it important? And the assumption was  
 18 yes, that folks would find it important.  
 19 VICE CHAIR HOWE: Council Condon.  
 20 COUNCILMEMBER CONDON: Just to continue  
 21 this.  
 22 Cindy Condon.  
 23 So, certainly, everyone viewed it as  
 24 important.  
 25 So at what point if everyone views it as

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1 important is it significant?  
 2 I mean, doesn't it become significant if it  
 3 has significant impact?  
 4 MS. PEASE: Certainly. Perhaps I could  
 5 speak a little bit to the history of the analysis with  
 6 respect to, for example, the NHOTIC. That's one  
 7 resource where initially when Idaho Power had first  
 8 developed the route or proposed the route in that area  
 9 and done visual impact modeling using lattice frames, it  
 10 was recognized that there could be significant impact if  
 11 lattice frames were to be used.  
 12 And so to address that potential impact,  
 13 Idaho Power in coordination with other agencies,  
 14 including ODOE and BLM, looked at various mitigation  
 15 options to determine what type of mitigation measures  
 16 could be implemented to reduce the significance of the  
 17 impact.  
 18 And so, for example, in that area, there  
 19 were proposals to consider the use of monopoles, which  
 20 are really big towers, to use H frames, to use shorter  
 21 stature lattice frames. And by sort of looking at all  
 22 of those options and evaluating what the visual impact  
 23 would be, Idaho Power was able to come up with measures  
 24 that -- that were determined to be less than significant  
 25 by using the shorter stature H frames which conform to

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1 the other visual elements on the landscape, including,  
 2 for example, the other H frame in that area and the  
 3 fences in that area and other agricultural features as  
 4 well.  
 5 COUNCILMEMBER CONDON: Thank you.  
 6 VICE CHAIR HOWE: Any other questions from  
 7 Council? Okay. Thank you, Ms. Pease.  
 8 MR. ROWE: Patrick Rowe, Department of  
 9 Justice on behalf of the Department of Energy.  
 10 I will speak just briefly to the proposed  
 11 condition that Council require Idaho Power to  
 12 underground the line.  
 13 The ALJ did analyze this in the proposed  
 14 contested case order. She analyzed it in the context of  
 15 issue SR-2, but she referenced her analysis of issue  
 16 SR-2 in this proposed condition in our analysis of SR-7  
 17 in Stop's proposal to underground.  
 18 The ALJ noted Council's task was determining  
 19 whether the facility, as proposed, complies with  
 20 Council's standards. And she determined Council does  
 21 not have jurisdiction to propose alternatives.  
 22 She considered it to be an alternative to  
 23 the facility, not just a condition.  
 24 The Department agrees that requiring Idaho  
 25 Power to underground the line would not just be imposing

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1 a condition necessary for approval but it would be  
 2 tantamount requiring an alternative facility, which is  
 3 outside of Council's jurisdiction.  
 4 That's -- that's all I've got on this issue.  
 5 The -- we agree with Idaho Power's  
 6 statements with regard to determining significance.  
 7 VICE CHAIR HOWE: Any questions from  
 8 Council?  
 9 COUNCILMEMBER CONDON: Just quickly,  
 10 Mr. Rowe, just to be clear. Undergrounding of a  
 11 segment, which is, I think, what people are talking  
 12 about, is considered the same as undergrounding the  
 13 whole project?  
 14 And is the segment meaning a completely  
 15 different -- does the Department consider it that would  
 16 be a completely different facility?  
 17 MR. ROWE: Admittedly, we're getting into an  
 18 area here that is -- it's a gray area. Right? So it's  
 19 not -- it's not easy to say, well, this is -- this is an  
 20 alternative and this is a condition.  
 21 But this is a significant enough change from  
 22 what is proposed to Council that in the Department's  
 23 opinion, undergrounding just that segment is tantamount  
 24 to not imposing a condition but would be requiring an  
 25 alternative facility.

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1 COUNCILMEMBER CONDON: Thank you.  
 2 VICE CHAIR HOWE: Any other questions from  
 3 Council?  
 4 Okay. We're done now with SR-7.  
 5 Ready for a straw poll?  
 6 SECRETARY CORNETT: For the record, Todd  
 7 Cornett.  
 8 Hearing no proposed changes to the contested  
 9 case order, I have "agree with the findings of fact,  
 10 conclusions of law, and conditions of approval in the  
 11 proposed contested case order pertaining to issue SR-7."  
 12 VICE CHAIR HOWE: I see a consensus of head  
 13 nods. Ready for a poll.  
 14 SECRETARY CORNETT: Cindy Condon.  
 15 COUNCILMEMBER CONDON: No.  
 16 SECRETARY CORNETT: Kent Howe.  
 17 VICE CHAIR HOWE: Yes.  
 18 SECRETARY CORNETT: Jordan Truitt.  
 19 COUNCILMEMBER TRUITT: Yes.  
 20 SECRETARY CORNETT: Perry Chocktoot.  
 21 COUNCILMEMBER CHOCKTOOT: Yes.  
 22 SECRETARY CORNETT: Ann Beier.  
 23 COUNCILMEMBER BEIER: Yes, with the -- I  
 24 need to dig deeper at some point into the mitigation  
 25 versus new facility issue. I'm just like Councilmember

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1 Condon, just a little queasy on that one. But I support  
2 this context. Thank you.  
3 SECRETARY CORNETT: Hanley Jenkins.  
4 COUNCILMEMBER JENKINS: Yes.  
5 SECRETARY CORNETT: Thank you,  
6 Councilmembers.  
7 VICE CHAIR HOWE: Now we move to SR-5; is  
8 that correct?  
9 MR. RATCLIFFE: That is correct.  
10 VICE CHAIR HOWE: Okay. So -- Counsel  
11 Ratcliffe, you have it.  
12 MR. RATCLIFFE: Great. Thank you.  
13 So SR-5 is an issue that the hearing officer  
14 dismissed on a request for summary determination, she  
15 granted that request and the issue is dismissed. The  
16 issue is whether the Rice Glass Hill Natural Area should  
17 be evaluated as a protected area.  
18 The ruling that the hearing officer made on  
19 summary determination was as a matter of law because the  
20 Rice Glass Hill Natural Area was not registered as a  
21 natural area as of May 11, 2007, under the language of  
22 the Council's rules, the applicant had no obligation to  
23 evaluate it as a protected area.  
24 So the -- the -- you know, the issue is  
25 fairly straightforward. The ruling is short. And

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1 that's all I have on -- on that one.  
2 So the limited party on this one is Ms. Geer  
3 and now is the time for oral argument.  
4 MS. GEER: Suzanne Geer. Issue SR-5.  
5 I'm a botanist and a plant community  
6 ecologist specializing in rare plants and long-term  
7 monitoring communities of plant communities in Northeast  
8 Oregon for over 30 years.  
9 I request that the Council deny the site  
10 certificate or reverse the proposed contested case  
11 order. Alternatively, deny the route that goes through  
12 Rice Glass Hill Natural Area.  
13 One exception Judge Webster erred in  
14 concluding because the Rice Glass Hill Natural Area was  
15 not registered as a natural area on May 11, 2007, Idaho  
16 Power was not required to evaluate the Rice Glass Hill  
17 Natural Area as a protected area in ASC Exhibit L.  
18 Over the years, I've been impressed with the  
19 conservation value of the Rice Glass Hill property. I  
20 was familiar with natural areas program through  
21 assisting with the natural areas inventory on federal  
22 lands.  
23 When I learned that private lands are  
24 eligible as state natural areas, I recommended the  
25 program to Joel Rice. Much of his Glass Hill property

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1 has been under conservation easements. Since 2001 the  
2 natural areas program is complementary to  
3 the conservation easement goals.  
4 On their website, the natural areas network  
5 is designed to include at least one good example of each  
6 ecosystem type, geologic formation, and at-risk species  
7 to be represented in each eco-region in which they  
8 naturally occur. These areas are to be used for  
9 scientific research, education, and nature  
10 interpretation.  
11 The Glass Hill property contains several  
12 special species and priority plant associations and so  
13 the Rice application was accepted by Oregon Parks and  
14 Recreation Department in 2019.  
15 The Council rule unprotected areas  
16 references various designations of protected areas,  
17 including Item I, state natural heritage areas listed in  
18 the Oregon Register of National Heritage Areas pursuant  
19 to the Natural Areas Register.  
20 The rule has a 2007 date and a list of  
21 specific protected areas in existence at that time. The  
22 categories of protected areas are listed too. It seems  
23 obvious that categories listed as of May 11, 2007, are  
24 protected. Natural areas is one of those protected  
25 categories. The rules were intended to be updated every

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1 five years, but the schedule has been neglected. Please  
2 review the seven responses to ex parte communication  
3 dated May 23rd, 2021, to see just how ambiguous and  
4 unclear the rule is.  
5 The responses show facts are in dispute.  
6 Hence, the issue should not have been disposed under the  
7 motions for summary determination. The ambiguity and  
8 lack of clarity are severe enough to have caused the  
9 rulemaking process to become protracted.  
10 The Protected Area Standard has not been met  
11 for Rice Glass Hill Natural Area. The Protected Areas  
12 Rule identifies all Oregon state natural areas on the  
13 Natural Areas Register.  
14 Clearly, the date of 2007 applies to the  
15 category of protected areas specified at the time of  
16 rulemaking and it makes no sense to regard that category  
17 as static. The natural areas register provides an  
18 updated list of protected areas.  
19 MS. PEASE: Good Afternoon, Councilmembers.  
20 For the record, this is Jocelyn Pease,  
21 again, for Idaho Power. There are no material facts in  
22 dispute regarding SR-5. This is purely a legal issue.  
23 The Protected Area Standard that is  
24 applicable to this project clearly states references in  
25 this rule to protected areas designated under federal or



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1 state statutes or regulations are to the designations in  
 2 effect as of May 11th, 2007.  
 3 It is undisputed that Glass Hill was not  
 4 designated as a state natural area until September of  
 5 2019. Therefore, under the plain language of the rule,  
 6 Idaho Power was not required to analyze Glass Hill for  
 7 compliance with the Protected Area Standard.  
 8 In her exceptions filing, Ms. Geer argues  
 9 that the cutoff date and the Protected Area Standard  
 10 refers only to the categories of protected areas and not  
 11 to the specific protected areas listed under the  
 12 category. However, Ms. Geer's novel interpretation  
 13 would render the cutoff entirely superfluous and,  
 14 therefore, should be rejected.  
 15 The Protected Area Standard lists programs  
 16 that will be considered as potential designations for  
 17 protected areas.  
 18 But the plain language demonstrates that the  
 19 standard limits consideration to the specific areas  
 20 designated under those programs as of the cutoff day.  
 21 Ms. Geer's personal opinion that the  
 22 standard is outdated is not relevant to the resolution  
 23 of SR-5.  
 24 Ms. Geer may argue that the rule is outdated  
 25 as a basis for revisiting the rule in the rulemaking

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1 docket, but the concern provides no basis to ignore the  
 2 rule as it is currently written in this case.  
 3 EFSC must still apply siting standards that  
 4 are currently in effect when issuing a site certificate  
 5 and the standard -- and the rule language at issue still  
 6 applies to this project.  
 7 Ms. Geer also argues in her exceptions that  
 8 an up-to-date list of the state natural areas is  
 9 available and Idaho Power could have requested that  
 10 list.  
 11 However, regardless of whether Idaho Power  
 12 could have done so, it is clear that the Protected Area  
 13 Standard did not require the company to request that  
 14 list because the standard applies only to the areas  
 15 designated as of the cutoff date, May 11th, 2007.  
 16 In her exception, Ms. Geer also argues that  
 17 Glass Hill provides important conservation value,  
 18 however, the conservation value of Glass Hill is not at  
 19 issue in SR-5.  
 20 Regardless of the habitat present at Glass  
 21 Hill, the company is not required to analyze Glass Hill  
 22 as a protected area. That said, to the extent Ms. Geer  
 23 is primarily concerned about Glass Hill providing  
 24 important habitat, any potential impacts to habitat are  
 25 analyzed under the Council's Fish and Wildlife Habitat

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1 Standard.  
 2 Idaho Power, therefore, respectfully  
 3 requests that the Council affirm the hearing officer's  
 4 conclusions regarding issue SR-5.  
 5 VICE CHAIR HOWE: Thank you, Ms. Pease.  
 6 Any questions from Council? Nope.  
 7 Counsel Rowe.  
 8 MR. ROWE: Pretty much the same as what  
 9 Ms. Pease just said. The rule clearly states that  
 10 references in the rule to protected areas are to those  
 11 designated -- are to designations in effect as of May  
 12 11, 2007.  
 13 Rice Glass Hill was not a designated  
 14 protected area as of that date. We believe the hearing  
 15 officer correctly dismissed this on summary  
 16 determination.  
 17 VICE CHAIR HOWE: So any questions of  
 18 Council?  
 19 COUNCILMEMBER JENKINS: A question of  
 20 Patrick.  
 21 Is there any reference at all in the rules  
 22 to categories in as far as -- I mean, the rules speak  
 23 specifically of designated areas. Doesn't speak that I  
 24 see that it speaks to -- categories.  
 25 MR. ROWE: I'm looking at it right now.

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1 Councilmember Jenkins and, Todd, are you pulling it up?  
 2 I don't see a reference to categories. It  
 3 speaks again. References in this rule to protected  
 4 areas designated under federal or state statutes or  
 5 regulations are to the designations in effect, and then  
 6 it lists parks, monuments, et cetera, which could be  
 7 considered categories. But Rice Glass Hill was not  
 8 designated as of that date?  
 9 SECRETARY CORNETT: For the record, Todd  
 10 Cornett. We apologize. Once there's an update, there's  
 11 nothing you can do. So that's why we kept having to hit  
 12 the snooze button on it. So hopefully it will just --  
 13 we will get through today and it will update tonight.  
 14 Any other questions from counsel?  
 15 VICE CHAIR HOWE: Okay. So we're ready for  
 16 the straw poll.  
 17 SECRETARY CORNETT: Okay. For this issue,  
 18 "agree with the findings of fact, conclusions of law,  
 19 and conditions of approval in the proposed contested  
 20 case order pertaining to issue SR-5."  
 21 VICE CHAIR HOWE: Sounds good.  
 22 SECRETARY CORNETT: Cindy Condon.  
 23 COUNCILMEMBER CONDON: Yes.  
 24 SECRETARY CORNETT: Jordan Truitt.  
 25 COUNCILMEMBER TRUITT: Yes.

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<p>1 SECRETARY CORNETT: Ann Beier. 2 COUNCILMEMBER BEIER: Yes. 3 SECRETARY CORNETT: Hanley Jenkins. 4 COUNCILMEMBER JENKINS: Yes. 5 SECRETARY CORNETT: Perry Chocktoot. 6 COUNCILMEMBER CHOCKTOOT: Yes. 7 SECRETARY CORNETT: Kent Howe. 8 VICE CHAIR HOWE: Yes. 9 SECRETARY CORNETT: Thank you, 10 Councilmembers. 11 VICE CHAIR HOWE: Moving on to SR-6. 12 Counsel Ratcliffe. 13 MR. RATCLIFFE: Thank you. 14 So issue SR-6. We have two limited parties, 15 Lois Barry and Stop B2H. 16 The issue is whether the applicant's visual 17 impact assessments are invalid because the applicant did 18 not incorporate Oregonians' subjective evaluation of 19 their resources to evaluate visual impacts, thereby 20 invalidating the visual impact analysis for Morgan Lake 21 Park and other protected areas, scenic resources, and 22 important recreational opportunities. 23 So this, again, was a summary determination 24 ruling from the hearings officer. She dismissed the 25 issue and finding that the applicants visual impacts</p>	<p>1 skewed definitions. The RAI the applicant referred to 2 questioned applicant's conclusions of no significant 3 impact because they didn't address EFSC's definition of 4 significant as it applied to affect -- to the affected 5 human population. 6 The Judge failed to note that applicants 7 said they considered the rule. And discussed it with 8 ODOE but they didn't use it. 9 Idaho Power admits they didn't incorporate 10 Oregonian subjective evaluation of their resource. 11 Instead, they claim to have done even better by assuming 12 that all viewer groups are highly sensitive. 13 But after that assumption, sensitive 14 disappeared. 15 Instead, in their visual impact analysis, 16 Idaho Power replaced sensitivity with viewer perception. 17 Okay. 18 Perception is a way of understanding or 19 interpreting something. But, once again, Idaho Power 20 did even better. They created their own definition of 21 perception. 22 Whether viewer's perception is either head 23 on or peripheral, that's not perception. Head on and 24 peripheral describe position or perspective and not 25 perception. Those terms don't appear in any of the</p>
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<p>1 assessments are valid and found that the applicant had 2 no obligation under the Council's standard as a matter 3 of law to incorporate Oregonians' subjective evaluations 4 of the resource and that the applicant's visual impact 5 methodology accounted for viewer's subjective 6 evaluations by assuming that all identified visual 7 resources were highly sensitive to impacts. 8 So, once again, we have a slightly different 9 procedure used here. This is ruling on a motion for 10 summary determination. The issue is whether or not 11 there are material facts in dispute and the hearing 12 officer concluded that they were not and dismissed the 13 issue. 14 So with that, it's time for oral argument. 15 MS. BARRY: I'm Lois Berry. I was a 16 professor of English for 30 years -- 17 VICE CHAIR HOWE: Is the mic on? 18 MS. BARRY: No, sir. Okay. 19 VICE CHAIR HOWE: Oh, it's on. Okay. 20 MS. BARRY: I'm losing time here. 21 I am a word person and I'm a careful reader. 22 And for the following reasons I ask you to reverse Judge 23 Webster's decision to dismiss SR-6. 24 She accepted without verification 25 applicant's misleading summaries, promised assumptions,</p>	<p>1 established methodologies Idaho Power claims to have 2 used in creating their own methodology. 3 Think about your favorite park. A 4 transmission line is being planned nearby. Here is a 5 direct quote from ODOE proposed order. 6 Quote, "viewers moving through the park 7 seeing the proposed facility could be intermittent and 8 peripheral; however, for viewers engaging in stationary 9 activities such as camping, picnicking, and fishing, the 10 viewer perception could be continuous and head on." 11 That makes no sense. It's an obvious effort 12 to ignore the EFSC rule for assessing the magnitude of 13 significant impact on the affected human population. 14 And that's precisely how Idaho Power was 15 able to conclude that a transmission line bordering 16 Morgan Lake Park and many other valuable recreation, 17 scenic, and protected areas will have no significant 18 impact on highly sensitive Oregonians because our 19 perceptions are head-on and peripheral. 20 No one has ever seen this methodology before 21 and I assume it will never be seen again. 22 VICE CHAIR HOWE: Ms. Barry. 23 Any questions from Council? Okay. 24 Thank you. 25 MR. ANUTA: For Stop B2H, this is Karl</p>

1 Anuta.  
 2 This is another one where the Council is  
 3 sitting as an appellate body evaluating whether Judge  
 4 Webster made factual conclusions or did not make factual  
 5 conclusions. This is another example of where the ALJ  
 6 unfortunately weighed the evidence and concluded, as the  
 7 Department and Mr. Ratcliffe pointed out to you, that  
 8 the methodology used was adequate. That's a factual  
 9 conclusion. Whether the methodology was adequate or  
 10 not.  
 11 She also concluded that the -- there was no  
 12 significant impact. That's, again, a factual  
 13 conclusion. Not something you should be concluding on a  
 14 summary determination where the only issue is what is  
 15 the law.  
 16 She did conclude as a matter of matter of  
 17 law that the Department's rules did not require an  
 18 assessment of subjective impact on that issue. We  
 19 fundamentally disagree.  
 20 As I've outlined previously, we think the  
 21 significance definition that you have absolutely  
 22 requires the assessment of the impact on humans. And  
 23 that is the assessment of the effect on them, not the  
 24 importance.  
 25 As Ms. Pease mentioned in her last argument,

1 Okay. Thank you.  
 2 MS. PEASE: Thank you, Council.  
 3 Again, for the record, this is Jocelyn Pease  
 4 for Idaho Power Company.  
 5 And I would like to respond to several of  
 6 the remarks that we just heard from Ms. Barry and  
 7 Mr. Anuta.  
 8 In connection with the RAI that Ms. Barry  
 9 had alluded to and her argument that Idaho Power did not  
 10 use the definition of significance, I -- this is just  
 11 argument.  
 12 In fact, Idaho Power did very carefully  
 13 review that definition of significance and incorporate  
 14 the elements from that definition into its methodology.  
 15 And as to the -- the questions that  
 16 Ms. Barry had raised around -- around sensitivity and  
 17 viewer perception, I would highlight that in connection  
 18 with viewer perception what Idaho Power did in its  
 19 methodology is -- is approach that from the -- from in  
 20 terms of viewer angles and how a viewer might perceive  
 21 the project.  
 22 And so that -- again, that's part of  
 23 developing a methodology that has some objective  
 24 elements to it and that can be standardized and  
 25 repeatable by other visual resources experts.

1 they assumed everyone was sensitive and so it was an  
 2 important resource. That's different than what or how  
 3 much impact the viewer is feeling. Yes, it's important.  
 4 But am I -- is it important enough that it's a  
 5 significant impact?  
 6 You have to weigh the facts to find that.  
 7 That should not have been done on summary determination.  
 8 And in this particular instance, the -- this rule with  
 9 significance involved should have required the  
 10 measurement of subjective impacts. There's no dispute  
 11 that Idaho Power did not assess subjective impacts.  
 12 They assessed, as Ms. Barry pointed out, perception, the  
 13 location and what you could see, not how it affected  
 14 you.  
 15 We think summary determination on this issue  
 16 is inappropriate. You should reverse the Administrative  
 17 Law Judge, send it back for an assessment of when you  
 18 have all the facts and you have a hearing and you have  
 19 cross-examination.  
 20 Is it an adequate methodology or not?  
 21 Is there significant impacts or not?  
 22 We'd ask that you reverse and remand for  
 23 that reason.  
 24 VICE CHAIR HOWE: Thank you, Mr. Anuta.  
 25 Any questions from Council?

1 And in connection with the impacts being  
 2 intermittent or head-on, that's simply a way to describe  
 3 how a viewer might perceive the project and how -- I  
 4 guess, I would argue here that that -- how the viewer  
 5 perceives the project would relate to how they might  
 6 feel about it. If they see more of the project, then  
 7 they might feel differently about it.  
 8 And that's all to say that the viewer angles  
 9 and viewer perception do address the sensitivity as  
 10 well.  
 11 As to Mr. Anuta's comment about the -- the  
 12 legal standard and that there were disputed facts in  
 13 connection with this motion for summary determination,  
 14 that's simply not correct. There were no disputed facts  
 15 in this case and the hearing officer was not making a  
 16 determination that there were no significant impacts.  
 17 Instead, this was a question about Idaho  
 18 Power's methodology and whether there was any element in  
 19 the Council's standards that would require Idaho Power  
 20 to consider subjective input.  
 21 And there is no such requirement in the  
 22 Council's rules.  
 23 I think with that, I'll conclude my remarks.  
 24 Thank you.  
 25 VICE CHAIR HOWE: Thank you. Ms. Pease.

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1 Any questions from Council?  
 2 Counsel Rowe.  
 3 MR. ROWE: Patrick Rowe, Department of  
 4 Justice on behalf of the Oregon Department of Energy.  
 5 This is another motion for summary  
 6 determination dispute that was really between Stop and  
 7 Idaho Power.  
 8 The Department did not bring a motion on  
 9 this, but I will, again, state what the issue was that  
 10 was presented to the hearing officer, because I think  
 11 that's important.  
 12 It was whether applicant's visual impact  
 13 assessments are invalid because applicant did not  
 14 incorporate Oregonians' subjective evaluation of their  
 15 resources to evaluated visual impacts, thereby  
 16 invalidating the visual impact analysis for Morgan Lake  
 17 Park and other protected areas, scenic resources, and  
 18 important recreational opportunities.  
 19 Again, asking is it invalid because they  
 20 didn't incorporate subjective evaluations?  
 21 I think the Department agrees that the  
 22 answer to that question is no, it's not invalid. And  
 23 the reason is because the rule does not require  
 24 subjective evaluations.  
 25 So on that basis, the Department agrees with

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1 the ALJ's ruling.  
 2 VICE CHAIR HOWE: Thank you, Mr. Rowe.  
 3 Any questions from Council?  
 4 Okay. Yep. Councillor Jenkins.  
 5 COUNCILMEMBER JENKINS: Does the Department  
 6 have any view -- any position on the viewer angle on  
 7 this? I mean, that was an issue that was raised as a  
 8 part of the exception.  
 9 MR. ROWE: The response to that, Hanley,  
 10 it's just essentially what I just said, which is the  
 11 standard does not require a particular methodology. So  
 12 there is no requirement to incorporate a particular  
 13 angle. Idaho Power proposed a methodology that the  
 14 Department analyzed and found sufficient.  
 15 And I'll kick that over to Kellen and Sarah,  
 16 because they were certainly very involved with this.  
 17 MS. TARDAEWETHER: And I'm sorry,  
 18 Councilmember Jenkins. Angle, as in like which  
 19 factor -- yes, it was peripheral and head-on.  
 20 COUNCILMEMBER JENKINS: Right.  
 21 MS. TARDAEWETHER: Were the -- were the  
 22 angles that were evaluated.  
 23 COUNCILMEMBER JENKINS: Correct. That's my  
 24 question.  
 25 MS. TARDAEWETHER: Yes.

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1 Are you asking what the actual, like, impact  
 2 assessment of head-on and peripheral was or were they  
 3 evaluated generally?  
 4 COUNCILMEMBER JENKINS: Okay. So my  
 5 understanding in reading the material is that the  
 6 applicant came to the Department to submit a methodology  
 7 that was -- in kind of a second round -- was in an  
 8 attempt to address the significant issue that was raised  
 9 by the Department. And in submitting that methodology,  
 10 the Department agreed to the methodology using part of  
 11 the Forest Service, part of the BLM, and the  
 12 addressing -- and the way to address the significance  
 13 definition.  
 14 And so what I'm trying to get at is did the  
 15 Department have a position on the way the affected view  
 16 was assessed in that methodology? Or was it simply a  
 17 methodology to meet the significance factor was  
 18 acceptable?  
 19 MS. TARDAEWETHER: I think going back in  
 20 time, because this was all kind of before -- these were  
 21 my predecessors, Max Woods and then the previous DOJ  
 22 counsel, Renee France, worked closely with Idaho Power  
 23 in developing it.  
 24 I think we would have to go into the record  
 25 and into the information requests. I don't think in my

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1 understanding we would have that level of detail.  
 2 However, there were lots of meetings -- of  
 3 in-person meetings of -- with, like, their consultant.  
 4 So it is possible that was discussed.  
 5 But I don't think that we have some sort of  
 6 record of guidance of that level of detail.  
 7 COUNCILMEMBER JENKINS: The important thing  
 8 is the Department agreed to the methodology.  
 9 MS. TARDAEWETHER: Correct. And it was the  
 10 assumption of the appropriateness of tailoring the  
 11 Forest Service and the BLM was that the Forest Service  
 12 methodology is catered towards forested areas. And that  
 13 would be applied to the areas that have more forest  
 14 lands, whereas the BLM methodology is more of a  
 15 rangeland open EFU zone.  
 16 So that would be more appropriate for the  
 17 areas where the transmission line would cross there, and  
 18 then applying the EFSC definition of "significant."  
 19 And Chris Clark may have some other input  
 20 too. I know he's on the line.  
 21 If you could -- Nancy, if you could elevate  
 22 him. I see him up there.  
 23 MR. CLARK: Hello, Councilmembers, can you  
 24 hear me?  
 25 VICE CHAIR HOWE: Yes, we can.

1 MR. CLARK: For the record, this is Chris  
 2 Clark.  
 3 I note that, you know, the discussion of  
 4 viewer angle which is really -- you know, how will  
 5 somebody who's experiencing a view from one of the  
 6 resources see the proposed facility?  
 7 Is that a head-on view or is it a peripheral  
 8 view as you're engaging in, you know, whatever the  
 9 recreational activity or typical viewing activity would  
 10 be at that site is just one component of the measurement  
 11 of how -- what the magnitude of the impact would be.  
 12 So a peripheral view is less impactful than  
 13 a full head-on view. I hope that that answers your  
 14 question.  
 15 VICE CHAIR HOWE: Any other questions from  
 16 Council?  
 17 Councillor Condon.  
 18 COUNCILMEMBER CONDON: Cindy Condon for the  
 19 record.  
 20 Just to verify, this was a new method -- or  
 21 is a new method that was used and did the Department  
 22 determine that it was a better method than a previous  
 23 method or was the previous method not available to be  
 24 used or -- what's the purpose of this new -- new method?  
 25 MS. TARDAEWETHER: The method that

1 project? For this application?  
 2 COUNCILMEMBER CONDON: No. A different -- a  
 3 transmission line, preferably.  
 4 MS. TARDAEWETHER: I would have to go back  
 5 into the record.  
 6 COUNCILMEMBER CONDON: No. Okay. Any  
 7 project.  
 8 MS. TARDAEWETHER: Any project, but a  
 9 transmission line, or --  
 10 COUNCILMEMBER CONDON: Just any project.  
 11 MS. TARDAEWETHER: Yes, visual impact  
 12 assessment is included under all of -- for all of  
 13 Council's projects. And the project orders typically  
 14 state that there aren't methodologies that Council  
 15 standards or rules prescribe.  
 16 COUNCILMEMBER CONDON: And "significant"  
 17 would have been a feature of all of those studies;  
 18 right? If not all of them.  
 19 MS. TARDAEWETHER: Not -- not necessarily.  
 20 COUNCILMEMBER CONDON: Okay.  
 21 MS. ESTERSON: So the general method that we  
 22 see for visual impacts is called a "zone of visual  
 23 influence." And it's a map that shows based on a color  
 24 shading, the extent and distance for which, like, the  
 25 number of components that might be visible out to what

1 incorporated the Council's definition of significant?  
 2 Channeling Max Woods -- who you didn't  
 3 know -- but it was really to -- an effort to cater the  
 4 review for Council's standards.  
 5 I know that we talked about under "cultural"  
 6 we're really trying to not duplicate studies with the  
 7 federal review.  
 8 However, there are -- so there's a lot of  
 9 what the applicant generated that is appropriate for the  
 10 NEPA review.  
 11 However, Council's standards actually go a  
 12 lot further in some cases for a lot of impact  
 13 evaluations to resources, and this is one of those cases  
 14 where we wanted them to go further so -- and make it  
 15 more specific to your standard.  
 16 And so that is -- that is the -- I'd imagine  
 17 the reason why.  
 18 And I could look up that basis in that  
 19 information request that basically served, as kind of,  
 20 us telling them this is how we want it done.  
 21 COUNCILMEMBER CONDON: So just to follow up  
 22 on that.  
 23 Have -- were other methods used previously  
 24 to evaluate a transmission line?  
 25 MS. TARDAEWETHER: Are you saying for this

1 distance. Rarely, do we get visual simulations or  
 2 detailed analysis that look at the terms of  
 3 significance.  
 4 So this is a methodology that is much more  
 5 than is the normal for EFSC projects. And I think what  
 6 we -- how we think about it as analysts and reviewers is  
 7 it's a scaled approach.  
 8 If most of the resources are 10 miles away,  
 9 you know, or at some distance based on topography, that  
 10 the zone of visual influence mapping tool which uses GIS  
 11 and different layers, if that doesn't necessitate a  
 12 further analysis where you really need to look at, you  
 13 know, do a -- we call it a "KOP study," where you are  
 14 identifying key observation points and then taking  
 15 pictures and doing visual simulations, that would be a  
 16 second tier, given what the ZVI might show and for --  
 17 for the majority of projects, they land -- they stay on  
 18 that ZVI.  
 19 This is Sarah Esterson with the Department  
 20 of Energy.  
 21 COUNCILMEMBER CONDON: Okay. So nothing --  
 22 there was not a previous methodology that took into  
 23 account a more subjective human impact.  
 24 This is -- this actually has gone farther  
 25 than any previous methodology.

1 MS. ESTERSON: Yeah.  
 2 COUNCILMEMBER CONDON: Thank you.  
 3 VICE CHAIR HOWE: Any additional questions?  
 4 Okay. So I think we're through SR-6 here.  
 5 Are we ready to have a straw poll?  
 6 SECRETARY CORNETT: For the record, Todd  
 7 Cornett.  
 8 So this would be a straw poll for both  
 9 the -- well, Scenic Resources Standard, the Protected  
 10 Area Standard, and issue SR-6. It would be the  
 11 culmination for all three of those.  
 12 Okay. So "agree with the findings of fact,  
 13 conclusions of law, and conditions of approval in the  
 14 proposed order pertaining to the Scenic and Protected  
 15 Area Standards that are not related to the issues in the  
 16 contested case and in the proposed contested case order  
 17 pertaining to issue SR-6."  
 18 VICE CHAIR HOWE: Sounds good.  
 19 SECRETARY CORNETT: Okay. Perry Chocktoot.  
 20 COUNCILMEMBER CHOCKTOOT: Yes.  
 21 SECRETARY CORNETT: Hanley Jenkins.  
 22 COUNCILMEMBER JENKINS: Yes.  
 23 SECRETARY CORNETT: Kent Howe.  
 24 VICE CHAIR HOWE: Yes.  
 25 SECRETARY CORNETT: Cindy Condon.

1 just kind of power through.  
 2 So when we're looking at recreational  
 3 opportunities, we -- the applicant and Department  
 4 evaluate recreational opportunities and we consider  
 5 factors such as special designations or managements, the  
 6 degree of demand, outstanding or unusual qualities,  
 7 availability or rareness, irreplaceability or -- my  
 8 brain -- my brain, I'm not going to pronounce that right  
 9 now.  
 10 Anyhow that's the analysis that we go  
 11 through for the -- the analysis area is the site  
 12 boundary and two miles from the site boundary.  
 13 So we're now kind of coming in from  
 14 protected areas and we're going now out -- out. But,  
 15 however, it's still along the transmission line and now  
 16 we're looking through the lens of recreation. Still  
 17 quite a few recreational opportunities.  
 18 Oh, yes. Yep.  
 19 So in the proposed order -- not too close.  
 20 And I'm doing my presentation this way, because I wasn't  
 21 able -- this gives me a better ability to kind of toggle  
 22 in between the presentation, so I apologize if it's kind  
 23 of small. I'll do my best.  
 24 So there's 21 important recreational  
 25 opportunities that's within the two-mile analysis area

1 COUNCILMEMBER CONDON: Yes.  
 2 SECRETARY CORNETT: Ann Beier.  
 3 COUNCILMEMBER BEIER: (No audible response.)  
 4 SECRETARY CORNETT: Jordan Truitt.  
 5 COUNCILMEMBER TRUITT: Yes.  
 6 SECRETARY CORNETT: Thank you,  
 7 Councilmembers.  
 8 VICE CHAIR HOWE: Okay. We are scheduled to  
 9 take a break at 3:15.  
 10 How are folks doing?  
 11 Do we want to try to go through the  
 12 recreation standard first or -- there's R-2, -4, and -3.  
 13 COUNCILMEMBER JENKINS: Let's get started.  
 14 VICE CHAIR HOWE: Okay. Yeah. Let's keep  
 15 going, then. And we're ready to start on recreation  
 16 standard R-2, I guess. Or maybe -- yeah, recreation  
 17 standard.  
 18 MS. TARDAEWETHER: Okay. For the record,  
 19 Kellen Tardaewether, Oregon Department of Energy.  
 20 We're now continuing into the recreation  
 21 standard. And I know one of the last issues kind of  
 22 bundled -- had a mention in the issue statement of also  
 23 recreational opportunities.  
 24 So you're -- you know, Council is correct.  
 25 These are all very related, so I think it is good to

1 that are evaluated in the proposed order.  
 2 When we're -- once we identify that a  
 3 recreational opportunity is important, then we go  
 4 through what is evaluated underneath the standard.  
 5 So we look at direct and indirect loss.  
 6 Now we've visited direct and indirect  
 7 impacts under cultural, right, a direct loss as there is  
 8 being -- there's going to be a permanent, you know,  
 9 facility footprint impact or construction impact that is  
 10 going to directly impact that recreational opportunity.  
 11 Indirect would be something, like, traffic, noise or  
 12 visual impacts, which are evaluated underneath this  
 13 standard.  
 14 There's four recreational opportunities that  
 15 are crossed by the proposed facility, and -- however,  
 16 the evaluation recommends that because -- even though  
 17 they are crossed, it doesn't -- a lot of times was  
 18 talking about spanning and with the recommendation is  
 19 that even though it is crossed, the transmission line  
 20 crosses the recreational opportunity. It does not  
 21 impact. It's not a direct loss of that recreational  
 22 opportunity because the overall use or importance of the  
 23 resource is maintained.  
 24 So here I had mentioned -- so that was  
 25 direct loss. And so these are the indirect loss

1 evaluation that's done: Construction and operation,  
2 noise, traffic, and visual impacts.

3 Over here I just took a snippet of the --  
4 the -- of the exhibit that goes through. And there's an  
5 entire -- each recreational opportunity in this  
6 example -- and I'll make this a little bit bigger so  
7 maybe you can see it.

8 Each recreational opportunity has an entire  
9 narrative in the exhibit that goes through, you know, a  
10 narrative assessment and also applies, you know,  
11 quantitative measures for each of the aspects that is  
12 evaluated and this is -- I just plucked out a summary  
13 table for each of them.

14 So this is just an example of some of what  
15 is looked at and what the Department pulls from and  
16 summarizes and evaluates in the proposed order to make  
17 its recommendations.

18 I'm going to remind Council, the KOP is a  
19 key observation point. So that is if there was a photo  
20 simulation associated with the potential impacts at that  
21 site.

22 So -- and I'm going to take a minute so --  
23 I'm going to pause with my notes.

24 And I wanted to go over here. Jesse is  
25 going to talk about it, but I just kind of -- again, I

1 that would be visible from the park, so there is an  
2 assessment of that in the proposed order that takes  
3 issue.

4 The -- so the Morgan Lake Road is a related  
5 or supporting facility?

6 Okay. Never mind. Okay. Because one of  
7 the things we look at for recreation is traffic impacts.  
8 And so Morgan Lake Road is a very kind of, like,  
9 switchback, steep, windy road that would have to be used  
10 to -- if the Morgan Lake alternative would be  
11 constructed and so that the construction impacts are  
12 discussed and evaluated or construction traffic impacts  
13 are evaluated in the proposed order.

14 And that is also underneath that public  
15 services condition of that county-specific traffic  
16 management plan.

17 Once the final routes are selected, those  
18 plans are going to be finalized with the City of  
19 La Grande and with Union County in identifying if any  
20 improvements need to be made, what those need to be  
21 made, making sure they are up to applicable standards.

22 If there is a road that isn't proposed in  
23 this application to be substantially modified and the  
24 applicant may need -- and proposes to substantially  
25 modify it, they would need to come in for an amendment

1 want to be helpful and orient Council to what we're  
2 going to be talking about.

3 Now, I can't find anything.

4 So I can't tell if this is my Exhibit C.

5 I just wanted to show -- and now my computer  
6 is thinking.

7 Okay. Well, I just wanted to point out to  
8 counsel that Morgan Lake Park, which is here, you know,  
9 in Union County right outside of La Grande, is a Park  
10 that is managed by the City of La Grande. And it is  
11 identified as an important recreational opportunity.

12 It's at the top of Morgan Lake Road,  
13 which -- there it is. Which is -- this is -- this here  
14 is Morgan Lake Road. And you take that road and then  
15 Morgan Lake is on a different map. I don't want to  
16 freeze anything.

17 But I just kind of wanted to show -- would I  
18 be able to get to it? I can't get to it. Okay.

19 Morgan Lake is known for bird  
20 watching/viewing. There are campsites there. There's  
21 fishing. There's actually two lakes associated with the  
22 recreational opportunity.

23 The proposed facility and the Morgan Lake  
24 alternative are cited to be outside the boundaries of  
25 the park. However, there are some facilities structures

1 to add it to be included into the site boundary.

2 I will stop there and pass it over to Jesse.

3 MR. RATCLIFFE: Our first issue under the  
4 recreation standard is issue R-2. Limited parties are  
5 Lois Barry and Mr. McAllister.

6 And the issue statement here is whether the  
7 visual impacts of the proposed facility structures in  
8 the viewshed of Morgan Lake Park are inconsistent with  
9 the objective of the Morgan Lake Park recreational use  
10 and development plan and should therefore be  
11 re-evaluated.

12 So the hearing officer concluded that the  
13 applicant is not required to demonstrate compliance with  
14 the Morgan Lake Park plan because there are no proposed  
15 project components located within the Park boundary.

16 However, the applicant considered the  
17 objectives and values of the Morgan Lake plan in  
18 determining that scenery is a valued attribute of Morgan  
19 Lake Park and incorporated that determination into its  
20 analysis of the potential park -- potential project  
21 impacts to the park.

22 And this is a function of the way that the  
23 Council's recreation standard is written where the --  
24 Council is supposed to be evaluating significant adverse  
25 impacts to important recreational opportunities.

1 The determination of the importance of a  
 2 recreational opportunity depends on a series of factors,  
 3 including any special designation or management near the  
 4 location. And so here we do have a special  
 5 management -- or designation of the location via the --  
 6 this recreational use and development plan. And one of  
 7 the attributes that the plan is looking at is scenery.  
 8 So that's how we end up, you know, with a -- a visual  
 9 impacts issue under the recreation standard.

10 So in response to the limited parties claims  
 11 that the applicant did not sufficiently consider the  
 12 proposed facilities impact to recreational opportunities  
 13 in undeveloped areas of the park, the applicant provided  
 14 additional evidence addressing disbursed recreation  
 15 opportunities in the undeveloped areas, some of these  
 16 opportunities included bird watching and nature study.

17 The revised analysis acknowledged that the  
 18 proposed facility would be visible from approximately 16  
 19 percent of the Park.

20 And that in those areas of the Park where  
 21 the towers are not screened, the visual contrast would  
 22 be high.

23 The hearing officer noted that -- that both  
 24 the applicant and the Department included that impacts  
 25 to the parks overall would be less than significant and

1 years.

2 There are only 12 modest campsites in a  
 3 small area on the lake's west shore near the dock. Most  
 4 of the park's 204 acres are natural forest and  
 5 grasslands.

6 First-time visitors are stunned by  
 7 360-degree views unmarred by man's activities.

8 Judge Webster said that Idaho Power had  
 9 considered the Morgan Lake Plan -- they're great at  
 10 considering, not so great on carrying through.

11 In her opinion, she stated the project would  
 12 not be inside the park boundary. Idaho Power has  
 13 repeated that so often that she seemed to think it was  
 14 relevant.

15 The recreation rule is that the area two  
 16 miles from the project site boundary should be  
 17 evaluated. She ignored the fact that one tower will  
 18 rise only two-tenths of a mile from the wetlands of  
 19 Little Morgan Lake, and that will be only 1 of 13  
 20 130-foot towers visible to the south and west.

21 Describing it's proposed mitigation, Idaho  
 22 Power refers to lower towers, but in their exceptions  
 23 they have never mentioned that four, 150-foot towers  
 24 they first proposed will be replaced by 13, 130-foot  
 25 towers.

1 that the proposed mitigation, including the proposal to  
 2 expand the use of the H frame structures to all tower  
 3 locations between mileposts 5 to 8 would further reduce  
 4 the potential visual impacts in that 16 percent of the  
 5 park.

6 Finally, the hearing officer concluded that  
 7 the recreation standard does not require the Council to  
 8 find that there would be no impact on a recreational  
 9 opportunity only that there is sufficient mitigation to  
 10 ensure that impacts will be avoided, minimized,  
 11 corrected, or compensated so that the impact is less  
 12 than significant.

13 We -- although I noted at the outset that  
 14 the parties who were admitted as limited parties for  
 15 this issue were Lois Barry and Mr. McAllister,  
 16 Mr. McAllister did not file exceptions on this issue,  
 17 and so the oral argument on this would be from  
 18 Ms. Barry.

19 MS. BARRY: For the reasons that follow, I  
 20 request that Judge Webster's decision on issue R-2 be  
 21 reversed.

22 For almost 50 years, the Morgan Lake Plan  
 23 has maintained the maximum of natural forest and lake  
 24 areas to encourage solitude and isolation with little  
 25 change or interference from man's activities. Fifty

1 The historic group who wrote the revered  
 2 Morgan Lake Plan, as well as current hikers and birders  
 3 who value the park's completely undeveloped areas would  
 4 be horrified by the industrial intrusion of 13, 130-foot  
 5 transmission towers marring their views from the park's  
 6 protected natural areas.

7 Obviously, the project will result in a  
 8 complete reversal of the Morgan Lake Plan. And Judge  
 9 Webster's decision should be reversed.

10 And I'll use the rest of my time to answer  
 11 your question about methodology that provides  
 12 information about significant impact on viewers of these  
 13 areas under discussion.

14 Since 1995, the Forest Service SMS has been  
 15 used to evaluate forest properties that will be impacted  
 16 by a project. It contains a 13-page chapter on  
 17 constituent information and how to gather it.

18 VICE CHAIR HOWE: Thank you, Ms. Barry.  
 19 Any questions from Council?

20 Okay. Thank you.

21 MS. PEASE: Good afternoon. For the record,  
 22 Jocelyn Pease for Idaho Power Company.

23 About a year ago, the Council considered an  
 24 interlocutory appeal in connection with issue R-2. In  
 25 that appeal the Council already determined that Idaho



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1 Power is not required to demonstrate compliance with the  
 2 Morgan Lake Plan because no project component is  
 3 proposed to be located within Morgan Lake Park. That is  
 4 a jurisdictional issue. The project is proposed to be  
 5 located entirely outside the park.  
 6 However, the Council determined that  
 7 designations contained in the Morgan Lake Plan are still  
 8 relevant to demonstrating compliance with the recreation  
 9 standard, because the Council's definition of  
 10 significance requires an assessment of impacts to the  
 11 importance of a resource. And the Council considers any  
 12 special designation or management of the location when  
 13 determining whether a recreational opportunity is  
 14 important.  
 15 As a result of the Council's order  
 16 explaining the scope of R-2, the remaining issue in this  
 17 contested case is narrow. Idaho Power must demonstrate  
 18 that the company adequately considered the values and  
 19 objectives of the Morgan Lake Plan when assessing  
 20 whether the impacts from the project will be significant  
 21 based on the importance of Morgan Lake Park. Consistent  
 22 with that direction from the Council, Idaho Power  
 23 assessed the values and objectives of the Morgan Lake  
 24 Plan to determine whether scenery was a valued attribute  
 25 of Morgan Lake Park and incorporate that assessment into

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1 the company's analysis of potential impacts.  
 2 Therefore, Idaho Power properly and  
 3 appropriately considered the Morgan Lake Plan in the  
 4 context of determining compliance with the Council's  
 5 recreation standard.  
 6 Dispute the Council's order that Idaho Power  
 7 need not demonstrate compliance with the Morgan Lake  
 8 Plan, Ms. Barry continues to argue that the Morgan Lake  
 9 Plan governs the siting of the project. Simply put, it  
 10 does not.  
 11 Ms. Barry suggests that because the Morgan  
 12 Lake Plan is within the analysis area for the project,  
 13 within the two miles, that Idaho Power must comply with  
 14 the Morgan Lake Plan.  
 15 Ms. Barry is incorrect.  
 16 The fact that the Morgan Lake Park is within  
 17 the analysis area of the project simply means that Idaho  
 18 Power must analyze the park in connection with the  
 19 development of the project and not for compliance with  
 20 the Morgan Lake Plan. It's the recreation standard that  
 21 governs, not the Morgan Lake Plan.  
 22 Ms. Barry's assertion that Idaho Power has  
 23 not provided a complete analysis of impacts to Morgan  
 24 Lake Park is also incorrect. Idaho Power has provided a  
 25 complete analysis, the first through the company's ASC.

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1 Then it refined the analysis in response to DPO comments  
 2 and again in the contested case process.  
 3 At each turn, Idaho Power considered the  
 4 input from the DPO comments and from the limited parties  
 5 in this case to expand the scope of its analysis.  
 6 And in fact, Idaho Power proposed  
 7 substantial additional mitigation to reduce impacts in  
 8 Morgan Lake Park such that the project would not be  
 9 visible from approximately 84 percent of the park.  
 10 Based on the foregoing, Idaho Power provided  
 11 evidence in the record that the impacts from the project  
 12 would be less than significant and requests that the  
 13 Council affirm the hearing officer's conclusions  
 14 regarding issue R-2.  
 15 VICE CHAIR HOWE: Thank you, Ms. Pease.  
 16 Any questions from Council?  
 17 Councillor Condon.  
 18 COUNCILMEMBER CONDON: Cindy Condon. Quick  
 19 question.  
 20 On the 16 percent that it will be visible,  
 21 can you give a feeling -- it seems like I read it in  
 22 here. Is that used -- like, are there trails through  
 23 that 16 percent of the --  
 24 MS. PEASE: My understanding is that area  
 25 is -- that there are some trails and that it is

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1 primarily undeveloped disbursed recreation.  
 2 And we understand from comments that were  
 3 provided both in the DPO comment process and then in the  
 4 contested case that that is a valued attribute of the  
 5 Morgan Lake Park, which is also Idaho Power also  
 6 analyzed that area.  
 7 In the initial analysis, the company was  
 8 much more focused on the developed areas of the park  
 9 where there are camping sites and a boat dock and around  
 10 the lake where it's used for fishing.  
 11 Based on that analysis, it was determined  
 12 that there would be hardly any impacts at the park  
 13 because the project wouldn't be visible from those  
 14 areas.  
 15 However, when we expanded the analysis, we  
 16 did recognize that there would be a certain amount of  
 17 impacts in those areas where there is disbursed  
 18 recreation.  
 19 COUNCILMEMBER CONDON: Just a quick  
 20 follow-up on that.  
 21 So just with respect to the 13 lower towers,  
 22 can you just give some idea of how much that reduce --  
 23 do you expect most of those to be screened by trees.  
 24 I know there will be some.  
 25 MS. PEASE: Certainly.

1 So in the -- as part of its rebuttal filing,  
2 Idaho Power had submitted a video simulation that can  
3 provide a sort of -- a representation of how much you  
4 might see, but to -- I guess, to back up a little bit,  
5 the idea with reducing the tower heights is that it  
6 would be the entire area where you -- where the towers  
7 might be visible in the vicinity of Morgan Lake Park.

8 And so it's now a three-mile stretch that  
9 will be changed to H frames. And then those towers  
10 would be visible in only that 16 percent of the park.

11 There's a significant portion of the park  
12 that's forested or where the views would be obscured  
13 either by topography or by trees.

14 COUNCILMEMBER CONDON: Thank you.

15 MR. RATCLIFFE: We really need to be keeping  
16 this to the exceptions that have been filed and the  
17 responses to those.

18 VICE CHAIR HOWE: So any other questions of  
19 Ms. Pease?

20 Okay. Counsel Rowe.

21 MR. ROWE: This is on behalf of Department  
22 of Energy.

23 Again, I'll repeat, the issue that was  
24 before the hearing officer -- because that's what we're  
25 here for, an exceptions hearing -- the issue that was

1 That, essentially, is beyond the scope of what this  
2 exception is.

3 The recreation standard, the looking at  
4 that, does not automatically require compliance with  
5 plan requirements within the analysis area.

6 Ms. Barry doesn't contest the finding that  
7 there aren't facility components within the boundary of  
8 Morgan Lake Park or that the applicant didn't adequately  
9 consider the goals and objectives of the plan.

10 We believe for that reason, it was  
11 appropriate -- or the exception should be rejected.

12 With regard to the mitigation that's been  
13 proposed in the closing arguments on issues R-1, R-2,  
14 R-3, R-4, SR-2, SR-3, SR-7, applicant proposed an  
15 additional condition to expand the use of the shorter  
16 H frame towers, as has just been discussed.

17 Specifically, that condition would expand  
18 the use of the proposed mitigation, the lower towers, to  
19 milepost -- originally, it was from milepost 6 to  
20 milepost 6.9. And now they are suggesting it go from  
21 milepost 5 to milepost 8.

22 In the proposed contested case order, the  
23 hearing officer doesn't appear to rely on that proposed  
24 amended condition in reaching her conclusion. The  
25 Department could recommend that Council -- I'm sorry,

1 before her was whether the visual impacts of the  
2 proposed facility structures in the viewshed of Morgan  
3 Lake Park are inconsistent with the objectives of the  
4 Morgan Lake recreational use and development plan.

5 So are they inconsistent with the plan?

6 And if they are, should visual impacts then  
7 be re-evaluated?

8 Ms. Barry takes exception to the hearing  
9 officer's finding that Idaho Power is not required to  
10 demonstrate compliance with the Morgan Lake Plan because  
11 there are no projected -- proposed project components  
12 within the park boundary.

13 We believe that ALJ got it right. The  
14 hearing officer correctly held that the Morgan Lake Plan  
15 is intended to apply to management of recreational  
16 opportunities within the park. It does not establish  
17 specific criteria that would apply to construction in  
18 operation of a transmission line located outside of the  
19 park boundaries. So this proposal is not inconsistent  
20 with the Morgan Lake Plan.

21 So as Ms. Pease stated, really what you need  
22 to look at is the recreation standard, not the plan. It  
23 is not inconsistent with the plan.

24 Now, you ask, well, is what they are  
25 proposing inconsistent with the recreation standard?

1 that Council could include that proposed amended  
2 condition as an applicant representation, hold them to  
3 it in the final order and modify -- modify the PCCO to  
4 say, okay, we'll find compliance with this condition  
5 based on your representation that you will include these  
6 shorter H frame towers in this expanded area.

7 VICE CHAIR HOWE: Councillor Jenkins, did  
8 you have a question?

9 COUNCILMEMBER JENKINS: I think that's  
10 appropriate.

11 VICE CHAIR HOWE: Yeah. Okay.

12 COUNCILMEMBER JENKINS: This is Hanley.

13 VICE CHAIR HOWE: Any other question -- or  
14 any questions?

15 Okay. We're to the -- if we do what we've  
16 been doing in the past, we won't continue. We'll go  
17 ahead and do a straw poll on R-2.

18 COUNCILMEMBER JENKINS: Just this part of  
19 R-2; right? Just this exception?

20 VICE CHAIR HOWE: Right. Yeah.

21 COUNCILMEMBER JENKINS: I'd like to do that.  
22 Keep them distinct. Okay.

23 SECRETARY CORNETT: So I did -- Patrick  
24 talked about the expanded distance for the H frames.

25 Is there agreement that Council wanted to

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1 include that and make that a representation of that  
 2 conditional requirement?  
 3 VICE CHAIR HOWE: Yes. I've seen enough  
 4 head nods.  
 5 SECRETARY CORNETT: So then "agree with  
 6 findings of fact, conclusions of law, and conditions of  
 7 approval in the proposed contested case order pertaining  
 8 to issue R-2 with the following modification" -- again,  
 9 general concept -- "hold the applicant to their  
 10 representation to require the expanded distance for the  
 11 shorter H frame towers adjacent or in proximity to  
 12 Morgan Lake Park."  
 13 And then we'll get the actual language for  
 14 that when we write the draft final order.  
 15 COUNCILMEMBER JENKINS: Which will be the  
 16 milepost.  
 17 VICE CHAIR HOWE: Okay. Sounds good.  
 18 SECRETARY CORNETT: Okay. Ann Beier.  
 19 COUNCILMEMBER BEIER: (No audible response.)  
 20 SECRETARY CORNETT: Perry Chocktoot.  
 21 COUNCILMEMBER CHOCKTOOT: Yes.  
 22 SECRETARY CORNETT: Cindy Condon.  
 23 COUNCILMEMBER CONDON: Yes.  
 24 SECRETARY CORNETT: Hanley Jenkins.  
 25 COUNCILMEMBER JENKINS: Yes.

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1 SECRETARY CORNETT: Kent Howe.  
 2 VICE CHAIR HOWE: Yes.  
 3 SECRETARY CORNETT: Jordan Truitt.  
 4 COUNCILMEMBER TRUITT: Yes.  
 5 SECRETARY CORNETT: Thank you,  
 6 Councilmembers.  
 7 VICE CHAIR HOWE: Okay. Counsel Ratcliffe.  
 8 I guess we move to R-4.  
 9 MR. RATCLIFFE: Okay. So issue R-4, we have  
 10 one limited party, Lois Barry. The issue statement is  
 11 whether the applicant's visual impact assessment for  
 12 Morgan Lake Park adequately evaluates visual impacts to  
 13 the more than 160 acres of undeveloped parkland and  
 14 natural surroundings, as visual simulations were only  
 15 provided for high-use areas.  
 16 So the hearing officer's opinion on this.  
 17 The hearing officer concluded that the  
 18 applicant's supplemental analysis of Morgan Lake Park  
 19 adequately evaluated the proposed project's visual  
 20 impacts in the undeveloped areas of the park.  
 21 And in a preceding issue, we heard a little  
 22 bit about the extra analysis that was done through the  
 23 course of the -- the contested case.  
 24 The hearing officer also found that a  
 25 preponderance of evidence establishes that although the

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1 park will result in long-term visual impacts of varying  
 2 intensity within the park, these visual impacts will not  
 3 preclude visitors from engaging in recreational  
 4 opportunities and the park's impacts will be less -- the  
 5 project's impacts to the park will be less than  
 6 significant.  
 7 So that's all I have on this one and then  
 8 it's time for oral argument from Ms. Barry.  
 9 VICE CHAIR HOWE: Ms. Barry, you can come on  
 10 up.  
 11 MS. BARRY: You skipped issue R-3.  
 12 Yeah, okay. I just wanted you to know that  
 13 there's going to be more after this one.  
 14 Okay. Well, when I wrote issue R-4, the  
 15 applicant had provided only eight photos taken from the  
 16 boat dock parking area as their visual impact assessment  
 17 of a 204-acre city park.  
 18 Furthermore, they provided no data for  
 19 determining "high use."  
 20 Clearly, Judge Webster's decision to accept  
 21 that visual impact assessment should be reversed.  
 22 Based on that initial meager effort, Idaho  
 23 Power concluded that quote, "Although the project will  
 24 introduce moderate contrast to the landscape, it will  
 25 not preclude visitors from enjoying the day-use area and

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1 overnight facilities offered at Morgan Lake Park."  
 2 Applicant's exception now argues that  
 3 visitors need only engage in recreational opportunities  
 4 but "enjoying" is the term in their ASC -- that's page  
 5 155 of Exhibit T.  
 6 You could engage in mud wrestling or  
 7 skydiving, but it's not like sitting alone for an hour  
 8 in the quiet, enjoying the sight of ducks swimming  
 9 through yellow water lilies on Little Morgan Lake.  
 10 In addition to the developed day use areas,  
 11 natural areas of the park are other day use.  
 12 Hikers and birders tend to avoid the  
 13 developed areas. Scenery is recognized as an important  
 14 aspect of recreation. Enjoyment of recreation in the  
 15 park will definitely be precluded by the line of 9,  
 16 130-foot transmission towers marring the views from the  
 17 park's natural areas.  
 18 Idaho Power claims that only 16 percent of  
 19 the park is natural.  
 20 I would say quite the reverse.  
 21 The lakes are natural, and unless an area in  
 22 the park is accessible by car, it is natural. That's  
 23 more than 75 percent of the park.  
 24 This year's analysis admits -- this year's  
 25 analysis admits the project's impact on the park is high

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1 because towers would not be screened by vegetation as  
 2 was previously claimed.  
 3 Nevertheless, still using the skewed  
 4 definition of user perception looking head-on or  
 5 peripherally, applicant concluded -- no surprise --  
 6 there would be less than significant impact visitors to  
 7 the park.  
 8 Words and logic matter. It would be clear  
 9 by now that the visual impact analysis for the Mill  
 10 Creek and Morgan Lake routes is worse than in -- it is  
 11 deceptive.  
 12 VICE CHAIR HOWE: Thank you, Ms. Barry.  
 13 Any questions from Council?  
 14 Thank you.  
 15 MS. PEASE: Thank you. Good afternoon,  
 16 Councilmembers.  
 17 Again, for the record, this is Jocelyn Pease  
 18 for Idaho Power Company.  
 19 In her exceptions filing, Ms. Barry argues  
 20 that the hearing officer had dismissed her concerns  
 21 about Idaho Power's analysis of impacts to Morgan Lake  
 22 Park, but that is not true.  
 23 Ms. Barry raised concerns that Idaho Power  
 24 had not adequately assessed impacts to undeveloped areas  
 25 and Idaho Power then addressed those concerns by

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1 providing additional analysis of impacts to the entire  
 2 park.  
 3 This type of process is what the contested  
 4 case is for. The limited parties get to raise issues  
 5 and Idaho Power has an opportunity to respond and  
 6 provide additional analysis and address those concerns.  
 7 And that is exactly what's happened here.  
 8 And while Ms. Barry will seek to go back and  
 9 criticize what Idaho Power put into the initial  
 10 application, Idaho Power has since responded to the  
 11 concerns that have been raised and provided a more  
 12 complete analysis, including the undeveloped areas of  
 13 the park.  
 14 Ms. Barry had also made a comment that Idaho  
 15 Power had asserted that only 16 percent of the park is  
 16 natural. That comment seems to misunderstand Idaho  
 17 Power's analysis.  
 18 Instead, what Idaho Power demonstrated that  
 19 there is only 16 percent of the park that would -- from  
 20 which the project facilities would be visible.  
 21 It is a question not of what area is natural  
 22 or what's not or what's developed recreation; instead,  
 23 it's a question of the viewshed and are there barriers,  
 24 such as trees or topography that would block the view of  
 25 the project.

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1 Ms. Barry had also made a comment about  
 2 language in the -- in the hearing officer's order  
 3 regarding engaging versus enjoying a resource.  
 4 And on that point, Ms. Barry is correct that  
 5 Idaho Power's initial analysis referred to the enjoyment  
 6 of recreational opportunities rather than engagement.  
 7 But regardless of the word that's used,  
 8 Idaho Power's analysis provides ample evidence that the  
 9 impacts will be less than significant. And for that  
 10 reason, Ms. Barry's exception does not identify any  
 11 error in the proposed contested case order and Idaho  
 12 Power respectfully requests that this Council affirm the  
 13 hearing officer's conclusions in connection with R-4.  
 14 Thank you.  
 15 VICE CHAIR HOWE: Thank you, Ms. Pease.  
 16 Any questions from Council?  
 17 Okay. Thank you.  
 18 Counsel Rowe.  
 19 MR. ROWE: The Department doesn't really  
 20 have any comments on this. We agree with the comments  
 21 that Ms. Pease just made. We don't see any error in the  
 22 hearing officer's conclusion on issue R-4.  
 23 VICE CHAIR HOWE: Okay. So we're through  
 24 recreation standard four. And I -- are there any  
 25 changes needed?

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1 Are we ready to have a straw poll?  
 2 All right. Councillor Condon.  
 3 COUNCILMEMBER CONDON: Cindy Condon.  
 4 And this might be for Ms. Pease, but in the  
 5 contested case in the ALJ's comments, it -- it's talking  
 6 about Idaho Power's statement. The company determined  
 7 that viewer perception -- quote, "viewer perception will  
 8 range from low to high throughout Morgan Lake Park,"  
 9 unquote. And that because of this range, quote, "viewer  
 10 perception for the park as a whole will be medium,"  
 11 unquote.  
 12 And I just want to ask.  
 13 So "medium" in Idaho Power's analysis would  
 14 not be significant?  
 15 MS. PEASE: That's correct.  
 16 COUNCILMEMBER CONDON: Okay. It's language  
 17 that -- thank you.  
 18 VICE CHAIR HOWE: Okay. With that, I  
 19 believe, Secretary Cornett, we're ready for a straw  
 20 poll. You can give us the language if you've got it  
 21 ready.  
 22 SECRETARY CORNETT: Specific to issue R-4,  
 23 "agree with the findings of fact, conclusions of law,  
 24 and conditions of approval in the proposed contested  
 25 case order pertaining to issue R-4."

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1 VICE CHAIR HOWE: Sounds right.  
 2 SECRETARY CORNETT: Ann Beier.  
 3 Hanley Jenkins.  
 4 COUNCILMEMBER JENKINS: Yes.  
 5 SECRETARY CORNETT: Jordan Truitt.  
 6 COUNCILMEMBER TRUITT: Yes.  
 7 SECRETARY CORNETT: Cindy Condon.  
 8 COUNCILMEMBER CONDON: Yes, with some  
 9 reser- -- I mean, I do think that public perception  
 10 could be better analyzed, but yes.  
 11 SECRETARY CORNETT: Perry Chocktoot.  
 12 COUNCILMEMBER CHOCKTOOT: Yes.  
 13 SECRETARY CORNETT: Kent Howe.  
 14 VICE CHAIR HOWE: Yes.  
 15 SECRETARY CORNETT: Thank you,  
 16 Councilmembers.  
 17 VICE CHAIR HOWE: Okay.  
 18 Counsel Ratcliffe, we're ready for R-3.  
 19 MR. RATCLIFFE: All right. So R-3 is --  
 20 limited party is also Ms. Barry.  
 21 The issue statement is whether the  
 22 mitigation proposed to minimize the visual impacts of  
 23 the proposed facility structures at Morgan Lake Park, in  
 24 parentheses, 100,000 for recreational facility  
 25 improvements is insufficient because the parks remote

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1 areas will not benefit from the proposed mitigation.  
 2 The hearing officer concluded that the funds  
 3 paid to the City of La Grande, the \$100,000 are not  
 4 intended to mitigate for the proposed facility's visual  
 5 impacts at Morgan Lake Park, rather the funds are  
 6 intended for recreational improvements as mitigation for  
 7 potential impacts to the park as a recreational  
 8 resource.  
 9 Recommended recreation condition number one  
 10 provides the mitigation for visual impacts.  
 11 The hearing officer also found that the  
 12 Memorandum of Agreement between Idaho Power and the City  
 13 of La Grande is a matter outside of the siting process  
 14 and, therefore, outside the Council's jurisdiction and  
 15 scope of review. And that because the Memorandum of  
 16 Agreement is not intended as mitigation for visual  
 17 impacts, it is immaterial whether the park's remote  
 18 areas will benefit from these funds.  
 19 And that's the summary of the hearing  
 20 officer's opinion and so Ms. Barry can provide her oral  
 21 argument.  
 22 MS. BARRY: Idaho Power's first extensive  
 23 survey of Morgan Lake Park identified the 67-acre Morgan  
 24 Lake as the entire 204-acre park.  
 25 Of course, they missed the remote areas of

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1 the park altogether.  
 2 The remote area still had not been analyzed  
 3 when the proposed order stated in 2020 that with  
 4 appropriate mitigation there would be no significant  
 5 impact on visitors to the park.  
 6 This January, just before  
 7 cross-examinations, applicant's expert witness provided  
 8 a supplemental analysis of the park. She admitted that  
 9 the remote areas of the park would be highly impacted.  
 10 The four proposed 150-foot towers would be  
 11 replaced with 13, 130-foot towers most with no  
 12 vegetative screening.  
 13 Judge Webster erred in citing the  
 14 supplementary analysis and proposed mitigation as  
 15 convincing evidence of no significant impact on park  
 16 visitors. The applicant is careful to mention lower  
 17 towers but not that they have tripled the number of  
 18 towers, impacting the park's remote southwestern  
 19 viewshed. This is not appropriate mitigation.  
 20 These days, remote areas with natural  
 21 scenery are highly prized and to have such fantastic  
 22 open views of distant miles of rolling hills available  
 23 within a five-minute drive from town and a 15-minute  
 24 hike in the park is a priceless opportunity.  
 25 The remote areas of the park will not

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1 benefit from the proposed mitigation. They will be  
 2 destroyed by it.  
 3 If the line were needed, the only reasonable  
 4 mitigation is to bury the portions of the line visible  
 5 from the remote areas of the park.  
 6 The new analysis concluded that even though  
 7 views from Morgan Lake Park would be highly compromised  
 8 there still would be less than significant impact on  
 9 human perception.  
 10 Remember, in Idaho Power speak, that's  
 11 "head-on" or "peripheral."  
 12 If this EFSC process is to maintain a  
 13 semblance of validity before a site certificate is  
 14 issued, this inept, senseless, unreasonable, visual  
 15 impact analysis must be replaced by a carefully  
 16 annualized established professional methodology. Fooled  
 17 you once, don't let them do it again.  
 18 VICE CHAIR HOWE: Thank you, Ms. Barry.  
 19 Any questions from Council?  
 20 Thank you.  
 21 MS. PEASE: Thank you.  
 22 Good afternoon, Councilmembers.  
 23 Again, for the record, this is Jocelyn Pease  
 24 for Idaho Power Company.  
 25 I wanted to start out with the issue

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1 statement which relates to the mitigation proposed for  
 2 the visual impacts to Morgan Lake Park and specifically  
 3 references \$100,000 for recreational facility  
 4 improvements.  
 5 And as Mr. Ratcliffe indicated, that was  
 6 part of a Memorandum of Agreement between Idaho Power  
 7 and the City of La Grande which would be implemented if  
 8 the Morgan Lake route is developed.  
 9 And that gives the City of La Grande the  
 10 discretion to determine how it might use that money to  
 11 improve the park. And so if they want to use that for  
 12 improvements to the undeveloped areas, they can do that.  
 13 Now, as it would relate to the additional  
 14 mitigation that Idaho Power had proposed in terms of the  
 15 use of H frames, Idaho Power proposed that analysis --  
 16 or provided analysis regarding the use of H frames in  
 17 its rebuttal testimony, which was offered in November in  
 18 accordance with the schedule set forth in the contested  
 19 case. Ms. Barry had claimed that that was offered late  
 20 in the game in January and that was just an incorrect  
 21 statement.  
 22 That was offered and consistent with the  
 23 schedule that was defined in our case.  
 24 Ms. Barry had also made an allegation that  
 25 Idaho Power has tripled the number of towers that would

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1 be used, and that statement is also incorrect.  
 2 She claims that instead of four towers,  
 3 there would be 13. And in fact, Idaho Power is  
 4 replacing 12 lattice towers with 19 H frames. So there  
 5 is an increase, but it is not quite as dramatic as  
 6 Ms. Barry contends.  
 7 Let me see if there's anything else.  
 8 Finally, regarding Ms. Barry's assertion  
 9 that the ALJ errs in relying on the rebuttal analysis  
 10 that was offered in this case -- and errs in relying on  
 11 Idaho Power's commitment to provide mitigation in the  
 12 form of H frames in the vicinity of Morgan Lake Park,  
 13 that -- that statement is -- it can't be supported.  
 14 The -- the Judge properly relied on the  
 15 rebuttal analysis that was offered in a timely  
 16 fashion -- that the Judge did not error in relying on  
 17 the rebuttal testimony that was offered in accordance  
 18 with the schedule outlined in this case.  
 19 Thank you, all.  
 20 VICE CHAIR HOWE: Yes. Councillor Beier.  
 21 COUNCILMEMBER BEIER: I just wanted to thank  
 22 you for clarifying that the agreement with the City of  
 23 La Grande allows the City to make a decision on how  
 24 those funds would be used in the event that this route  
 25 is chosen.

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1 So there's nothing that says it has to be  
 2 used to improve the campground or the parking area.  
 3 It's left to the City to decide as -- and the intent is  
 4 that the mitigation for the visual impacts is the  
 5 H frame poles and how those are sited.  
 6 MS. PEASE: That's right. The mitigation  
 7 that Idaho Power offered in the form of H frames is in  
 8 additional to the \$100,000 that's -- that's agreed to in  
 9 the MOA with the City of La Grande.  
 10 VICE CHAIR HOWE: Okay. Thank you,  
 11 Ms. Pease.  
 12 Any changes that Council needs to make on  
 13 the proposed contested case order for recreational  
 14 standard three?  
 15 Okay. I guess we're then ready for a straw  
 16 poll.  
 17 SECRETARY CORNETT: For the record, Todd  
 18 Cornett.  
 19 So no changes to R-3 and no changes to the  
 20 standard.  
 21 So if that's correct, then, "agree with the  
 22 findings of fact, conclusions of law, and conditions of  
 23 approval in the proposed order pertaining to the  
 24 recreation standard that are not related to the issues  
 25 in the contested case and in the proposed contested case

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1 order pertaining to issue R-3."  
 2 VICE CHAIR HOWE: Sounds right. Okay.  
 3 SECRETARY CORNETT: Perry Chocktoot.  
 4 COUNCILMEMBER CHOCKTOOT: Yes.  
 5 SECRETARY CORNETT: Ann Beier.  
 6 COUNCILMEMBER BEIER: Yes.  
 7 SECRETARY CORNETT: Cindy Condon.  
 8 COUNCILMEMBER CONDON: Yes.  
 9 SECRETARY CORNETT: Hanley Jenkins.  
 10 COUNCILMEMBER JENKINS: Yes.  
 11 SECRETARY CORNETT: Jordan Truitt.  
 12 COUNCILMEMBER TRUITT: Yes.  
 13 SECRETARY CORNETT: Kent Howe.  
 14 VICE CHAIR HOWE: Yes.  
 15 SECRETARY CORNETT: Thank you,  
 16 Councilmembers.  
 17 VICE CHAIR HOWE: Okay. We will take a  
 18 break here. And return at four o'clock.  
 19 (A break was taken.)  
 20 VICE CHAIR HOWE: Okay. Ms. Tardaewether.  
 21 MS. TARDAEWETHER: For the record, Kellen  
 22 Tardaewether, Oregon Department of Energy.  
 23 I wanted to take just a quick moment. Let  
 24 me breeze through here and figure out where I'm at.  
 25 We're also waiting for a few more -- for the folks on

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1 the line. We're waiting for a few other people,  
 2 Councilmembers, to join our group.  
 3 I just wanted to take a moment to say that I  
 4 have been corrected in my description of the Morgan Lake  
 5 alternative and proposed route.  
 6 I think I was talking about under the Scenic  
 7 Resource Standard, I kind of wove in a reference from  
 8 one of the public comments about the Mill Creek route.  
 9 And so I said that it was the proposed  
 10 route. And that -- that's not accurate. The Mill Creek  
 11 route was a route that came out of the NEPA review, but  
 12 is not reflected in the application for site  
 13 certificate. So this is just -- just to make sure --  
 14 yeah, so -- is that accurate.  
 15 Okay. All right. Making sure I'm getting  
 16 it right. However, what is in front of Council right  
 17 now, proposed route and the Morgan Lake alternative in  
 18 Union County. But I just wanted to make sure that we  
 19 got that -- got that clarified.  
 20 How is that not -- okay.  
 21 Well, and I am talking about Union.  
 22 VICE CHAIR HOWE: Okay. We have a quorum of  
 23 the Council. We are ready to move forward.  
 24 MS. TARDAEWETHER: All right. We're going  
 25 to proceed with the Council's Fish and Wildlife Habitat

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1 Standard.  
 2 So to the -- the Fish and Wildlife Habitat  
 3 Standard, which I'm sitting here staring at it and it  
 4 does actually have habitat in it. This is not named  
 5 correctly; correct?  
 6 Okay. So one of the things I was going to  
 7 emphasize -- and I'm looking at the name with how we  
 8 have it labeled here and it's missing the word  
 9 "habitat."  
 10 Is the important aspect about this standard  
 11 is that it really is oriented toward habitat. And so  
 12 sub (1) directs Council and the Department to work and  
 13 coordinate with and be consistent with the Oregon  
 14 Department of Fish and Wildlife Habitat Mitigation  
 15 Policy, which also includes their habitat  
 16 categorization.  
 17 So the habitat categorization from ODF&W  
 18 goes from a categorization of category 1 to category 6  
 19 where 1 being the most exclusive. And I'm not using --  
 20 I don't have their language right in front of me.  
 21 And Sarah probably has it memorized best.  
 22 I'm just going to air quote "best habitat"  
 23 or "habitat that should be most protected."  
 24 And then 6 being the poorer quality habitat.  
 25 And then it continues on that spectrum and

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1 where each habitat category has a -- separate protection  
 2 goals and mitigation goals for habitat quantity and  
 3 quality.  
 4 So let me go here. I have some maps here.  
 5 This is another one of those issues where I  
 6 had to PDF my PowerPoint.  
 7 So you are missing a table here. But it's a  
 8 table that it summarizes -- which, actually, it's just  
 9 more valuable than this figure here. But it summarizes  
 10 the habitat categorization just along for the proposed  
 11 route and the alternative routes.  
 12 An example and so we had talked -- under  
 13 Threatened and Endangered Species, we talked about  
 14 category 1 habitat for the Washington ground squirrel.  
 15 Other examples of category 1 habitat are the  
 16 occupied WGS colonies, trees or structures with special  
 17 status raptor nests and then caves with -- that are  
 18 hibernaculum for bats.  
 19 Mostly, I'm just working in my favorite word  
 20 that I've learned here in this job.  
 21 That's all avoidance. And so -- but there  
 22 is a lot of the transmission line that crosses through.  
 23 And Council is pretty familiar with category  
 24 2 habitat. Category 2 habitat is elk and mule winter  
 25 range. There's also pygmy rabbits is considered

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1 category 2 habitat.  
 2 All in all, there is approximately 4,403  
 3 acres of category 2, 3, 4, and 5 habitat that would  
 4 be -- that would be temporarily and permanently impacted  
 5 by the proposed facility and also incorporated into --  
 6 and would be mitigated for and also restored,  
 7 particularly with those -- the temporary impacts.  
 8 So this slide, I'm just going to touch on  
 9 some of the fish and wildlife habitat conditions. We've  
 10 talked about some of them before. I'm going to start  
 11 with the bottom here on my screen.  
 12 In conditions 15 and 16, there are a lot of  
 13 fish and wildlife conditions. A lot of these have  
 14 timing restrictions, seasonal restrictions.  
 15 But 15 and 16 are -- are the conditions that  
 16 specify that certain surveys must be conducted according  
 17 to this final biological -- biological survey work plan.  
 18 And it's attachment P-1 to -- that is attached to the  
 19 final order -- or proposed order; correct? Right.  
 20 So -- and that has -- and the reason why  
 21 that's important is that the survey protocols are agreed  
 22 to and worked with ODF&W where ODF&W says this is an  
 23 appropriate methodology to go out in the field and  
 24 conduct this survey. All of those protocols for all of  
 25 the habitats and species that we've looked at and that

1 we've kind of talked about under threatened and  
2 endangered species and for other -- in other habitats  
3 are -- kind of set out in that plan.

4 And so these are the conditions that say do  
5 those surveys according to these protocols, you know, in  
6 your finalization of your -- of, like, based on your  
7 final route what -- and your final -- all your surveys  
8 that you have to go back out and do.

9 There is fish -- fish and wildlife condition  
10 one has the reclamation and re-vegetation plan, which  
11 is -- it says what it is. It is also attached to the  
12 order. And this has success criteria for how -- what --  
13 what reclamation and successful re-vegetation will look  
14 like. This is also done in -- conducted -- or generated  
15 and reviewed in conjunction with ODF&W and then as well  
16 as -- as counties. Same with the noxious weed plans.

17 We work with the Counties and their weed  
18 supervisors as well as ODF&W and Oregon Department of  
19 Agriculture as applicable in the development of that  
20 plan. And then we have the fish and habitat wild --  
21 wildlife habitat mitigation plan, or the "HMP."

22 This is the plan that -- that says and  
23 outlines how and -- how and where they are going to  
24 mitigate for the impacts to those different categories.

25 So -- and we're kind of the same -- seems to

1 MR. RATCLIFFE: Okay. So we have several  
2 fish and wildlife issues that were part of the contested  
3 case that have filed exceptions. We're going to be  
4 starting with fish and wildlife 7.

5 The limited parties are Ann and Kevin March.  
6 The issue statement is whether the applicants fish  
7 passage plans, including the 3-A and 3-B designs  
8 complies with the Fish and Wildlife Habitat Standards  
9 category 2 mitigation requirements.

10 Also, whether the applicant must revisit its  
11 plans because threatened steelhead redds have been  
12 identified in the watershed.

13 And I note on this, when it's referring to  
14 "identified in the watershed," what we're talking about  
15 here is a part of Union County where the line would  
16 cross Ladd Creek streams near I-84.

17 This issue arises in part because the  
18 Department of Transportation completed a culvert project  
19 not too long ago, a few years ago, which opened fish  
20 passage resulting in potential increase in Snake River  
21 Basin steelhead and the -- (audio disruption) -- of the  
22 watershed.

23 This species of steelhead is a federally  
24 listed threatened species. It's not a state-listed  
25 species.

1 be the theme of the day is that aside from that  
2 biological survey work plan, all of these are draft  
3 plans because -- that will be finalized -- and I think  
4 it's a really good example of going through that 4400  
5 acres of temporary and permanent impacts. Those  
6 include -- right -- because everything is a maximum  
7 worst-case impact scenario, those include the proposed  
8 route and the alternative routes.

9 But we know, let's run this scenario where  
10 all routes are approved, but really only one route is  
11 going to be selected. These routes are going to drop  
12 off. Therefore, there will be no impacts to those -- to  
13 the habitat under -- for those routes, so your actual  
14 and permanent and temporary impact number is going to be  
15 reduced, which then will reduce the -- it's going to  
16 impact all of these.

17 So all of these are going to be reflected  
18 and finalized based on kind of the final location and  
19 details associated with those plans. And these are all  
20 based off of the surveys that they have to go out.

21 Based on the final route, they are going to  
22 go out and re-survey everything, because they are  
23 current and new surveys, and that will all be reflected  
24 in these plans.

25 And I will stop there.

1 So the hearing officer, the way she  
2 approached this in her opinion was to break it into two  
3 sub issues.

4 First, a question on the adequacy the fish  
5 passage plan design; and then, second, a question of the  
6 adequacy of the habitat categorization and mitigation.

7 So with respect to the fish passage plan  
8 design, the hearing officer noted that the applicability  
9 of fish passage law requirements -- and these are Oregon  
10 Department of Fish and Wildlife laws that the Council is  
11 charged with implementing as part of this process --  
12 that those fish passage requirements are triggered by  
13 the need for construction of an artificial obstruction.

14 The hearing officer concluded that the  
15 applicant has not proposed or requested approval for any  
16 construction of new road crossings or major replacement  
17 of existing road crossings on any identified streams in  
18 the Upper Ladd Creek watershed.

19 The company will rely on existing bridges or  
20 culverts for road crossings, therefore, fish passage  
21 requirements are not triggered and the proposed 3-A/3-B  
22 design for proposed crossings do not apply in this area.

23 With respect to the second issue concerning  
24 the adequacy of habitat categorization and mitigation,  
25 the Fish and Wildlife Habitat Standard requires that the



1 Council find that the design, construction, and  
2 operation of the proposed facility would be consistent  
3 with the ODFW fish and wildlife habitat mitigation  
4 goals.

5 The first step in figuring out the  
6 mitigation goals is categorizing the habitat. And the  
7 applicant categorized all potentially fish-bearing  
8 streams in Upper Ladd Creek above the I-84 culvert  
9 within the site boundaries category 2 habitat.

10 This was something that -- the applicant and  
11 ODOE consulted with the Fish and Wildlife Department on.

12 And the hearing officer found that the  
13 presence of state or federally listed threatened and  
14 endangered or special status species does not  
15 automatically elevate the habitat categorization.

16 In this case, that would be from -- the only  
17 one to go above two is one.

18 So -- and the reason for that is that the  
19 fish species -- the habitat that they exist in, you  
20 know, it can vary. And in many cases the fish  
21 themselves can exist. Their lifecycle requirements can  
22 be met within habitat that would be categorized as a  
23 lower category than category 1.

24 Importantly, ODFW is not able to affirm  
25 that -- definitively affirm the nonfish-bearing

1 issue. And we're ready now for the Marches' oral  
2 argument.

3 MR. MARCH: In 2015, when ODOT completed the  
4 first part of a nearly \$50 million fish passage  
5 improvement project on I-84 to open up 86 square miles  
6 of high quality habitat in the Upper Ladd Creek  
7 Watershed for Snake River Basin steelhead, the year  
8 following that -- excuse me, the upper watershed had  
9 been blocked to migration since the freeway was first  
10 constructed in the 1950s.

11 In 2016, ODOT documented a steelhead redd,  
12 which is a spawning bed, above the crossing. ODF&W  
13 didn't know about that and neither did Idaho Power until  
14 we notified EFSC in our letter in 2019.

15 ODF&W has since acknowledged the presence of  
16 the steelhead in the watershed, yet Idaho Power  
17 continues to assert that the presence of this listed  
18 threatened and state-sensitive species is alleged.  
19 They're not alleged. They are present in the watershed.

20 This is the basis of our argument that Idaho  
21 Power's application was based on out-of-date, faulty,  
22 and inadequate data in its analysis. I spent more time  
23 the last three years working on this project here than I  
24 have at my business. We did five hours of  
25 cross-examination, 47 pages of testimony, and 27 pages

1 designation of five nonfish road stream crossings. And  
2 so, you know, they are out there trying to make sure  
3 that there aren't any fish in these streams.

4 The standard doesn't obligate the applicant  
5 to definitively show that streams labeled  
6 nonfish-bearing within Ladd Creek Watershed, in fact, do  
7 not bear Snake River Basin steelhead or other fish  
8 species to establish compliance with the standard.

9 However, the proposed contested case order  
10 recommends that the Council adopt a Department  
11 recommended amended fish passage condition to require  
12 that these five road crossings within Ladd Creek which  
13 were not able to be affirmed by ODFW as nonfish-bearing  
14 have additional evaluation prior to construction.

15 If the streams are identified as  
16 fish-bearing and require construction to support a  
17 crossing, and fish passage approval, in that case, a  
18 site certificate amendment would be required.

19 So this is not kind of a -- a review and  
20 approval by the Department situation. Idaho Power would  
21 have to come back in and request an amendment if fish  
22 are identified in those streams.

23 Okay. So that is a lengthy summary, but a  
24 lengthier issue. And that is the summary of the hearing  
25 officer's proposed contested case order opinion on this

1 of closing brief. Yet, as we pointed out in exception  
2 one, in her ruling the Judge quoted Idaho Power's  
3 closing argument and mistakenly attributed it to us.  
4 Her analysis is incorrect.

5 You will hear Idaho Power state that no new  
6 fish passage plans are anticipated because they're not  
7 constructing anything new in the water. This is  
8 allegedly true, yet they have only studied streams they  
9 labeled as containing resident fish.

10 As we've pointed out from the beginning,  
11 many streams and parts of the watershed are labeled as  
12 "nonfish," quote/unquote, by Idaho Power.

13 They stated in the ASC that they wouldn't  
14 study those streams then and they fought us for three  
15 years to not have to study them now.

16 ODF&W has stated that they don't have  
17 adequate maps to ascertain where the crossings are in  
18 the streams labeled as "nonfish." And that they don't  
19 have the capacity, nor is it a priority to study the  
20 watershed. They're not out there studying them right  
21 now.

22 And ODOE will state that these details that  
23 we brought up will be taken care of by ODF&W in  
24 condition one. How can that be?

25 Condition one will be satisfied by the

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1 Agency that doesn't have the capacity to do these  
 2 studies? That makes no sense.  
 3 Northwest steelhead are in big trouble.  
 4 2021 is, by far, the lowest recorded migration in  
 5 history. As a species, they are inquisitive and they  
 6 will explore new habitat for spawning and rearing when  
 7 it is open to them. Just as they did in 2016 after  
 8 being blocked from this historic and important habitat  
 9 for 70 years. The year after, they went up there.  
 10 Oregon rules are in place to protect species such as  
 11 these in just this kind of case.  
 12 Please remand FW-7 so that complete and  
 13 accurate studies can be undertaken before the  
 14 application is approved so that these iconic fish can  
 15 have ever chance possible to continue to repopulate this  
 16 important watershed. Thank you for your time. I know  
 17 you are all tired.  
 18 VICE CHAIR HOWE: Thank you, Mr. March.  
 19 Are there any questions from Council?  
 20 Okay. Thank you.  
 21 MS. PEASE: Thank you and good afternoon,  
 22 Councilmembers. Again, this is Jocelyn Pease for Idaho  
 23 Power Company.  
 24 Issue FW-7 asks whether the potential  
 25 reintroduction of steelhead into the Upper Ladd Creek

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1 watershed affects the project's compliance with both the  
 2 fish passage rules and the requirements for habitat  
 3 category 2.  
 4 The Marches assert that Idaho Power failed  
 5 to comply with the fish passage rules because the  
 6 company allegedly relied on incomplete data on fish  
 7 presence.  
 8 However, as Idaho Power explained in its  
 9 responsive briefing, regardless of whether fish are  
 10 present in these streams, no fish passage plan is  
 11 required for any of the crossings in the Ladd Creek  
 12 watershed because the fish passage rules require a fish  
 13 passage plan only if there is a trigger event.  
 14 Specifically, under ODF&W regulations, no  
 15 person shall construct or maintain any artificial  
 16 obstruction across any waters of this state that are  
 17 inhabited or historically inhabited by native migratory  
 18 fish without providing passage for native migratory  
 19 fish.  
 20 For purposes of the fish passage rules, the  
 21 trigger event is construction, fundamental change in  
 22 permit status, or abandonment of an artificial  
 23 obstruction.  
 24 During the contested case, Idaho Power  
 25 definitively stated that the company does not propose

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1 construction or major replacement of any artificial  
 2 obstructions in the Upper Ladd Creek watershed. Thus,  
 3 there is no trigger event. The fish passage rules do  
 4 not apply to the project-related crossings in these  
 5 streams, not withstanding the potential reintroduction  
 6 of steelhead.  
 7 Additionally, the Marches ask the Council to  
 8 remand their newly raised issue regarding ephemeral  
 9 streams to allow Idaho Power to provide additional  
 10 evidence of compliance with the fish passage rules as  
 11 they relate to those streams.  
 12 However, these newly raised issues do not  
 13 allege noncompliance with the fish passage rules,  
 14 because again, no fish passage plan is required for any  
 15 crossing in the Upper Ladd Creek watershed.  
 16 As to the Marches' claim that Idaho Power  
 17 has not demonstrated compliance with the habitat  
 18 category 2 requirements because the company's nonfish  
 19 designations in the Upper Ladd Creek watershed are  
 20 potentially inaccurate.  
 21 Idaho Power submitted a map in the contested  
 22 case comparing the project-related crossings and their  
 23 associated fish-bearing or nonfish-bearing designations  
 24 to ODF&W's most recent distribution data for Snake River  
 25 Basin steelhead.

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1 Those maps demonstrate that Idaho Power's  
 2 identification in the ASC of potential fish presence in  
 3 the Upper Ladd Creek watershed is consistent with the  
 4 most up-to-date data available regarding the Snake River  
 5 Basin distribution within that watershed.  
 6 Additionally, as Mr. Ratcliffe had  
 7 explained, the hearing officer had adopted ODOE proposed  
 8 condition that would require Idaho Power to come back to  
 9 the Council in the event that there were any road  
 10 crossings that are proposed in these streams that would  
 11 require a fish passage plan.  
 12 And with that, I'll conclude my remarks.  
 13 Thank you.  
 14 VICE CHAIR HOWE: Thank you, Ms. Pease.  
 15 Any questions from Council?  
 16 Councillor Jenkins.  
 17 COUNCILMEMBER JENKINS: This is Hanley.  
 18 So I'm going to try and restate what you've  
 19 said, but even if there are fish in the upper watershed  
 20 of Ladd Creek, Idaho Power proposes no improvements that  
 21 would require a permit and, therefore, there's no need  
 22 for a fish passage plan.  
 23 MS. PEASE: That is correct. A fish passage  
 24 plan is only required if there is a trigger event.  
 25 COUNCILMEMBER JENKINS: And so what the

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1 hearings officer has done is said that if that changes  
 2 and there is a need for a plan, then you have to come  
 3 back to the Council for an amendment.  
 4 MS. PEASE: That is correct.  
 5 COUNCILMEMBER JENKINS: Okay. Thank you.  
 6 MS. PEASE: Thank you.  
 7 VICE CHAIR HOWE: Any other questions?  
 8 Okay. Thank you.  
 9 Counsel Rowe.  
 10 MR. ROWE: Patrick Rowe, Department of  
 11 Justice on behalf of Department of Energy.  
 12 Councilmember Jenkins, you stole my thunder,  
 13 as did Mr. Ratcliffe.  
 14 This is an example -- that condition is an  
 15 example of how the contested case -- how the proposed  
 16 order is evolving -- the Department's recommendations  
 17 are evolving as a result of the contested case.  
 18 The Marches, through the contested case,  
 19 identified that there were nonfish-bearing streams  
 20 that -- I wanted to make -- make sure I get my  
 21 terminology correct.  
 22 Give me one second.  
 23 That the Marches identified whether stream  
 24 crossings designated as nonfish-bearing if ODF&W had  
 25 adequately evaluated them.

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1 ODF&W acknowledged that they had not and so  
 2 that is what led to the proposed condition amendment  
 3 that you see in the hearing officer's proposed contested  
 4 case order at pages 159 to 160.  
 5 We believe that -- we were -- felt pretty  
 6 good about that. We were -- listened to the input. We  
 7 were responsive and amended -- proposed this amended  
 8 condition.  
 9 The only input I've heard today is that they  
 10 now question ODF&W's ability to -- to comply with that  
 11 condition because ODF&W had indicated that previously it  
 12 didn't have the capacity to address all of the streams.  
 13 Well, that -- that may be that they -- that  
 14 they said they didn't have the capacity to investigate  
 15 all the streams across the state. But that doesn't mean  
 16 that they -- once -- if this is -- if there's a trigger  
 17 event and they are asked to investigate those streams by  
 18 ODOE, that they won't.  
 19 In fact, the reverse is true, they will. An  
 20 ODF&W witness testified at the cross-examination about  
 21 this condition and indicated their satisfaction with the  
 22 condition.  
 23 VICE CHAIR HOWE: Any questions from  
 24 Council?  
 25 COUNCILMEMBER CONDON: Cindy Condon.

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1 Patrick, so the last -- in the amended  
 2 condition, it's the last sentence of the amendment  
 3 itself. The bold language, "If fish passage  
 4 requirements apply, certificate holder shall seek  
 5 approval from the Energy Facility Siting Council," dot,  
 6 dot, dot.  
 7 So if fish passage requirements apply, that  
 8 is a triggering event -- I mean, it's deemed any  
 9 triggering event, a change in nonfish-bearing streams,  
 10 in fish-bearing streams, if there is a triggering event,  
 11 an amendment happens.  
 12 Am I understanding that correctly?  
 13 MR. ROWE: Requirements apply and then they  
 14 were to identify fish in that stream.  
 15 COUNCILMEMBER CONDON: Yes. Fish -- a  
 16 nonfish-bearing stream or one that was -- had fish in  
 17 it. If there is a triggering event not --  
 18 MR. ROWE: Then they will come in and seek  
 19 EFSC for an amendment. Right.  
 20 COUNCILMEMBER CONDON: Yes. Okay.  
 21 VICE CHAIR HOWE: Any other questions?  
 22 COUNCILMEMBER JENKINS: This is Hanley.  
 23 So we need to concur with this proposed  
 24 amendment in order to alter the proposed order.  
 25 MR. ROWE: Yes. And Secretary Cornett will

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1 propose -- will have a straw poll for you that would be  
 2 consistent with the other straw polls, where you adopt  
 3 the hearing officer's findings of fact and conditions in  
 4 the proposed contested case order, and if you were to  
 5 vote in favor of that, then that would achieve that.  
 6 COUNCILMEMBER JENKINS: So this is part of  
 7 the contested case order that will affect the proposed  
 8 order? Okay. Thank you.  
 9 VICE CHAIR HOWE: So in that case, are we --  
 10 do we do a straw poll on just the proposed contested  
 11 case order at this time?  
 12 SECRETARY CORNETT: For the record, Todd  
 13 Cornett.  
 14 Yes, this just would be a straw poll on  
 15 issue FW-7. And the proposed contested case order  
 16 already includes that condition, so there would be no  
 17 modification necessary for -- to add that condition.  
 18 VICE CHAIR HOWE: Perfect.  
 19 SECRETARY CORNETT: "Agree with the findings  
 20 of fact, conclusions of law, and conditions of approval  
 21 in the proposed contested case order pertaining to issue  
 22 FW-7."  
 23 VICE CHAIR HOWE: Sounds good.  
 24 SECRETARY CORNETT: Okay. Hanley Jenkins.  
 25 COUNCILMEMBER JENKINS: (No audible

1 response.)  
 2 SECRETARY CORNETT: Perry Chocktoot.  
 3 COUNCILMEMBER CHOCKTOOT: Yes.  
 4 SECRETARY CORNETT: Kent Howe.  
 5 VICE CHAIR HOWE: Yes.  
 6 SECRETARY CORNETT: Ann Beier.  
 7 COUNCILMEMBER BEIER: Yes.  
 8 SECRETARY CORNETT: Jordan Truitt.  
 9 COUNCILMEMBER TRUITT: Yes.  
 10 SECRETARY CORNETT: Cindy Condon.  
 11 COUNCILMEMBER CONDON: Yes.  
 12 SECRETARY CORNETT: Thank you,  
 13 Councilmembers.  
 14 MR. RATCLIFFE: Okay. Our next fish and  
 15 wildlife issue is fish and wildlife one. The limited  
 16 party is Stop B2H.  
 17 The issue here is -- pertains to sage grouse  
 18 habitat. It's whether the applicant adequately analyzed  
 19 sage-grouse habitat connectivity in the Baker and Cow  
 20 Valley priority areas of conservation.  
 21 The potential indirect impacts of the  
 22 proposed facility on sage-grouse leks, and the existing  
 23 number of sage-grouse in the Baker and Cow Valley  
 24 priority areas of conservation.  
 25 So this was another instance of the issue

1 And -- or sage-grouse connectivity.  
 2 Finally, the company has no obligation to  
 3 ascertain the existing number of sage-grouse in Baker  
 4 and Cow Valley priority areas of conservation to  
 5 establish compliance with the standard.  
 6 So, once again, this was a rule on motion  
 7 for summary determination. And with that, I'll turn it  
 8 over to Stop B2H for their oral argument.  
 9 MR. ANUTA: Karl Anuta appearing on behalf  
 10 of Stop B2H. I feel a little bit like a broken record  
 11 on the summary determination issue.  
 12 You're, again, looking at one where, in our  
 13 view, the Administrative Law Judge erred by not allowing  
 14 the parties to present further factual information.  
 15 There was a factual dispute here about the  
 16 sufficiency of the analysis because there was no  
 17 analysis and there's no dispute. There isn't an  
 18 analysis.  
 19 What Idaho Power is proposing is to rely on  
 20 a habitat mitigation analysis tool later on. But the  
 21 standard requires them to evaluate, in our view, and it  
 22 requires the Department and the commission to -- Council  
 23 to evaluate.  
 24 Have they done an analysis now and is it  
 25 adequate?

1 being dealt with in a ruling on motion for summary  
 2 determination.  
 3 The proposed contested case order opinion  
 4 finds that the Fish and Wildlife Habitat Standard  
 5 requires that the Council find that taking into account  
 6 mitigate the design, construction, and operation of the  
 7 proposed facility is consistent with the sage-grouse  
 8 specific habitat mitigation requirements of the greater  
 9 sage-grouse conservation strategy for Oregon.  
 10 So I want to stop here and point out really  
 11 quickly that sage-grouse are a special case in the ODF&W  
 12 Fish and Wildlife Habitat Mitigation Program. There was  
 13 a multi-year effort that resulted in a set of rules.  
 14 ODF&W is one of the agencies that adopted  
 15 those that -- that address sage-grouse habitat  
 16 specifically.  
 17 So the hearing officer found that Stop B2H  
 18 did not previously raise the issue of whether the  
 19 applicant's analysis of indirect impacts is incomplete,  
 20 because the applicant is yet to quantify impacts and  
 21 compensatory mitigation through the habitat  
 22 quantification tool.  
 23 No evidence was provided demonstrating  
 24 insufficiencies in the applicant's analysis of the  
 25 proposed facilities. Potential impacts, sage leks.

1 There is no analysis, so it can't be  
 2 adequate.  
 3 Part of what you have to do in your position  
 4 and part of what the ALJ should have done is when you're  
 5 on a summary determination issue, you must view all  
 6 facts in the light most favorable to the party opposing  
 7 the motion.  
 8 We pointed out that it is a fact that there  
 9 is no analysis. The -- viewing that fact in the light  
 10 most favorable to the party opposing the motion, which  
 11 is Stop, you must conclude that the analysis wasn't  
 12 adequate because there -- it didn't exist. That's how  
 13 you have to determine that fact, because you have to  
 14 assume it in the light most favorable to us. That was  
 15 not done by the ALJ. That should have been done here  
 16 because that was not done, the analysis by the ALJ was  
 17 in error.  
 18 You are being asked to approve a lack of  
 19 analysis as compliant with the standard because at some  
 20 point in the future they will do a habitat and a  
 21 modification mitigation analysis.  
 22 You can't keep kicking that can down the  
 23 road. You have to force them to do the analysis now.  
 24 Is -- are there any birds there? How many  
 25 birds are there?

1 And then once they know that, down the road  
2 they can do a mitigation analysis to determine whether  
3 that impact is significant or not. But you can't find a  
4 nonexistent analysis compliant with the standard.  
5 I could say more, but I think I've covered  
6 the issue.  
7 I'm happy to answer any questions.  
8 VICE CHAIR HOWE: Questions?  
9 Thank you, Mr. Anuta.  
10 MS. PEASE: Thank you.  
11 Good afternoon. For the record, this is  
12 Jocelyn Pease for Idaho Power Company.  
13 What Mr. Anuta has highlighted in his  
14 comments is a timing issue. Stop B2H's exceptions focus  
15 on the fact that Idaho Power has not yet performed the  
16 final step in its analysis of potential impacts to  
17 sage-grouse habitat and Mr. Anuta argues that because  
18 Idaho Power has not yet done this analysis, the Council  
19 cannot ensure compliance with the -- with the  
20 sage-grouse rules.  
21 However, Idaho Power explained in its  
22 responsive briefing that it has not calculated the final  
23 mitigation acreage for indirect impacts, and that it is  
24 only because ODF&W requires that the mitigation be  
25 calculated using its habitat quantification tool or

1 research regarding the type of impacts, the timing, the  
2 duration, the quantification metrics, and potential  
3 mitigation measures related to potential permanent and  
4 temporary direct impacts, as well as indirect impacts to  
5 sage-grouse habitat.  
6 Exhibit P-2 also includes the State of  
7 Oregon's preliminary calculation of the project's direct  
8 impacts using a draft direct impact assessment tool  
9 which totals approximately 543 acres of impacts.  
10 Idaho Power also included with Exhibit P-2 a  
11 draft sage-grouse mitigation plan that includes analysis  
12 of four potential mitigation sites, totaling over 6,500  
13 acres of habit for mitigation purposes.  
14 Accordingly, Stop B2H's unsupported claims  
15 that Idaho Power has not completed any analysis is  
16 plainly wrong and fails to identify any error in the  
17 hearing officer's ruling.  
18 And in sum, I would add in response to  
19 Mr. Anuta's argument that there are disputed facts here  
20 that there are not -- what is -- the Council has before  
21 it is a path to compliance using the recommended  
22 condition 17 and the HQT that is required by ODF&W's  
23 rules.  
24 Thank you.  
25 VICE CHAIR HOWE: Thank you, Ms. Pease.

1 "HQT." And that tool had not yet been completed when  
2 Idaho Power filed its ASC, thus the timing issue.  
3 To ensure compliance with ODF&W requirement,  
4 the proposed order requires Idaho Power to provide all  
5 information necessary to use the HQT to calculate the  
6 mitigation for potential impacts.  
7 Specifically, the -- the recommended Fish  
8 and Wildlife condition 17 requires Idaho Power to  
9 provide all information necessary to ODF&W to calculate  
10 the amount of required compensatory mitigation using the  
11 HQT and to provide mitigation commensurate with the  
12 HQT's results. These are what ODF&W rules require and  
13 the Council, through the recommended Fish and Wildlife  
14 condition 17, can be assured that those rules will be  
15 followed.  
16 Second, Stop B2H asserts incorrectly that  
17 Idaho Power has not done any actual analysis. This  
18 assertion is plainly contradicted by the record in this  
19 case.  
20 While Idaho Power has not yet completed its  
21 final calculations with the HQT, as I mentioned, the  
22 company still provided substantial analysis of potential  
23 impacts to sage-grouse in Exhibit P-2 of the ASC.  
24 In that exhibit, Idaho Power provided  
25 analysis backed by expert biologists and scientific

1 Are there questions?  
2 Councillor Jenkins.  
3 COUNCILMEMBER JENKINS: This is Hanley.  
4 So, Jocelyn, condition 17 requires the  
5 certificate holder to provide to the Department the  
6 information for conducting the analysis. And then  
7 it's -- it's Oregon Department of Fish and Wildlife that  
8 actually does the analysis. It's not the applicant,  
9 it's not the Department of Energy, at least that's the  
10 way I read condition 17.  
11 MS. PEASE: Yes. That's my understanding --  
12 COUNCILMEMBER JENKINS: So it's ODF&W then  
13 that identifies the acreage threshold -- or the acreage  
14 necessary for the mitigation.  
15 MS. PEASE: Yes. And fundamentally, the HQT  
16 is ODF&W's tool. It's not a tool that Idaho Power  
17 developed. It's what is required to be applied in this  
18 case.  
19 COUNCILMEMBER JENKINS: Thank you.  
20 VICE CHAIR HOWE: Any other questions?  
21 Councillor Condon.  
22 COUNCILMEMBER CONDON: Thank you.  
23 Just teeing off of what Councillor Jenkins  
24 asked.  
25 So if Idaho -- I mean, if Department of Fish

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1 and Wildlife does not respond to something, if I  
 2 understand, it's ODF&W's responsibility to do the  
 3 analysis; is that right?  
 4 MS. PEASE: It is ODF&W's responsibility to  
 5 assist in that analysis.  
 6 COUNCILMEMBER CONDON: And so we'll be  
 7 relying on them to meet this condition, or Idaho Power  
 8 will be relying on ODF&W to do that analysis  
 9 regardless of timing.  
 10 MS. PEASE: That's correct.  
 11 And my understanding is that, to date -- and  
 12 I believe this would be in the record -- that ODF&W has  
 13 been a cooperative partner in -- and working with Idaho  
 14 Power in the -- in the sage-grouse issues.  
 15 COUNCILMEMBER CONDON: So you don't  
 16 anticipate any timing issue -- if -- if we determine to  
 17 issue a site certificate, it will be without the  
 18 analysis required by condition 17.  
 19 And so your -- there's not a concern about  
 20 timing, because ODF&W is cooperating and --  
 21 MS. PEASE: That's my understanding.  
 22 Is there anything else that --  
 23 My -- my understanding is that Idaho Power  
 24 is required by law to -- to work with ODF&W and follow  
 25 the HQT. So independent of what's in the site

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1 certificate, that's what Oregon law requires.  
 2 COUNCILMEMBER CONDON: Okay. Thank you.  
 3 VICE CHAIR HOWE: Any other questions?  
 4 Thank you, Ms. Pease.  
 5 Counsel Rowe.  
 6 MR. ROWE: The dialogue we just heard about  
 7 condition 17, I think, pretty much addresses what I was  
 8 going to say. The Department is comfortable that Idaho  
 9 Power will comply in light of this condition.  
 10 I don't have anything further. And looking  
 11 over at Kellen and Sarah, it doesn't look like they have  
 12 anything further to add.  
 13 MS. ESTERSON: I guess the one thing I would  
 14 add is that the condition references ODF&W in lieu fee  
 15 program, which is an established program that once the  
 16 HQT is run and there is a dollar amount associated with  
 17 the acreage and the long-term mitigation into  
 18 perpetuity, that program exists so that -- that means  
 19 that mitigation -- like, the availability of mitigation  
 20 is affirmed because there's an existing program to  
 21 implement the mitigation.  
 22 And it's -- it's similar to what we do under  
 23 the Fish and Wildlife Habit Standard where mitigation is  
 24 like long-term enhancement and monitoring for  
 25 improvement of, you know, maybe lower quality habitat

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1 within areas of potential sage-grouse habitat.  
 2 VICE CHAIR HOWE: Okay. That completes us  
 3 on Fish and Wildlife exception 1.  
 4 So are we ready to do the straw poll for the  
 5 proposed contested case order?  
 6 SECRETARY CORNETT: For the record, Todd  
 7 Cornett.  
 8 "Agree with the findings of fact,  
 9 conclusions of law, and conditions of approval in the  
 10 proposed contested case order pertaining to issue FW-1.  
 11 VICE CHAIR HOWE: Works.  
 12 SECRETARY CORNETT: Cindy Condon.  
 13 COUNCILMEMBER CONDON: Yes.  
 14 SECRETARY CORNETT: Kent Howe.  
 15 VICE CHAIR HOWE: Yes.  
 16 SECRETARY CORNETT: Jordan Truitt.  
 17 COUNCILMEMBER TRUITT: Yes.  
 18 SECRETARY CORNETT: Perry Chocktoot.  
 19 COUNCILMEMBER CHOCKTOOT: Yes.  
 20 SECRETARY CORNETT: Ann Beier.  
 21 COUNCILMEMBER BEIER: Yes.  
 22 SECRETARY CORNETT: Hanley Jenkins.  
 23 COUNCILMEMBER JENKINS: Yes.  
 24 SECRETARY CORNETT: Thank you,  
 25 Councilmembers.

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1 MR. RATCLIFFE: So our next Fish and  
 2 Wildlife issue is dealing with the draft Noxious Weed  
 3 Plan.  
 4 The limited parties involved here are  
 5 Gilbert and Geer.  
 6 The issue is whether the draft Noxious Weed  
 7 Plan, which is in proposed order attachment P1-5,  
 8 adequately assures compliance with the weed control  
 9 laws, ORS 569.390, ORS 569.400, and ORS 569.445.  
 10 The hearing officer's opinion on this issue  
 11 included that the applicant's not required to  
 12 demonstrate compliance with ORS Chapter 569 to  
 13 demonstrate with the Fish and Wildlife Habitat Standard  
 14 because it was not listed in the Department's order, nor  
 15 included in Division 21, the information requirements.  
 16 And, again, as a reminder, Department's  
 17 project order is the document that sets out the -- not  
 18 only the Department's -- or the Council's standard but  
 19 also the other sources of law, other permitting  
 20 programs, et cetera, that an applicant is going to be  
 21 required to comply with as part of the process.  
 22 The hearing officer concluded that the  
 23 Council is not responsible for enforcing Oregon weed  
 24 control laws. That enforcement authority lies with the  
 25 county courts. The Council is not waiving compliance

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1 with the weed control laws by findings that the proposed  
 2 facility would comply with the Fish and Wildlife Habit  
 3 Standard.  
 4 The hearing officer also found that the  
 5 applicant is only obligated to address, in other words,  
 6 prevent and mitigate, noxious weed infestations that  
 7 result from the proposed facility.  
 8 The applicant is not obligated to address  
 9 pre-existing or subsequent noxious weeds within the site  
 10 boundary that exist outside of project-related areas of  
 11 use or disturbance.  
 12 The applicant is committed to identifying,  
 13 controlling, treating, and monitoring noxious weed  
 14 species on Oregon Weed Board Class A, B, and T lists and  
 15 County Class B lists, A and B lists.  
 16 In the contested case proceeding, the  
 17 company updated its Draft Noxious Weed Plan, including  
 18 additional requirements of the plan that require the  
 19 company to consult annually with county weed districts  
 20 regarding treatment, if anything, for Class C weeds, and  
 21 on any updates to state and county weed lists to be  
 22 reflected in their Noxious Weed Plan.  
 23 The Draft Noxious Weed Plan identifies that  
 24 the applicant would monitor at least once annually for  
 25 the first five years. After year five, the company

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1 would prepare location-specific, long-term monitoring  
 2 plans for noxious weed control.  
 3 The hearing officer found that nothing in  
 4 the weed control statute specifically requires twice  
 5 annual monitoring and finally that ORS 569.445, that  
 6 deals with wheel washing is limited to other machinery  
 7 used for agricultural purposes and does not apply to  
 8 construction equipment or vehicles.  
 9 Okay. That is the summary of the hearing  
 10 officer's ruling on that issue.  
 11 And we can have oral argument from  
 12 Ms. Gilbert/Ms. Geer, whoever wants to come first.  
 13 MS. GILBERT: Anyway, am I okay here?  
 14 I guess I can be heard.  
 15 The applicant -- I'm going to just deal with  
 16 the one issue here, which is that weeds are not allowed  
 17 go to seed. This requirement is necessary to comply  
 18 with the Oregon statute, also with EFSC rules requiring  
 19 that the development not significantly increase the cost  
 20 to the county, which includes the cost of noxious weed  
 21 control in compliance with the habitat standard  
 22 requiring the plan to assure that the development will  
 23 not result in infestations of noxious weeds and  
 24 resulting damage to wildlife habitat and that conditions  
 25 be imposed that require monitoring mitigation to assure

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1 compliance with the standards.  
 2 The weed supervisors from three counties  
 3 submitted the information saying that Idaho Power must  
 4 comply with state law regarding controlled noxious weeds  
 5 on lands they manage or hold right-of-way on regardless  
 6 of cause or pre-existence, the same as any other  
 7 landowners.  
 8 ODF&W, Ms. Rice stated, weed management  
 9 should occur on all project areas for the life of the  
 10 project. The risk discovery infection in the areas of  
 11 operation and areas of re-vegetation will remain high  
 12 for the life of the project.  
 13 The current weed management plan fails to  
 14 meet the requirements that weeds not be allowed to go to  
 15 seed or comply with state statutes and rules including  
 16 requiring annual monitoring for the life of the project  
 17 to assure noxious weeds are not allowed to go to seed  
 18 and infest other areas.  
 19 The procedure for finalizing the weed  
 20 management plan fails to comply with the requirements  
 21 for Council approval of the weed management plan to show  
 22 the statutes and rules are complied with.  
 23 The agency review process being required is  
 24 controlled by the Oregon Department of Energy and  
 25 detailed requirements for counties or agencies to

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1 disagree with the drafts presented by the developer  
 2 include identifying a rule that specifically requires  
 3 the change in providing only a 14-day time frame for  
 4 review and objection to what's submitted.  
 5 And I'm going to read the rule that keeps  
 6 getting referred to in terms of ODOE being able to  
 7 finalize these plans.  
 8 469.402. "Delegation of review of future  
 9 action required by site certificate. If the Energy  
 10 Facility Siting Council elects to propose conditions on  
 11 a site certificate or an amended site certificate that  
 12 requires subsequent review, then they can refer it to  
 13 ODOE."  
 14 That's what the rule says.  
 15 The language is referring to the fact there  
 16 is a site certificate.  
 17 Now, 469.377 says, "At the conclusion of the  
 18 contested case, the Council shall issue a final order  
 19 either approving or rejecting the application based upon  
 20 the standards adopted in 469.501 and what's in" the --  
 21 "the project order."  
 22 So the bottom line is, yes, ODOE can do some  
 23 follow-up, but not until the Council actually issues a  
 24 site certificate. That is your responsibility. Your  
 25 duty. They can only do the actions that you have

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1 included after you decide that there is eligibility for  
 2 the site certificate.  
 3 So with these plans, if they are required in  
 4 order to issue a site certificate, that's your  
 5 responsibility. They can draft it. You have to approve  
 6 it.  
 7 So that's --  
 8 VICE CHAIR HOWE: Thank you, Ms. Gilbert.  
 9 Are there any questions from Council?  
 10 Okay.  
 11 MS. GILBERT: Yeah. This applies all across  
 12 the Board. You know that.  
 13 VICE CHAIR HOWE: Ms. Geer. Oh, recorded.  
 14 SECRETARY CORNETT: For the record, Todd  
 15 Cornett, Mr. Vice Chair. So Ms. Geer has provided a  
 16 recording for issues FW-3 and FW-6, but they are one  
 17 six-minute long recording.  
 18 So what I would request is a little  
 19 alteration here, which would be to play the entire  
 20 recording of Ms. Geer, which is six minutes, and then  
 21 allow Idaho Power six minutes to respond to both of the  
 22 issues, as well as Mr. Rowe six minutes to respond to  
 23 both issues. And then you would do a straw poll on a  
 24 combination of those issues.  
 25 VICE CHAIR HOWE: And there's nobody else.

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1 SECRETARY CORNETT: This is it.  
 2 VICE CHAIR HOWE: Okay. That works.  
 3 MR. RATCLIFFE: One friendly amendment to  
 4 that proposed one. That's before we hear the recording  
 5 that will cover both issues, maybe I should say what the  
 6 second issue is.  
 7 Okay. So issue FW-6 -- again, the  
 8 single-limited party on this issue is Susan Geer -- is  
 9 whether the Noxious Weed Plan provides adequate  
 10 mitigation for potential loss of habitat due to noxious  
 11 weeds when it appears to relieve the applicant of weed  
 12 monitoring and control responsibilities after five years  
 13 and allows for compensatory mitigation if weed control  
 14 is unsuccessful.  
 15 The hearing officer addressed this in her  
 16 opinion and ruled that no Council standard requires  
 17 prevention or eradication of nonnative invasive species  
 18 in natural areas.  
 19 Further, the treatment of nonnative invasive  
 20 plant species is a matter outside of Council  
 21 jurisdiction.  
 22 The noxious weed control plan would require  
 23 noxious weed monitoring and control annually, at a  
 24 minimum, for the first five years and then requires  
 25 development of a long-term monitoring plan after year

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1 five, which is consistent with other re-vegetation and  
 2 weed control plans approved by the Council.  
 3 Ms. Geer has not demonstrated that the  
 4 noxious weed plan is inadequate for the purpose of  
 5 controlling noxious weeds. Okay.  
 6 (Recording played.)  
 7 "Susan Geer, issue FW-3 and FW-6. I've  
 8 been a botanist and plant community  
 9 ecologist for over 30 years. I'm a  
 10 landowner who controls weeds and who  
 11 assists in vegetation management at Rice  
 12 Glass Hill Natural Area. I ask the  
 13 Council deny the site certificate or  
 14 remand the proposed contested case order  
 15 to Judge Webster for more evidence and  
 16 remand to ODOE for updated analysis and  
 17 further development of the various  
 18 plans. I'm adopting Ms. Gilbert's  
 19 exceptions for FW-3 plus the following.  
 20 Judge Webster erred when she summarized  
 21 FW-3. The affects of residual  
 22 herbicides on native plant communities  
 23 was omitted from the issue. I have  
 24 great concerns for the effects of  
 25 residual herbicides on native plant

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1 communities. Large amounts of  
 2 herbicides would be used to address  
 3 invasive plants resulting from  
 4 disturbance of construction. This  
 5 important concern is not addressed in  
 6 any of the other issues or discussed in  
 7 the plans. The draft noxious weed, the  
 8 reclamation and re-vegetation, or the  
 9 vegetation management plan, proposed in  
 10 the application for site certificate,  
 11 This concern should be part of the  
 12 discussion of habitat standards.  
 13 Exception for FW-6. Judge Webster erred  
 14 in how she addressed FW-6. She failed  
 15 to address the potential loss of habitat  
 16 in the type of litigation, the  
 17 compensatory mitigation raised in FW-6  
 18 and by incorrectly limiting the scope of  
 19 FW-6 with prejudicial wording in her  
 20 opinion, even beyond the limited wording  
 21 she originally chose for the issue in  
 22 the amended order. The judge's  
 23 conclusion of law states the updated  
 24 draft Noxious Weed Plan is adequate to  
 25 serve its intended purpose of



<p style="text-align: right;">Page 523</p> <p>1 establishing the measures the company  2 will take to scroll noxious weed species  3 and prevent the introduction of these  4 species during construction and the  5 operation of the project. Ms. Geer has  6 not presented evidence or persuasive  7 argument to show the Noxious Weed Plan  8 is invalid or that Idaho Power will be  9 unable to implement and adhere to the  10 plan when finalized. This conclusion  11 completely ignores the loss of habitat  12 which is central to the issue. In a  13 letter to the judge dated October 1,  14 2020, I appealed for and gained  15 recognition of this very issue stating  16 the following issue is not mentioned by  17 ODOE but is recognized as properly  18 raised by Idaho Power in response to  19 petitions for party status, 2D fish and  20 wildlife habitat standard mitigation for  21 potential habitat loss from noxious  22 weeds, whether the new action in the  23 proposed order allowing Idaho Power to  24 mitigate for a potential loss of habitat  25 due to noxious weeds is an adequate</p>	<p style="text-align: right;">Page 525</p> <p>1 solely for natives plants and animals  2 for over 20 years and has special status  3 species and priority plant associations.  4 The judge draws faulty conclusions about  5 mitigation of loss of habit and  6 compensatory mitigation the judge  7 offers. As previously discussed, issue  8 FW-6 is limited to whether the Noxious  9 Weed Plan provides adequate mitigation  10 for potential adverse affects from  11 noxious weeds resulting from project  12 construction and/or operation. The  13 Judge has replaced the words, loss of  14 habitat and in her initial wording of  15 the issue with adverse impacts, taking  16 the issue even further from my concerns  17 as initially expressed. The judge  18 further dismisses concerns about habit  19 loss because of invasive plants by  20 focusing only on the words "Noxious Weed  21 Plan." In her view, the Noxious Weed  22 Plan is the only aspect of invasive  23 plants under consideration. The judge  24 erroneously reasons that since the  25 Council is not responsible for the</p>
<p style="text-align: right;">Page 524</p> <p>1 solution to the risk of noxious weed  2 impacts. The judge was able to draw  3 this conclusion only because she chose  4 to re-word and prejudicially narrow the  5 scope of FW-6 in her opinion. The  6 judge's opinion states: Idaho Power is  7 not required to demonstrate compliance  8 with the weed control laws to satisfy  9 Fish and Wildlife Habitat Standard. The  10 judge incorrectly assumes that  11 compliance with weed control laws is the  12 only factor related to disturbance and  13 invasives that would affect habit. The  14 opinion is moot because without  15 beginning construction, Idaho Power  16 could not demonstrate compliance. All  17 they can do is demonstrate a willingness  18 to comply, at least, in the writing.  19 Loss of high quality native habitat  20 would occur under the proposed order.  21 There is no mitigation that can atone  22 for unique high quality native habitat.  23 This is particularly true for Rice Glass  24 Hill Natural Area, which has been  25 undisturbed, undeveloped, and managed</p>	<p style="text-align: right;">Page 526</p> <p>1 Noxious Weed Plan, the Council retains  2 zero responsibility for the long-term  3 effects of introducing invasives to the  4 landscape. In her opinion about my  5 concerns, regarding compensatory  6 mitigation, the judge, once again,  7 restricts the issue even beyond her  8 previously chosen wording, allows for  9 compensatory mitigation if weed control  10 is unsuccessful stating this argument  11 exceeds the scope of issue FW-6, which  12 as previously discussed, is limited to  13 the adequacy of weed monitoring and the  14 control positions of the Noxious Weed  15 Plan. By excluding wording about  16 habitat in compensatory mitigation, the  17 judge has prejudicially changed the  18 emphasis of issue FW-6 and rendered her  19 opinion invalid.  20 MS. PEASE: Thank you.  21 And good afternoon, members of the Council.  22 Again, this is Jocelyn Pease for Idaho Power  23 Company.  24 We'll start with issue FW-3. Ms. Geer and  25 Ms. Gilbert had both filed exceptions for FW-3 raising</p>

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1 numerous arguments that Idaho Power has fully addressed  
 2 in its responsive briefing.  
 3 And for purposes of these comments, I'll try  
 4 to focus on two main arguments and also try to hit some  
 5 of the points that were raised in the oral comments.  
 6 First, Ms. Gilbert and Ms. Geer argue that  
 7 the hearing officer erred in her conclusion that the  
 8 Draft Noxious Weed Plan is not required to demonstrate  
 9 compliance with the weed control laws to satisfy the  
 10 Fish and Wildlife Habitat Standard.  
 11 And the Council is not the agency  
 12 responsible for enforcing compliance with the weed  
 13 control laws.  
 14 Here, the hearing officer correctly  
 15 recognized that the Draft Noxious Weed Plan was designed  
 16 to address the Fish and Wildlife Habitat Standard. It  
 17 was not specifically intended to address compliance with  
 18 the full extent of the Oregon weed control statutes in  
 19 ORS Chapter 569.  
 20 In particular, all though, ORS Chapter 569  
 21 requires an owner or occupant of land to take action  
 22 regarding control of noxious weeds located on that  
 23 person's land, EFSC's Fish and Wildlife Habitat Standard  
 24 instead focuses on the impacts resulting from the  
 25 project.

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1 And what -- what Idaho Power explained in  
 2 its briefing is that there's basically two tracks.  
 3 There is the EFSC Fish and Wildlife Habitat Standard  
 4 track and then the counties also still retain a local  
 5 enforcement of the weed control laws.  
 6 Ms. Gilbert had made a point about there  
 7 being a critique from county weed supervisors from -- I  
 8 believe it was a meeting in 2017.  
 9 In fact, during the contested case and at  
 10 cross-examination, there was testimony from an ODA  
 11 witness, Mr. Porter, explaining an understanding of  
 12 these parallel tracks, that there's an EFSC process  
 13 where the applicant demonstrates compliance with the  
 14 EFSC standards, and then the County still retains  
 15 jurisdiction to enforce the weed control laws as they  
 16 need to.  
 17 Additionally, Ms. Gilbert had asserted  
 18 that -- that the hearing officer's conclusions related  
 19 to the Draft Noxious Weed Plan are null and void because  
 20 the plan may be later changed or updated.  
 21 However, the process for finalizing the  
 22 Council's weed plan is entirely consistent with the  
 23 agency review process for finalizing plans in the  
 24 Council's roles, which are provided in OAR  
 25 Chapter 345.025.0016.

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1 Moreover, Idaho Power provided a robust  
 2 Noxious Weed Plan to demonstrate how the company will  
 3 address project-related noxious weeds for compliance  
 4 with the Fish and Wildlife Habitat Standard.  
 5 And importantly, during this contested case,  
 6 Idaho Power updated the Draft Noxious Weed Plan to  
 7 address several of the concerns that limited parties had  
 8 raised, including concerns about treating Class B weeds,  
 9 clarify Idaho Power's intent to prepare a long-term  
 10 monitoring plan following the initial five-year  
 11 assessment period, and clarifying plans for vehicle  
 12 cleaning as well as a number of other updates.  
 13 Let's see. Okay. Moving on to FW-6 and the  
 14 assertions that Ms. Geer had raised.  
 15 First, she made a number of arguments about  
 16 the hearing officer narrowly framing her issues or that  
 17 her issue should have been stated more expansively.  
 18 Unfortunately, we're in a contested case  
 19 process where we need to define the scope of the issues  
 20 early on, and there was a process for the judge to do  
 21 that, which occurred over a year and a half ago.  
 22 So the time for raising concerns about the  
 23 framing of issues has long past and the Council should  
 24 reject those claims.  
 25 Additionally, regarding FW-6, the basic

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1 thrust of Ms. Geer's argument is that mitigation should  
 2 not be available in connection with the Noxious Weed  
 3 Plan.  
 4 The Noxious Weed Plan provides that Idaho  
 5 Power will take measures to ensure -- to minimize and to  
 6 the extent possible ensure the limited transmission of  
 7 noxious weeds in connection with the development of the  
 8 project.  
 9 However, in the event that there -- that  
 10 there are noxious weeds that take hold, the plan also  
 11 provides for compensatory mitigation to address any  
 12 impacts to any potential loss of habit.  
 13 Those -- this framework is consistent with  
 14 the Council's Fish and Wildlife Habitat Standard which  
 15 provides for mitigation in the event of impacts.  
 16 Thus, it is entirely consistent here for the  
 17 Council to find that mitigation can be appropriate in  
 18 the event that there is a loss of habitat.  
 19 However, in light of the measures that Idaho  
 20 Power has proposed and updated in its Draft Noxious Weed  
 21 Plan, the Council can find that it's consistent with the  
 22 Fish and Wildlife Habitat Standard and affirm the  
 23 hearing officer's conclusions with respect to FW-3 and  
 24 FW-6.  
 25 And I can be available for any further

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1 questions.  
 2 VICE CHAIR HOWE: Any questions from  
 3 Council?  
 4 Looks good. Thank you.  
 5 Counsel Rowe.  
 6 MR. ROWE: I could say I have nothing to say  
 7 and then we could all leave, but I have a couple things  
 8 to say. Not much. I'll take it one issue at a time.  
 9 FW-3, again, the issue is whether the Draft  
 10 Noxious Weed Plan adequately ensures compliance with the  
 11 weed control laws at ORS 569, dot, dot, dot.  
 12 Department's position on that is that the  
 13 hearing officer correctly ruled that it's the counties,  
 14 not EFSC, that are responsible for enforcing those weed  
 15 control laws.  
 16 With regard to compliance with EFSC's  
 17 standards, recommended Fish and Wildlife condition  
 18 three, that's in your proposed order at page 319, that  
 19 would require that Idaho Power submit a draft of  
 20 their -- they already have a Draft Noxious Weed Plan.  
 21 And it's actually quite well-developed, but  
 22 that condition would require Idaho Power to submit their  
 23 draft of their final Noxious Weed Plan and that would be  
 24 subject to the formal local state and federal review  
 25 that Kellen was discussing earlier.

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1 If you look at -- this is in the record.  
 2 The version I'm looking at the Department attached to  
 3 its response on exceptions FW-3.  
 4 I don't know -- are you -- is everyone able  
 5 to pull that up relatively easily? If not, I can  
 6 certainly summarize for you what's in it.  
 7 But, again, it's an attachment to the  
 8 Department's response to the exceptions of FW-3. The  
 9 very beginning of that includes the agency review  
 10 process that Kellen described for us earlier. And  
 11 the -- and I want to pull up the condition itself.  
 12 And the condition says, "Prior to  
 13 construction of a phase or segment of the facility in  
 14 accordance with the rule governing agency consultation  
 15 process and outlined in the Draft Noxious Weed Plan,  
 16 Idaho Power must finalize and submit to the Department  
 17 for its approval the final plan."  
 18 The Department believes that that final plan  
 19 sufficiently addresses Idaho Power's responsibilities  
 20 under Council's standards. That's FW-3.  
 21 Now I'm going move to FW-6.  
 22 VICE CHAIR HOWE: Any questions from Council  
 23 on FW-3?  
 24 Okay.  
 25 MR. ROWE: FW-6, again, the issue that was

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1 before the hearing officer, whether the Noxious Weed  
 2 Plan provides adequate mitigation for potential loss of  
 3 habitat due to noxious weeds when it appears to relieve  
 4 applicant of weed monitoring and control  
 5 responsibilities after five years and allows for  
 6 compensatory mitigation if weed control is unsuccessful.  
 7 First, I'd like to address the assertion  
 8 that it appears to relieve the applicant of weed  
 9 monitoring and control responsibilities after five  
 10 years.  
 11 If you were to look at the Draft Noxious  
 12 Weed Plan, section 5.3.4 addresses timing.  
 13 And it states -- basically, what they can --  
 14 they are going to go out there and if they identify  
 15 noxious weeds, they are going to try to control them.  
 16 And if they believe they have successfully controlled  
 17 them within five years, then they can come to the  
 18 Department and they can request a concurrence of the  
 19 Department that they successfully controlled the weeds  
 20 in that time period.  
 21 If ODOE concurs, Idaho Power still needs to  
 22 continue to monitor. Okay. This -- I'm just going to  
 23 read it directly.  
 24 "If ODOE concurs, IPC will continue to  
 25 monitor the sites as described below in Section 6.1 but

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1 will cease treatment" -- so they can stop treatment but  
 2 they have to continue to monitor -- unless determined --  
 3 "unless treatment is determined to be necessary through  
 4 subsequent monitoring."  
 5 "If control of noxious weeds is deemed  
 6 unsuccessful after five years of monitoring and noxious  
 7 weed control actions, IPC will coordinate with ODOE  
 8 regarding appropriate steps forward."  
 9 So they're not off the hook after five  
 10 years. If they come to the Department, the Department  
 11 concurs you did adequately control, they can stop  
 12 treatment, but they still have to continue monitoring.  
 13 That's right in the plan.  
 14 In addition to the Draft Noxious Weed Plan,  
 15 the Department would also point out to the Council that  
 16 temporary and permanent disturbance that might be caused  
 17 as a result of construction or operation of the  
 18 facility, that could result in noxious weed impacts they  
 19 would be mitigated not just through the Noxious Weed  
 20 Plan, but there are other mitigation obligations in  
 21 place. And they include the 1200-C permit, the  
 22 agricultural mitigation plan, the right-of-way clearing  
 23 assessment, the reclamation and re-vegetation plan.  
 24 Almost all of those, except for 1200-C,  
 25 require landowner consultation, treatment, and short- to

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1 long-term monitoring for noxious weeds.  
 2 These plans that I just listed are required  
 3 under the following conditions. Fish and Wildlife  
 4 habitat -- or would be, were you to adopt them -- fish  
 5 and wildlife habitat condition one, recommended fish and  
 6 wildlife habitat condition three, recommended land use  
 7 condition 14, recommended land use condition 16, and  
 8 soil protection condition one.  
 9 That's all I have. Thank you.  
 10 VICE CHAIR HOWE: Any questions from  
 11 Council?  
 12 COUNCILMEMBER JENKINS: This is Hanley.  
 13 So, Patrick, again, if they are unsuccessful  
 14 after five years in their weed plan, they need to submit  
 15 a new plan to the Department for subsequent evaluation  
 16 and mitigation.  
 17 MR. ROWE: I had not -- yeah, I don't --  
 18 yes, is that correct? Sarah?  
 19 COUNCILMEMBER JENKINS: Long-term plan.  
 20 Yeah, new long-term plan.  
 21 Thank you.  
 22 VICE CHAIR HOWE: Councillor Beier.  
 23 COUNCILMEMBER BEIER: So this is just a  
 24 question for, I think, staff.  
 25 Where does compensatory mitigation come in,

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1 then, if we don't get everything right in the first five  
 2 years and we come up with a new plan? I know that it's  
 3 allowed, in general, for fish and wildlife standards.  
 4 But what triggers that here and who triggers  
 5 it?  
 6 MS. ESTERSON: Well, the way I think it will  
 7 work is that the -- like the reclamation re-veg plan and  
 8 the Noxious Weed Plan are to address temporary impacts.  
 9 So if those become a permanent impact  
 10 because it's taking much longer than five years,  
 11 compensatory mitigation would start to come into play  
 12 but that doesn't mean you don't still have to try in  
 13 some way. It is just now you have more of an  
 14 obligation.  
 15 VICE CHAIR HOWE: Any other questions?  
 16 Councillor Condon.  
 17 COUNCILMEMBER CONDON: I'm just curious, in  
 18 the plan, is there a provision for public input?  
 19 Like, if the public sees evidence of noxious  
 20 weeds, is there a public process for coming to us, ODOE,  
 21 Idaho Power?  
 22 MS. ESTERSON: Well, what first comes to  
 23 mind is our -- in our compliance program, we have a  
 24 process where you can file a complaint. I don't know if  
 25 you want to talk about that?

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1 SECRETARY CORNETT: For the record, Todd  
 2 Cornett. It's a request for inspection. So if somebody  
 3 believes a condition is not being met or a facility is  
 4 not being operated consistent with the approval, they  
 5 can request the Department conduct an inspection to  
 6 evaluate that so we can come to our own conclusion.  
 7 COUNCILMEMBER CONDON: Thank you.  
 8 VICE CHAIR HOWE: Any other questions?  
 9 So I believe we're ready.  
 10 Are any changes needed in fish and wildlife  
 11 issues 3 and 6?  
 12 If not, I think we're ready for the roll  
 13 call.  
 14 SECRETARY CORNETT: So this would be for the  
 15 fish and wildlife standard in addition to issues FW-3  
 16 and FW-6.  
 17 "Agree with the findings of fact,  
 18 conclusions of law, and conditions of approval in the  
 19 proposed order pertaining to" fish and wildlife -- "the  
 20 Fish and Wildlife Standard that are not related to the  
 21 issues in the contested case and in the proposed  
 22 contested case order pertaining to issues FW-3 and  
 23 FW-6."  
 24 VICE CHAIR HOWE: Sounds good.  
 25 SECRETARY CORNETT: Cindy Condon.

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1 COUNCILMEMBER CONDON: Yes.  
 2 SECRETARY CORNETT: Jordan Truitt.  
 3 COUNCILMEMBER TRUITT: Yes.  
 4 SECRETARY CORNETT: Ann Beier.  
 5 COUNCILMEMBER BEIER: Yes.  
 6 VICE CHAIR HOWE: Hanley Jenkins.  
 7 COUNCILMEMBER JENKINS: Yes.  
 8 SECRETARY CORNETT: Perry Chocktoot.  
 9 COUNCILMEMBER CHOCKTOOT: Yes.  
 10 SECRETARY CORNETT: Kent Howe.  
 11 VICE CHAIR HOWE: Yes.  
 12 SECRETARY CORNETT: Thank you,  
 13 Councilmembers.  
 14 VICE CHAIR HOWE: So we got through that.  
 15 The time is now 5:18, in the August 29th, 30th, 31st of  
 16 the 2022 meeting of the Energy Facility Siting Council  
 17 is now in recessed until tomorrow morning at 8 a.m.  
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 19 (Meeting adjourned at 5:18 p.m.)  
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CERTIFICATE

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF KITSAP    )

I, CRYSTAL R. McAULIFFE, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the Energy Facility Siting Council Meeting on AUGUST 30, 2022, is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 9th day of September, 2022.

*Crystal McAuliffe*



CRYSTAL R. McAULIFFE, RPR, CCR #2121  
Oregon CCR 22-0002

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**9th** 539:15

## Hearing - Day 3

# Council Review of Boardman to Hemingway Transmission Line

August 31, 2022



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OREGON DEPARTMENT OF ENERGY  
ENERGY FACILITY SITE COUNCIL MEETING

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Council Review of the Proposed Order/Proposed Contested  
Case Order for the  
Boardman to Hemingway Transmission Line

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August 31, 2022  
Day 3 of 3  
8:00 a.m.

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REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121,  
Oregon CCR 22-0002

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1            A P P E A R A N C E S

2

3 OREGON DEPARTMENT OF ENERGY COUNCILMEMBERS:

4 KENT HOWE, Vice Chair

5 HANLEY JENKINS II

6 PERRY CHOCKTOOT

7 JORDAN TRUITT

8 CINDY CONDON

9 ANN BEIER

10 TODD CORNETT, Secretary

11 OREGON DEPARTMENT OF ENERGY STAFF:

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1            A P P E A R A N C E S  
(Continued)

2

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21

22 Also Present:

23 Irene Gilbert

24 Joe Horst

25 Sam Myers

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1            LA GRANDE, OREGON; AUGUST 31, 2022

2            8:00 a.m.

3            -o0o-

4

5            VICE CHAIR HOWE: Good morning, everyone.

6 Welcome back. The time is now eight o'clock in the

7 morning. And I would like to call the August 29th,

8 30th, and 31th, 2022 meeting of the Energy Facility

9 Siting Council to order.

10 Mr. Secretary, please call the roll.

11 SECRETARY CORNETT: Kent Howe.

12 VICE CHAIR HOWE: Here.

13 SECRETARY CORNETT: Hanley Jenkins.

14 COUNCILMEMBER JENKINS: Here.

15 SECRETARY CORNETT: Jordan Truitt.

16 COUNCILMEMBER TRUITT: Here.

17 SECRETARY CORNETT: Cindy Condon.

18 COUNCILMEMBER CONDON: Here.

19 SECRETARY CORNETT: Perry Chocktoot.

20 COUNCILMEMBER CHOCKTOOT: Here.

21 SECRETARY CORNETT: Ann Beier.

22 COUNCILMEMBER BEIER: Here.

23 SECRETARY CORNETT: You have a quorum,

24 Mr. Vice Chair.

25 VICE CHAIR HOWE: Okay. Are there any

1 agenda modifications?  
 2 SECRETARY CORNETT: Mr. Vice Chair, just as  
 3 a reminder, at the end of the meeting today, we will go  
 4 back to the meeting minutes from June and July. And  
 5 then there was, at least thus far, one item that was  
 6 pushed to the end of the meeting today, which was the  
 7 notification related to the blasting plan. So that's  
 8 the one remaining issue from all of the standards and  
 9 issues that the Council has heard thus far. So that's  
 10 the one that we will return to.  
 11 And we do have a proposal for Council, so  
 12 thank you to Christopher Clark. He did some research on  
 13 that and has provided that. And Sarah is working up a  
 14 proposal that we will have for Council on that one.  
 15 VICE CHAIR HOWE: Okay. Thank you.  
 16 So I have the following announcements.  
 17 Please silence your cell phones. Those participating  
 18 via phone or webinar, please mute your phone. And if  
 19 you receive a phone call, please hang up from this call  
 20 and dial back in after finishing your other call.  
 21 For those signed on to the webinar, please  
 22 do not broadcast your webcam. Reminder to Council and  
 23 anyone addressing the Council to please remember to  
 24 state your full name clearly and do not use the speaker  
 25 phone feature as it will create feedback.

1 Jesse Ratcliffe, Department of Justice Senior Assistant  
 2 Attorney General of the Natural Resources section.  
 3 So we are ready to move to the Noise Control  
 4 Regulation Standard. And we have issues NC11, -2, -3,  
 5 and -4. And so I'll turn it over to Ms. Tardaewether.  
 6 MS. TARDAEWETHER: Good morning. Thank you,  
 7 Vice Chair. Good morning, members of the Council.  
 8 For the record, my name is Kellen  
 9 Tardaewether, Senior Siting Analyst, Oregon Department  
 10 of Energy.  
 11 I'm going to do an introduction for Council  
 12 for noise. I'm going to deviate a little bit from what  
 13 my PowerPoint presentation had and we are all boarding  
 14 the train and we're leaving Council's standards and  
 15 we're headed to the realm of the other applicable  
 16 standards and rules.  
 17 So this is going to be exciting and we're  
 18 going to look at some rules. And I don't want  
 19 anybody -- there will be a lot, but I'm going to talk  
 20 you through what they are. And I think that's the best  
 21 way to set you up for the background for some of the --  
 22 the pretty technical information that you're going to be  
 23 hearing today regarding noise for the facility.  
 24 So we are in the realm of the noise control  
 25 regulations that are under the Department of

1 For those testifying on B2H agenda item,  
 2 please use the "raise your hand" feature in Webex to  
 3 speak during the public comment period, or press star 3  
 4 to raise your hand if you are participating by  
 5 telephone.  
 6 You may sign up for email notices by  
 7 clicking the link on the agenda or on the Council web  
 8 page. You are also welcome to access the online mapping  
 9 tool and any documents by visiting our website.  
 10 Energy Facility Council meetings shall be  
 11 conducted in a respectful and courteous manner where  
 12 everyone is allowed to state their positions at the  
 13 appropriate times, consistent with Council rules and  
 14 procedures. Willful, accusatory, offensive, insulting,  
 15 threatening, insolent, or slanderous comments which  
 16 disrupt the Council meetings are not acceptable.  
 17 Pursuant to Oregon Administrative Rule  
 18 345.011.0080, any person who engages in unacceptable  
 19 conduct which disrupts the meeting may be expelled.  
 20 So today, we're continuing our review of the  
 21 proposed order and proposed contested case order and  
 22 exception hearing on the Boardman to Hemingway  
 23 Transmission Line.  
 24 We have Kellen Tardaewether, the Senior  
 25 Siting Analyst for the Oregon Department of Energy, and

1 environmental qualities noise rules. And Council has  
 2 seen the noise rules before and we've talked about them.  
 3 But if the Council has wondered what are we  
 4 doing making decisions about DEQ's noise rules, I'm  
 5 going to show you why.  
 6 And while we're getting there, I'm going to  
 7 remind the Council that under the Council's general  
 8 standard of review, the question is whether or not the  
 9 preponderance of evidence supports the conclusion that  
 10 the application for site certificate or the proposed  
 11 facility meets Council's standards, Council's statutes,  
 12 and then other applicable laws and statutes as  
 13 identify -- you know, in Oregon as identified in the  
 14 Second Amended Project Order. So that is where we're  
 15 going.  
 16 And so up here on my screen -- and there is  
 17 a little bit of delay. So this is in the proposed  
 18 order.  
 19 So this is -- this is why Council is making  
 20 decisions on the -- the DEQ noise rules, which is just  
 21 what I'm going to call them. They are noise  
 22 regulations. So the legislative assembly actually  
 23 withdrew funding.  
 24 So DEQ doesn't actually fund, administer, or  
 25 generally mediate or provide input or interpretation for

1 their rules or implementation of their rules.  
2 However, the DEQ noise rules are still rules  
3 that are -- apply in Oregon. Therefore, they fall into  
4 that bucket underneath the general standard of review  
5 that the Council must find -- must evaluate and find  
6 compliance with.

7 Oh, my sharing bar. Bear with me here.

8 Okay. So this is the rule-set. Let me see  
9 if I can make it bigger here for folks.

10 Okay. Noise control regulations for  
11 industry and commerce, so I'm going to kind of walk  
12 through here. These are standards and regulations.  
13 We're going to skip over one. Those are existing noise  
14 sources.

15 What are we talking about?

16 We're talking about new noise sources. So  
17 there's new noise sources and we're on previously  
18 unused -- previously used sites and new sources located  
19 on previously unused sites.

20 And in the proposed order, the applicant  
21 provides information and representations that the site  
22 for the proposed transmission line is an unused site,  
23 predominantly using information from Exhibit K, which is  
24 information about land use.

25 The facility crosses mostly EFU lands and

1 that have, like, weather conditions that have light  
2 moisture so, like, a light rain that is light enough  
3 that where the moisture would amplify the corona noise,  
4 but not heavy enough rain to where the sound of the rain  
5 would actually drowned out the corona noise.

6 So those are kind of the conditions in which  
7 corona -- the corona effect would be the most amplified.

8 So underneath here the "no person owning or  
9 controlling," this is where we have your -- the two  
10 noise standards. And we have this -- I'm going to stop  
11 or start with -- okay.

12 So we have this -- so the noise source here,  
13 transmission lines are not allowed to increase the  
14 ambient statistical noise levels by more than 10  
15 decibels, "dBA," in any one hour. Okay. So that is  
16 one. This is one of the noise standards.

17 We call that the "ambient degradation  
18 standard" or the "anti-ambient degradation standard."

19 So this is where in any one hour the noise  
20 from the facility cannot exceed 10 dBA.

21 The other, the other noise standard is the  
22 maximum noise standard and there's this table eight.

23 And I have it later in the presentation,  
24 which I'll go over. So this is the maximum noise levels  
25 that are represented in this table. So those are the

1 some forested lands. But, in general, one of the ways I  
2 think about it is like a used site would be a brown  
3 field or already developed or an industrial site and an  
4 unused site would be, generally, an undeveloped site.

5 The rules that fall under an unused site are  
6 more stringent than a used site. So it is a more  
7 conservative set of rules that would apply to the  
8 facility.

9 So we're looking at this big "B," little  
10 "i," and then, you know, "ii," so we're just going to  
11 kind of walk through this.

12 Now, also what are we talking about with  
13 noise?

14 We know we have a transmission line. We're  
15 going to be constructing and operating a transmission  
16 line. So there's noise associated with construction,  
17 which I'll talk about that. And then there's noise  
18 associated with the operation of the proposed facility.  
19 The vast majority of that noise is the corona noise  
20 associated with operating a high voltage transmission  
21 line.

22 Generally speaking, the higher the voltage,  
23 the more corona noise you may have under certain  
24 circumstances.

25 Corona noise is most apparent in conditions

1 two that we look at.

2 Okay. I'm going to scroll down. There  
3 are -- so Council will just see here. This doesn't  
4 apply. But there are separate rules that would apply to  
5 a wind energy facility. This is not a wind energy  
6 facility, so we are applying the non-wind rules.

7 Okay. Okay.

8 This is an applicable portion of the rules.  
9 This is some direction about measurement and where  
10 measurement of a noise source or measurement points  
11 for -- on gaining data to establish what the existing  
12 ambient or baseline noise is. So these are rules  
13 that -- that provide direction about the location and --  
14 and how to go about measurement.

15 Okay. The sub (5) are exceptions. So there  
16 are explicit exemptions for noise under the DEQ noise  
17 rules. One of them that we -- and the proposed order  
18 does talk about several exemptions.

19 The one that really -- that kind of Council  
20 is the most familiar with and that we talk about in the  
21 proposed order is the exemption for sounds that  
22 originate from a construction site.

23 So noise associated with constructing a  
24 facility is exempt from these noise rules. They  
25 contemplate that construction may be noisy. However,



1 there is a lengthy explanation of noise associated with  
2 construction in the proposed order because that's also  
3 where we talk and we pull in the assessment under  
4 recreation, protected areas, and scenic resources, we  
5 point to that evaluation to give an idea of what the  
6 noise associated with construction may be.

7 Okay. And then we have, under this sub (35)  
8 of the noise control regulations, there are exceptions.

9 Just give me a moment. I'm going to check  
10 with my notes to see if I need to go back to my  
11 PowerPoint and see if I'm on target here with what I  
12 want to say.

13 Okay. Very good.

14 Before I go into exceptions -- and I'll just  
15 leave these here. But I wanted to talk about and to  
16 give some background about ambient or baseline noise  
17 levels.

18 So here, really, what we're doing -- and  
19 these are for all of Council's facilities, what is  
20 modeled is the worst-case noise that could potentially  
21 come out of a proposed facility.

22 So with other types of facilities, we  
23 generally talk about -- for example, with, like, a solar  
24 facility, what is the noise-generating equipment?  
25

And it is usually associated with the

1 scenarios when it's the loudest, likely would not even  
2 be heard because the ambient noise is so loud.

3 However, out at Hanley's house, it's rural  
4 and it's quiet. Your ambient noise are the sounds of  
5 maybe dogs barking in the distance and birds chirping  
6 and maybe some back-traffic, far-away airplanes. These  
7 are the ambient noise levels.

8 So this is what the applicants -- all  
9 applicants have to establish. And so that there is  
10 ambient noise monitoring, where the applicant goes out  
11 into the field, positions monitoring devices and  
12 measures during the day and during the night in time  
13 spans and then -- and then takes the most -- again,  
14 we're applying the most conservative assumptions.

15 So usually what's used is the ambient noise  
16 level in, like, late, late night/early morning when it's  
17 just the quietest and that is the ambient assumed for  
18 that site all the time. So it's the most conservative.

19 And then we add that -- we take that ambient  
20 and add on the projected maximum corona noise, and that  
21 is what is applied to that ambient degradation standard  
22 of the "no more than 10 dBA per hour" and the maximum  
23 noise. So those are kind of a very high level summary  
24 of those two.

25 So -- and we will get to this. And the

1 transformers and any equipment associated with the  
2 battery storage. And the applicant has to model the  
3 most possible equipment that they are proposing and put  
4 that into their noise assessment.

5 Here, part of the noise -- the noise -- the  
6 maximum or worst-case noise that we're talking about is  
7 the corona noise. So what the applicant has provided in  
8 Exhibit X, which has information about the noise, is the  
9 worst-case noise -- or a situation where corona would be  
10 the worst. So that is kind of one bundle of assessment  
11 that goes over here.

12 But then, because these are not existing  
13 facilities, these are proposed facilities. So we're  
14 projecting ahead and we're modeling. And part of that  
15 modeling has to take into consideration the existing  
16 noise levels at a site.

17 And that is the baseline or an ambient noise  
18 level. Because -- and we can just run a scenario of --  
19 say that we had a facility or this facility was  
20 criss-crossing or right adjacent to I-84 as opposed to  
21 maybe Hanley's house, which is rural and, you know,  
22 nestled and it's very quiet and peaceful out there.

23 The ambient noise next to I-84 is going to  
24 be louder. And so, therefore, any noise from the corona  
25 noise from a transmission line, even in the worst-case

1 applicant has conducted that modeling. And there are  
2 several areas where the applicant does not meet or  
3 exceeds the anti-ambient degradation standard. So the  
4 noise level in any hour would be more than 10.

5 So there are several instances in this. So  
6 then the applicant in its application has requested  
7 Council apply -- consider and apply an exception to the  
8 noise rules. They also are requesting a variance to the  
9 noise rules in these situations.

10 So I'm just going to -- that's what we're  
11 going to look at these rules here, and these are -- this  
12 is the findings that are provided in their proposed  
13 order.

14 So for an exemption upon written request for  
15 an owner, this would be the applicant. The Department  
16 may authorize an exception to these noise rules, what  
17 I've talked about, and then these are the  
18 circumstances -- this A through E, the circumstances  
19 under which an exemption may be granted.

20 The applicant is representing that the  
21 corona noise would be an unusual and/or an infrequent  
22 event and provides to support that representation.

23 So that's the exception. So -- and here it  
24 tells -- tells us to point here. So go here. So we're  
25 going to go there now. This is exciting.

1 Okay. So here we are. And so this is  
 2 what -- this is what the Department does.  
 3 We read rules and we see what an applicant  
 4 gets us and we draft findings.  
 5 So in establishing an exception, Department  
 6 shall consider protection of health and safety and  
 7 welfare of Oregon citizens.  
 8 And then we also consider feasibility and  
 9 cost of noise abatement; the past, present, and future  
 10 patterns of land use; relative timing of land use  
 11 changes, and other legal constraints.  
 12 For exceptions, the Department shall specify  
 13 times. So all of these items in here the Department has  
 14 evaluated in the proposed order and made -- made  
 15 recommendations. So each of these aspects is -- is  
 16 represented in the proposed order.  
 17 And then -- and -- and so the Council, as  
 18 the decision-maker for these rules, is -- has the  
 19 authority to do this evaluation and grant or deny these  
 20 exceptions and apply the noise rules.  
 21 The applicant is also requesting that  
 22 Council consider a variance to the noise rules. So the  
 23 Commission may grant -- may grant specific variances  
 24 from the particular requirements of any rule,  
 25 regulation, or order to -- for such specific noise

1 also -- and so it includes the baseline or ambient and  
 2 then their maximum modeled. And in that table, it does  
 3 include the result of the anti-ambient degradation  
 4 standard, so the increase of 10 dBA per hour, but it  
 5 also has the results of the maximum allowable.  
 6 And in that table, the maximum noise at  
 7 any -- and I forgot to give Council the background.  
 8 Council has heard it before.  
 9 In the DEQ noise rules, they call them  
 10 "noise sensitive properties."  
 11 In general, those -- Council can think of  
 12 those as -- they're properties normally used for  
 13 sleeping. That's part of the definition. But it's a  
 14 residence. That's what we're looking at.  
 15 They are called "noise sensitive  
 16 properties."  
 17 In the application and just in the  
 18 Department's vernacular, we commonly call it an "NSR" or  
 19 a "noise sensitive receptor."  
 20 So the NSR, or noise sensitive property,  
 21 that has the -- which would experience the loudest  
 22 noise, it would be at 47 dBA which is underneath the 50  
 23 dBA. Which this is that Table 8 that those noise rules  
 24 pointed to. This is just taken out of DEQ's noise  
 25 rules.

1 sources upon conditions as it may deem necessary to  
 2 protect the public health and welfare if it finds that  
 3 strict compliance with rule, regulation, or order is  
 4 inappropriate because of conditions beyond the control  
 5 of persons granted such variance. So we're going  
 6 to procedures for requesting.  
 7 So this is the second part in the proposed  
 8 order where there is an evaluation and recommendation  
 9 for Council's consideration.  
 10 Okay. Let me go back here. That was kind  
 11 of a lot of rules. And we can go back to that. And  
 12 maybe I'll just proceed.  
 13 But if Council has any questions about  
 14 those, we can do that now or at the end.  
 15 So just give me one minute. I'm almost  
 16 through here. Maybe.  
 17 Okay. I had these snippets of rules in my  
 18 PowerPoint and I thought it was better to actually just  
 19 look at them.  
 20 So under -- there is a table NC-4, which is  
 21 the summary of acoustic modeling results, comparison of  
 22 predicted facility sound levels to late night baseline.  
 23 It provides the results of the applicant's  
 24 noise modeling. So this is their establishment of the  
 25 baseline at representative locations. And then it

1 And again, we're kind of looking -- we're  
 2 going the most conservative, which is the I-50. When  
 3 the Council sees the "I-50" is generally the statistical  
 4 noise level that is the quietest.  
 5 So everything is kind of the most  
 6 conservative application within these rules. So the --  
 7 and so when we talk about "maximum allowable," 50 dBA is  
 8 that threshold. Because in here it's the most  
 9 conservative. It is the lowest noise.  
 10 And -- in that table, NSR it would be 47.  
 11 So we're recommending the maximum allowable noise  
 12 standard is met.  
 13 And that concludes my portion.  
 14 MR. RATCLIFFE: Thanks, Kellen.  
 15 So we have four issues that are part of the  
 16 contested case that exceptions were filed on related to  
 17 the noise standard.  
 18 We're gonna take those issues one by one.  
 19 So our first issue is NC-1. The limited party here is  
 20 Stop B2H.  
 21 The issue is whether the Department  
 22 improperly modified, slash, reduced the noise analysis  
 23 area in Exhibit X from one mile of the proposed site  
 24 boundary to one-half mile of the proposed site boundary,  
 25 and whether one of the Department's application rules.

1 So one of the application materials rules in Division 21  
 2 requires notification to all owners of noise-sensitive  
 3 property within one mile.  
 4 So the proposed contested case order  
 5 opinion, the hearing officer found that the Department's  
 6 application rule does require that an applicant identify  
 7 and address -- and include addresses for noise sensitive  
 8 receptors within a mile of the site boundary.  
 9 A separate Council rule allows for the  
 10 Department to modify the information to be required in  
 11 an application for site certificate if that modification  
 12 is reflected in the Department's project order.  
 13 We've heard about the project order a few  
 14 times. And, again, that is the document that is  
 15 intended to provide the roadmap to the applicant for the  
 16 standards that are going to be required to be met in the  
 17 application process.  
 18 The -- in this case, the project order was  
 19 amended a couple of times. So in the Second Amended  
 20 Project Order the Department modified the requirements  
 21 of the application -- the application requirements to  
 22 accommodate the linear nature of the proposed facility  
 23 and established that the extent of the names and  
 24 addresses that must be identified for noise-sensitive  
 25 properties extend to a half-mile from the site boundary

1 within its authority and established the noise analysis  
 2 area in the Second Amended Project Order as the area  
 3 within and extending one-half mile from the site  
 4 boundary.  
 5 So, again, that's the summary of the hearing  
 6 officer's proposed contested case order opinion. And  
 7 we'll now here oral argument from Stop B2H on this  
 8 issue.  
 9 MR. ANUTA: Good morning, members of the  
 10 Commission. My name is Karl Anuta. I'm representing  
 11 Stop B2H.  
 12 First, let me point something out to make  
 13 sure that we're all clear. Stop did not accept on the  
 14 issue of notice. Stop only accepted on the issue of the  
 15 modification in the project order of the pre-existing  
 16 rule.  
 17 And this is an interesting legal issue.  
 18 Hopefully, the Council has thought through this. The  
 19 basic problem here is that you have an existing rule  
 20 that says one mile is what is required for the list.  
 21 The Department's position is that you have  
 22 another rule that allows you to modify that rule in a  
 23 project order. And the problem for you is the Oregon  
 24 Administrative Procedures Act or "APA," is what governs  
 25 rule-making and it does not provide for having a rule

1 rather than a mile.  
 2 So one of the issues raised by Stop B2H was  
 3 whether or not the Department's authority to modify  
 4 these application requirements are limited to a  
 5 situation where the applicant has made a written request  
 6 to waive requirements.  
 7 The hearing officer found that while that  
 8 provision does authorize the Department to modify  
 9 requirements upon the applicant's written request, it  
 10 does not preclude the Department from otherwise  
 11 establishing on its own the applicable application  
 12 requirements in the project order.  
 13 Separately -- and we're, you know, getting a  
 14 little technical here, but the -- the rule that refers  
 15 to the -- the mile boundary, the hearing officer found  
 16 that that's not a requirement for issuing public notice.  
 17 Public notice and entities that must receive  
 18 notice are addressed in a separate Department -- or  
 19 Council rules.  
 20 And that, further, the -- the rule at issue  
 21 here does not establish or define the noise analysis  
 22 area.  
 23 So the Hearing Officer's ultimate conclusion  
 24 here was that separately from modifying the information  
 25 requirements in the application, the Department acted

1 that lets you modify a rule in an order. It has very  
 2 strict prescriptions. You have to go through a  
 3 rule-making process that publishes notice and does all  
 4 the things that the APA requires. There's no dispute  
 5 that didn't happen here.  
 6 So the really simple direct issue is can  
 7 ODOE pass a rule giving itself an exemption from the  
 8 Administrative Procedures Act rulemaking or rule  
 9 modification requirements.  
 10 Stop's position is straightforward. No.  
 11 Every agency is bound by the APA. If you want to change  
 12 a rule, you have to go through rulemaking. You can do  
 13 that on a temporary or emergency basis, if you find that  
 14 there's an emergency. Not sure how you could find there  
 15 would be an emergency because a power company wants to  
 16 make a lot of money building a line, but -- maybe that  
 17 would -- they could try to argue that. But here there  
 18 was no effort to get an emergency rule passed. There  
 19 was no amended rule that you could apply in a project  
 20 order. You had the existing rules. And instead, the  
 21 Department modified the rule to say something that it  
 22 didn't say.  
 23 So our position is very straightforward.  
 24 You don't have the authority to do that.  
 25 You, the Council, should tell the

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1 Department -- make them go back and do it correctly.  
 2 And why does that matter?  
 3 Because that list that they create is the  
 4 noise -- is -- provides the public, or you, the ability  
 5 to look at what noise-sensitive receptors are out there  
 6 and what might be covered by the project boundary or the  
 7 project one-mile radius.  
 8 And that's something that the public should  
 9 know. That's why your rules require that notice within  
 10 a half mile.  
 11 You now have a whole group of people that  
 12 were between a half mile and a mile that could never  
 13 figure out because the list wasn't accurately done.  
 14 Whether they were on the list or off the list.  
 15 And that's what happens if you change rules  
 16 in the middle of a proceeding without going through the  
 17 APA.  
 18 I'd be happy to answer questions, if you  
 19 have any.  
 20 VICE CHAIR HOWE: Thank you, Mr. Anuta.  
 21 Any questions from Council?  
 22 Thank you.  
 23 MS. RACKNER: Mr. Anuta is asking you to  
 24 look at one portion of your rules. And to -- and to --  
 25 excuse me. I seem to have some sound going on here.

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1 Could I pause my time?  
 2 Thank you. I seem to have made all kinds of  
 3 mistakes.  
 4 Okay. I think that's better. All right.  
 5 And again, for the record, I'm Lisa Rackner.  
 6 So Mr. Anuta wants you to look at one  
 7 portion of your rules which are the requirement lists  
 8 for Exhibit X, to read that all by itself and say you  
 9 can't change that rule except to do so under the APA.  
 10 But that's not the way you look at a set of  
 11 rules. Basic principles of statutory construction  
 12 require you to look at all of the rules and construe  
 13 them together.  
 14 And if you do that, you will see that ODOE  
 15 definitely had the authority to make changes in the  
 16 project order to the analysis area for noise.  
 17 And I hate quoting noise -- excuse me,  
 18 quoting rules by number, but I think it's helpful to do  
 19 so.  
 20 OAR Chapter 345-21-0004, that section  
 21 provides that ODOE may waive or modify any of the  
 22 application content requirements listed in Chapter 21  
 23 that ODOE determines are not applicable to the proposed  
 24 facility.  
 25 Similarly, 345-21-0010(1) states that the

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1 project order identifies the provisions of this rule  
 2 applicable to the application for the proposed facility,  
 3 including any appropriate modifications to application  
 4 of the rule.  
 5 So, clearly, within your rules itself, ODOE  
 6 had the authority to make a revision to the analysis  
 7 area in the project order and that is exactly what they  
 8 did.  
 9 There is no reason for rulemaking. There is  
 10 no error that was committed on a procedural basis here.  
 11 I also want to point out that while ODOE --  
 12 excuse me, while Stop B2H is stating that they are  
 13 concerned that people on that list going out to a mile  
 14 may not have had proper notice.  
 15 At the same time they've said -- and this is  
 16 true in their exceptions -- they didn't raise a notice  
 17 argument. So I think that's a red herring.  
 18 And the final thing I just want to emphasize  
 19 is while ODOE did reduce the analysis area at the  
 20 outset, Idaho Power did analyze for noise effects only  
 21 out to a half a mile.  
 22 Ultimately, in response to concerns -- and  
 23 this is a familiar refrain you'll hear -- Idaho Power  
 24 heard concerns. Idaho Power ultimately expanded its  
 25 analysis area out to one mile.

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1 And as a result, found one additional  
 2 exceedance going out to one mile. So in the end, the  
 3 analysis area was out to one mile.  
 4 And finally, in the site conditions that  
 5 were adopted by the hearing officer, ultimately, Idaho  
 6 Power is going to have to update the list of landowners  
 7 going out to a mile, provide them all with notice of the  
 8 conditions that are adopted in the site certificate so  
 9 that everybody going out to one mile was going to  
 10 understand what the rules are around noise, what  
 11 mitigation they might be entitled to, and what the  
 12 process is for compliance.  
 13 And I see I've gone over. I apologize.  
 14 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 15 Are there any questions from Council?  
 16 Guess not.  
 17 Counsel Rowe.  
 18 MR. ROWE: Patrick Rowe, Department of  
 19 Justice for the Oregon Department of Energy.  
 20 I've said this before, I think at least  
 21 internally, this is an issue that only an administrative  
 22 law professor could love.  
 23 I don't have much to add to what Mr. Rackner  
 24 said, but I will -- always good to hear things a couple  
 25 times to make sure you're following.

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1 The rule at issue seeks only a list of names  
 2 and addresses of noise-sensitive receptors within one  
 3 mile of the proposed facility.  
 4 It doesn't establish a public notice hearing  
 5 requirement and it doesn't establish an analysis area.  
 6 That rule doesn't say you have to analyze  
 7 noise within one mile. It says give us a list of the  
 8 NSR properties within one mile.  
 9 Council rules don't specify an analysis area  
 10 to determining compliance with the noise control  
 11 regulations. There are statute, as well as rules, that  
 12 provide authority for the Department to establish  
 13 application requirements in the project order.  
 14 Okay. So this -- what was done here isn't  
 15 being done just pursuant to a rule. It is also being  
 16 done pursuant to a statute, which says in the project  
 17 order, the Department shall establish what statutes,  
 18 rules, Council standards apply to the application.  
 19 Consistent with that authority in the  
 20 project order, the Department set the noise analysis  
 21 area at a half mile of the site boundary.  
 22 Even if the Division 21 rule at issue  
 23 required analysis within one mile, which it does not,  
 24 the Department would have authority to modify that  
 25 provision consistent with the statute as well as the

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1 rules that Ms. Rackner just mentioned.  
 2 Also as Ms. Rackner mentioned, all of this  
 3 is essentially moot. Because even though in the project  
 4 order the Department said analyze within half a mile,  
 5 Idaho Power ended up evaluating noise-sensitive  
 6 receptors and potential noise impacts extending out to  
 7 one mile in response to public comment and concern about  
 8 this issue.  
 9 VICE CHAIR HOWE: Thank you, Counsel Rowe.  
 10 Any questions from the Council?  
 11 Okay. Do we want to continue our practice  
 12 of taking on each issue and resolving with the straw  
 13 poll for the proposed contested case order one at a  
 14 time?  
 15 Yeah, Council Condon.  
 16 COUNCILMEMBER CONDON: Cindy Condon.  
 17 Just a question for the Department.  
 18 What was the reason for the half mile? Just  
 19 general reasoning for half mile.  
 20 MS. TARDAEWETHER: For the record, Kellen  
 21 Tardaewether.  
 22 That was established prior -- prior to Sarah  
 23 and I being here.  
 24 After the establishment of the analysis  
 25 areas, happens after the "notice of intent" phase where

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1 there is a comment period. And we ask reviewing  
 2 agencies to comment on if they have any feedback about  
 3 analysis areas. You know, agencies generally don't  
 4 comment on noise. But just for Council to take into  
 5 consideration that we take that information and then  
 6 that's the basis that we modify analysis areas and then  
 7 your rules tell us to establish that in the project  
 8 order, which happens after the notice of intent phase.  
 9 The intent is just that it is a longer  
 10 linear facility and to have kind of -- it's kind of like  
 11 a reasonable factor. And this is just in conversations  
 12 in our understanding with the people that did establish  
 13 that, because it happened prior to Sarah and I being  
 14 here.  
 15 But that -- that because it is this long,  
 16 you know, 274 mile linear facility, that a reasonable  
 17 analysis area that basically going out a mile would just  
 18 be a really big and maybe unnecessary analysis.  
 19 This is -- and this is just from my  
 20 understanding. We don't actually have anything in the  
 21 record that has a basis or a reason for it.  
 22 VICE CHAIR HOWE: Okay. Secretary Cornett,  
 23 I believe we're ready for the straw poll.  
 24 SECRETARY CORNETT: Okay. This would be to  
 25 agree with the finding of -- for the record, Todd

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1 Cornett.  
 2 "Agree with the findings of fact,  
 3 conclusions of law, and conditions of approval in the  
 4 proposed contested case order pertaining to issue NC-1."  
 5 VICE CHAIR HOWE: Sounds right.  
 6 SECRETARY CORNETT: Kent Howe.  
 7 VICE CHAIR HOWE: Yes.  
 8 SECRETARY CORNETT: Ann Beier.  
 9 COUNCILMEMBER BEIER: Yes.  
 10 SECRETARY CORNETT: Hanley Jenkins.  
 11 COUNCILMEMBER JENKINS: Yes.  
 12 SECRETARY CORNETT: Jordan Truitt.  
 13 COUNCILMEMBER TRUITT: Yes.  
 14 SECRETARY CORNETT: Perry Chocktoot.  
 15 COUNCILMEMBER CHOCKTOOT: Yes.  
 16 SECRETARY CORNETT: Cindy Condon.  
 17 COUNCILMEMBER CONDON: Yes.  
 18 SECRETARY CORNETT: Thank you,  
 19 Councilmembers.  
 20 MR. RATCLIFFE: The next issue is NC-2. We  
 21 have several limited parties associated with this issue,  
 22 Stop B2H, Gilbert, and Horst, all three of these limited  
 23 parties filed exceptions.  
 24 The issue is whether the Department erred in  
 25 recommending that the Council grant a variance/exception

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1 from the Oregon DEQ's noise rules, OAR 340-035-0035, and  
 2 whether the variance/exception is inconsistent with  
 3 ORS 467.010.  
 4 So the Hearing Officer's opinion on this  
 5 issue first notes one of the Council's statutes  
 6 ORS 469.370 sub (7), which establishes that the Council  
 7 must determine whether the proposed facility complies  
 8 with any additional statutes, rules, or ordinances  
 9 determined to be applicable to the facility by the  
 10 project order as amended.  
 11 So again, this is setting the stage that  
 12 these noise rules come from another source of law and  
 13 not the Council's own rules in the first instance, but  
 14 the DEQ noise rules.  
 15 ORS 469.401 establishes the Council's  
 16 authority in consolidating other permits or permit  
 17 requirements into the site certificate.  
 18 Based on these statutes taken together, the  
 19 Council has the jurisdiction and authority to determine  
 20 whether the proposed facility meets DEQ's noise control  
 21 regulation requirements for an exception and/or a  
 22 variance from the ambient anti-degradation standard.  
 23 And that standard is a limit not to exceed  
 24 more than 10 dBA above the baseline ambient noise levels  
 25 in any one hour.

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1 And further, that the Council is not  
 2 required to consult with the Environmental Quality  
 3 Commission or DEQ in making its determination.  
 4 The hearing officer found that 30 years ago  
 5 the Environment Quality Commission and DEQ suspended  
 6 their responsibility for administrating the noise  
 7 program.  
 8 And, essentially, this places the Council as  
 9 the sole authority to make findings and rules on an  
 10 applicant's request for variance and exception, just as  
 11 it does to the Council's authority to make decisions  
 12 with respect to any aspect of the noise rules that may  
 13 apply here.  
 14 The hearing officer found that limited  
 15 parties presented no persuasive evidence that the  
 16 Department's recommendation that the Council grant a  
 17 variance or exception was an error.  
 18 The hearing officer found that exceedances  
 19 of the ambient degradation standard met the criteria for  
 20 being unusual or infrequent, because it would occur less  
 21 than 2 percent of the time. Only during foul weather,  
 22 where foul weather is infrequent in the project area and  
 23 at times of low ambient noise levels and when the  
 24 transmission line is operating at full capacity.  
 25 ORS 467.010, which is the legislative policy

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1 behind the noise control rules states that it's to  
 2 provide protection of the health, safety, and welfare of  
 3 Oregon citizens from the hazards and deterioration of  
 4 the quality of life imposed by excessive noise  
 5 emissions.  
 6 The hearing officer found that the proposed  
 7 facility will not present a threat to the environmental  
 8 quality of life in this State. The Department --  
 9 further that the Department appropriately considered the  
 10 factors under OAR 340-35-0010(2).  
 11 The hearing officer also noted the noise  
 12 conditions that have been imposed here.  
 13 Noise condition one, which is a pre --  
 14 preconstruction requirement to work with known NSRs  
 15 where exceedances would occur and agree and implement  
 16 noise impact-related mitigation.  
 17 And second, a post-construction requirement  
 18 to evaluate any noise complaints and implement noise  
 19 impact-related mitigation if the complaint is deemed  
 20 valid.  
 21 This includes a Council review component if  
 22 any disputes on the level of mitigation end up being  
 23 unresolved.  
 24 That with these conditions that are included  
 25 in the proposed contested case order that this would

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1 result in the protection of health, safety, and welfare  
 2 of Oregon citizens.  
 3 So that is the summary.  
 4 So again, we have three parties who filed  
 5 exceptions on this issue and they can present oral  
 6 argument in the order that they choose.  
 7 MS. GILBERT: Good morning. Irene Gilbert  
 8 here.  
 9 Knowing you are going to deny my request for  
 10 exception on this, based on -- and you've also denied  
 11 all procedural arguments, I'm going to kind of focus  
 12 some on the procedural issues that relate to this  
 13 particular case.  
 14 This is one of many issues when the  
 15 Administrative Law Judge used procedures to hamstring  
 16 the public participation in contested cases.  
 17 My contested case in regard -- is in regard  
 18 to whether it's appropriate for Council to authorize an  
 19 exception in variance to the DEQ's rules. And this is  
 20 one example because, obviously, in order to decide if  
 21 you are going to be able to issue an exception, you have  
 22 to know what the noise effects are.  
 23 And I was denied any arguments regarding the  
 24 methodology or the establishment of what the actual  
 25 noise impacts are going to be, which makes it very

1 difficult to justify an exception. And they -- if you  
 2 look at the noise issue, it is -- it's one issue and yet  
 3 you see four -- actually, there were a couple other  
 4 noise issues, if you will, which were really just pieces  
 5 of the noise problem.  
 6 So anyway, when you -- there are a couple of  
 7 court decisions. One is DLCD v. Tillamook County which  
 8 says divisions -- decisions stating -- stating  
 9 petitioners need not have raised individual arguments  
 10 regarding my issue.  
 11 So what -- what that court decision said was  
 12 you don't have to give all the details. All you have to  
 13 do is raise the broad issue.  
 14 And another one here says that -- this is  
 15 with League of Women Voters, says that individual  
 16 arguments regarding issue on appeal cannot be limited.  
 17 So the fact that they have thrown out  
 18 everything in my contested case on the exception or  
 19 variance that had to do with what the actual noise  
 20 levels are and whether or not that was correctly  
 21 identified is not going to hold water in appeal.  
 22 The -- let's see. I wanted to also state  
 23 that I might insert, anyway, the fact that there's no  
 24 deference to an agency when it comes to interpreting  
 25 another agency's rules or statutes.

1 time. So if we were to have this -- this weather  
 2 pattern for four days in a row, then it would be just a  
 3 minor event in a 365-day year.  
 4 That's not what the rules say. The rules  
 5 say one hour within any 24-hour period if there's an  
 6 exceedance, there's an exceedance. That is not  
 7 infrequent. Thank you.  
 8 VICE CHAIR HOWE: Any questions from  
 9 Council?  
 10 Ready for the next.  
 11 MR. ANUTA: Karl Anuta on behalf of Stop.  
 12 You have several issues embedded in this  
 13 particular one. One of them is the legal question of  
 14 can the Department -- or the Council take over the  
 15 authority of DEQ and EQC to grant a variance.  
 16 Our position is very simple.  
 17 You could go to them, or the applicant could  
 18 go to them and say "Will you let us do this because  
 19 you're no longer administering the program?"  
 20 And if they say, heck, yeah. We're no  
 21 longer doing anything, then you have authority.  
 22 If you don't do that, you can't just usurp  
 23 the authority of another agency and say, hey, we're  
 24 going to do that stuff because we don't think they will.  
 25 So that's pretty much a straightforward

1 And actually, the statute specifically says  
 2 that the rules -- how the rules are supposed to be  
 3 established by DEQ and the DEQ rules have to cover  
 4 specific items and that they are, in effect, the  
 5 statute.  
 6 Because the statute is so clear that it says  
 7 you will determine how you're going -- how you're going  
 8 to measure it. How you're going to interpret it. It's  
 9 that specific.  
 10 The -- the other thing -- so I was going to  
 11 talk about unusual and infrequent.  
 12 ODOE re-interpreted the idea about what --  
 13 how much noise level the exceedance there is.  
 14 In the rules it clearly says that when the  
 15 corona noise is exceeding the ambient degradation  
 16 standard, they are talking about how many days. And it  
 17 specifically says any -- within a 24-hour period if  
 18 there's an exceedance, there's an exceedance of this  
 19 standard.  
 20 So in Union County, that means that 365 days  
 21 out of every year, we could expect the weather to  
 22 be such that -- (audio disruption) -- instead of looking  
 23 at it that way. What the developer did is they said,  
 24 well, if we look at the amount of days -- or not the  
 25 amount of days, but the -- look at it as a block of

1 legal question. We don't think you have that authority.  
 2 ODOE argues that you do.  
 3 I think we'll ultimately end up having to  
 4 see how an appellate court views that. We don't think  
 5 the grant of authority is that broad.  
 6 The secondary issues you have here is does  
 7 the applicant's materials and the Department's analysis  
 8 actually meet the requirements for a variance? And --  
 9 or an exception. And if there is one, should it be for  
 10 the entire line or should it be based on individual NSRs  
 11 where the actual high levels of noise will occur?  
 12 Our position on the latter is very  
 13 straightforward. You shouldn't be granting anybody an  
 14 exception for an entire facility that goes for almost  
 15 300 miles. It should be focused on the NSRs where there  
 16 are actually exceedances.  
 17 As to whether they meet the standard, they  
 18 don't. As Ms. Gilbert just noted that there isn't an  
 19 infrequent issue here because it's 48 days if you're in  
 20 Union County. That's not infrequent. There's also no  
 21 special circumstances here that render compliance  
 22 impractical. There are other routes where there  
 23 wouldn't be this problem. One of them would be the NEPA  
 24 route. But the other routes would make this perfectly  
 25 feasible.

1 There's also an exception allowed if  
 2 substantial compliance would result in substantial  
 3 curtailment or closing down of the business.  
 4 Well, the business doesn't exist right now.  
 5 It wouldn't be closing anything down. And if the  
 6 applicant can't comply with the noise standards, then  
 7 they shouldn't be building the line. You shouldn't be  
 8 approving things because -- simply because the applicant  
 9 can't meet your standard. You should be saying meet the  
 10 standards or your certificate is denied. That's how  
 11 that it is supposed to work.  
 12 And then one of the other points to think  
 13 about is, you are obligated, if you are actually  
 14 applying the DEQ noise rules to balance the equities  
 15 here, and that wasn't done.  
 16 If you look at the order, the public health,  
 17 welfare, and safety on noise issues were not balanced  
 18 against IPCs. The only thing that was balanced was the  
 19 cost and the difficulty for IPC of building a line that  
 20 actually complied with the standards.  
 21 VICE CHAIR HOWE: Thank you, Mr. Anuta.  
 22 Are there any questions from Council?  
 23 Okay. Thank you.  
 24 The next is Mr. Horst.  
 25 MR. HORST: Excuse me. My name is Joe

1 state and the health of safety and welfare of the people  
 2 of the state as is pollution of the air and waters of  
 3 this state.  
 4 The Oregon legislature takes noise pollution  
 5 very seriously. While the Oregon Department of  
 6 Quality (sic) no longer does the variances or exception,  
 7 they did set the standards to what maximum noise levels  
 8 should be.  
 9 If a company wanted to pollute a river and  
 10 their guess is going to be 10 to 20 percent over what  
 11 the maximum allowed is, or if a company wanted to put  
 12 smoke in the air, you know, just saying -- it might be  
 13 10, might be 20. We really don't know that for sure.  
 14 Over the maximum allowed, I'm sure they would be  
 15 rejected.  
 16 There -- there -- there -- the Department  
 17 is and Idaho Power is asking for exceptions that would  
 18 be determined over the maximum level that the ODEQ has  
 19 already made maximum level should be.  
 20 So I'm asking that the -- the -- that you  
 21 guys reject the -- their exceptions or variances at all.  
 22 I'm just going to make a quick comment.  
 23 From what I've seen of this process so far, yesterday I  
 24 made a comment that on this -- that the La Grande City  
 25 Council does not want this route to be used. There's

1 Horst. Just regards to contested case NC-2. OAR  
 2 340-035-0010 regarding exceptions reads specifically, in  
 3 establishing exceptions, the Department shall consider  
 4 the protection of health, safety, and welfare of Oregon  
 5 citizens.  
 6 This does not do that. You know, there  
 7 might be an argument made that this might be for the  
 8 greater good of the northwest, but the OAR specifically  
 9 says health, safety, and welfare of Oregon citizens, not  
 10 Idaho citizens.  
 11 OAR 340-035-0100 regarding variances reads,  
 12 specifically, conditions for granting. The Commission  
 13 may grant specific variances from the particular  
 14 requirements of any title, regulation, or order to a  
 15 specific person or class of persons shall specific noise  
 16 upon such conditions as it may deem necessary to protect  
 17 the public health and welfare.  
 18 This actually does the opposite of that. It  
 19 does not protect the public health and welfare. So  
 20 that -- therefore, that does not apply.  
 21 The Oregon legislature has made it very  
 22 clear, ORS 467.010 reads: The legislative assembly  
 23 finds that the increasing incidents of noise emissions  
 24 in this State at unreasonable levels is as much of a  
 25 threat to the environmental quality of life in this

1 many citizens who don't want it to be used. You guys  
 2 aren't listening to us. You're not listening to us at  
 3 all.  
 4 Mr. White came in and he was concerned about  
 5 the -- the blasting -- you know, he lives on the bottom  
 6 of a huge, steep hillside, and he's concerned about his  
 7 house.  
 8 And you guys say, well, we're going to give  
 9 you a week's notice, you know, so you can get out of  
 10 your house so if the rocks come down, you're not in it.  
 11 It's just wrong. You're not listening to what we're  
 12 trying to say. He didn't care about the notice. He  
 13 doesn't want his house flattened.  
 14 You know, while that road -- my road might  
 15 be 15 to 20 percent, it goes at an angle, that -- if you  
 16 ever look at that hillside right at the bottom of those  
 17 houses, it's big and it's steep. If a car -- if a  
 18 cement truck is coming down that road and there is  
 19 another car coming the other way, just a blind corner,  
 20 either the two are going to hit or one -- that cement  
 21 truck is going to go off the road. If it does, it is  
 22 going to land right on a couple of houses. There's no  
 23 way it can't.  
 24 VICE CHAIR HOWE: Thank you, Mr. Horst.  
 25 MR. HORST: Yeah. Okay. I apologize.



1 Thank you.  
 2 VICE CHAIR HOWE: Any questions of  
 3 Mr. Horst?  
 4 Okay.  
 5 MS. RACKNER: Good morning. Lisa Rackner,  
 6 again, for the record.  
 7 The argument that the parties have made on  
 8 this issue are far-ranging, and I will try to just  
 9 briefly touch on as many as I can in the time that I  
 10 have.  
 11 First, as Mr. Ratcliffe explained, EFSC does  
 12 have expressed jurisdiction to assess an application for  
 13 a site certificate to make sure that it complies with  
 14 state statutes and rules that are normally administered  
 15 by and enforced by others, including ODEQ's noise rules.  
 16 In EFSC's findings regarding compliance with  
 17 such statutes and rules, it is binding on those  
 18 agencies.  
 19 Accordingly, the Council does have  
 20 jurisdiction to issue a variance or exception in this  
 21 case. And as we explained in our briefing, the  
 22 legislature, when it adopted the noise statute, it  
 23 clearly didn't intend that it would be inflexibly  
 24 applied in each case because it allowed for variances  
 25 and exceptions.

1 in compliance with the noise rules approximately 98.7  
 2 percent of the time. And when you specifically look at  
 3 the La Grande area, which was the subject of some  
 4 controversy here, B2H will be in compliance  
 5 approximately 97.3 percent of the time.  
 6 Now, both Stop B2H and Ms. Gilbert have  
 7 focused on the fact that Idaho Power's analysis does  
 8 show that if you look at that data on a daily basis,  
 9 there will be 48 days in a year or 13 percent of the  
 10 days where there will be an exceedance.  
 11 But we think the sole focus on that data  
 12 point is -- it's misleading, because it treats a day in  
 13 which there is a -- an exceedance in one hour the same  
 14 as a day where there was an exceedance in every hour.  
 15 And so while that is an interesting data  
 16 point, we're not ignoring it. We think much more  
 17 salient is to think about how many total hours of the  
 18 day is there going to be an exceedance, and it's a tiny  
 19 little fraction.  
 20 Finally, a variance is appropriate because  
 21 strict application of the noise rules, given the  
 22 numerous other constraints the company needs to avoid  
 23 would -- could render B2H unpermissible, which  
 24 would deprive the region of critical infrastructure  
 25 that's necessary to achieve a clean energy grid. And

1 Now, neither EQC or DEQ are currently  
 2 enforcing their noise statutes and rules. So in order  
 3 to give effect to the legislature's intent, EFSC is the  
 4 only agency that can consider a variance or an exception  
 5 in this case.  
 6 So you have the ability to do so. And as a  
 7 matter of policy, you should do so.  
 8 And with respect to Mr. Anuta's suggestion  
 9 that the applicant or ODOE should have consulted with  
 10 DEQ or ODOE, I can tell you there's an affidavit in the  
 11 record here that on another issue related to noise, the  
 12 applicant did contact DEQ to try to get some advice and  
 13 were told very clearly, we don't have staff to even talk  
 14 to you about this issue. That was on a different issue,  
 15 not the variance or exception issue.  
 16 But to give you a sense, there is evidence  
 17 in the record that there is no one to talk to there  
 18 about noise.  
 19 So second, based upon Idaho Power's noise  
 20 modeling analysis, the corona noise exceedances caused  
 21 by foul weather events are, in fact, infrequent and  
 22 unusual, therefore, warranting an exception to DEQ's  
 23 anti-degradation standard.  
 24 Idaho Power has demonstrated that on average  
 25 in applying conservative assumptions the project will be

1 it's been supported and prioritized by the state and the  
 2 nation.  
 3 And with respect to Mr. Anuta's claim that  
 4 if we -- that the NEPA route wouldn't have had any of  
 5 the same issues, there's absolutely no evidence in the  
 6 record to suggest that there would have been no  
 7 exceedances along the NEPA route.  
 8 And finally -- and thank you, the other  
 9 parties went a little long, so I will, if you'll indulge  
 10 me, just 30 more seconds.  
 11 Keep in mind, also, that health and welfare  
 12 is one of the bases, one of the things you have to  
 13 consider when you would grant an exception or a  
 14 variance.  
 15 Keep in mind that corona noise that is  
 16 predicted to occur will only be during foul weather and  
 17 it's most likely to cause an exceedance in nighttime  
 18 hours when it is particularly quiet. Under these  
 19 conditions, most residence will be in doors where sound  
 20 levels will be significantly attenuated. And under foul  
 21 weather conditions, where the rain is heavy, then corona  
 22 is frequently masked by the sound of the rain hitting  
 23 the foliage. So our prediction of exceedances is really  
 24 quite conservative.  
 25 As Idaho Power's acoustical expert, Mr. Mark

1 Bastasch, explained, the evidence confirms that B2H  
2 won't cause exceedances of DEQ's maximum allowable sound  
3 standards for industry sources the maximum amount. And  
4 Oregonians can reasonably be expected to hear, sleep,  
5 and go about their daily activities without  
6 interruption. Therefore, the granting of a variance and  
7 exception, together with the site conditions that we'll  
8 talk about a little bit more in a few minutes, are fully  
9 protective of Oregonians.

10 Thank you.

11 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
12 Are there any questions from Council?  
13 Councillor Condon.

14 COUNCILMEMBER CONDON: So I can face you  
15 without turning. Thank you. Cindy Condon.

16 One of the things that is concerning to me  
17 is -- there's certainly reliance on modeling. I  
18 certainly get that. And there are -- are certainly  
19 comments made that people can reasonably expect this or  
20 that.

21 So when the project is finished, if there  
22 are exceedances, what's -- what's the consequence of  
23 that?

24 Does the public just live -- in your mind,  
25 does the public just live with that? You know, yep.

1 into homes.

2 If people are more concerned about the  
3 impact of noise, maybe they wouldn't be able to hear the  
4 noise because they already have, like, a really strong  
5 and tight house but they are more concerned about noise  
6 in their front yard, there is -- we can plant trees. We  
7 can put in foliage. So there is -- I use the term a lot  
8 of tools in the tool kit. So there are a lot of tools  
9 in the tool kit for addressing concerns.

10 So for those people for whom an exceedance  
11 is expected or -- or under our analysis before  
12 construction even occurs, we're going to go through that  
13 whole process. And as -- I think Jesse explained that  
14 if there's any disagreement about whether the mitigation  
15 that we're proposing is adequate, then we come to the  
16 Council and the Council can decide. This was good  
17 enough or this wasn't good enough. Try something  
18 different.

19 So there's a whole process and set of rights  
20 that land owners will have under that condition.

21 Now, what about those people that we  
22 don't -- we haven't predicted are going to have an  
23 exceedance, but once the line is energized they think it  
24 is noisy and they are concerned about it. Then there is  
25 a complaint process.

1 We've tried to protect health and welfare. Or is there  
2 mitigation that can be done for that?

3 MS. RACKNER: Let me talk a little bit about  
4 the mitigation and the complaint process.

5 And these are required in the proposed  
6 conditions. And forgive me if I don't know which  
7 condition number is which without checking my notes.

8 But first of all, prior to construction,  
9 Idaho Power is going to meet with each and every  
10 landowner where there is an exceedance that is predicted  
11 and work with them to come up with a mitigation plan.

12 And Idaho Power proposed -- and the hearing  
13 officer adopted some very specific kind of minimal  
14 requirements that the company will -- will offer, for  
15 instance, noise attenuating windows. They make really  
16 good strong windows that are specifically made to  
17 attenuate noise.

18 And what the company has committed to do and  
19 what the hearing officer has requiring us to do is look  
20 at what's the amount of the exceedance. And the higher  
21 the exceedance, the stronger level of window that we  
22 would propose to install.

23 For landowners who don't want -- maybe they  
24 already have fantastic windows and they want something  
25 else. There's things you can do by blowing insulation

1 And again, prior to construction -- there is  
2 a lot of detail in the conditions, but prior to  
3 construction the company has to provide ODOE with a  
4 detailed complaint process that -- that will kind of lay  
5 out what -- what the rules are. So people can come to  
6 us. They can rely -- if they want to do their own  
7 measurement they can do their own measurement;  
8 otherwise, we can bring in -- we can bring in our own  
9 measurement.

10 If there's a disagreement. Again, that type  
11 of thing can be resolved by the Council.

12 But then we go -- but if we find that there  
13 is actually an exceedance, that they are correct, this  
14 is loud, and it's an exceedance then we go through the  
15 whole mitigation process with -- with those folks, as  
16 well.

17 So whether they are on our list where  
18 there's an expected exceedance or whether an unexpected  
19 exceedance is identified, there's a full suite of  
20 mitigation that we can provide.

21 COUNCILMEMBER CONDON: Thank you.

22 And just to follow up. So the number of  
23 people on your list are within the one mile -- I think  
24 you said there was just one more exceedance from the  
25 half mile to one mile.

1 MS. RACKNER: Yeah.  
 2 COUNCILMEMBER CONDON: But would it be the  
 3 NSRs within the mile that you're --  
 4 MS. RACKNER: Yes.  
 5 COUNCILMEMBER CONDON: -- assessing?  
 6 MS. RACKNER: And to go back to something I  
 7 said earlier. And again, there's a lot of detail and so  
 8 I hope that, Kellen, you'll correct me if I get any of  
 9 this detail wrong. I'm not looking at the site  
 10 condition itself.  
 11 But this was something that the company  
 12 agreed to do. It was really in response to some  
 13 concerns that Stop B2H was raising about notice that  
 14 what we agreed to do was that prior to the line being  
 15 energized we will provide notice.  
 16 We're going to update X-7, which was our  
 17 list of all landowners within a mile -- so we're going  
 18 to update that list because there could have been  
 19 changes. Then we're going to send out notice to all  
 20 those folks within the mile and tell them what their  
 21 rights are.  
 22 So not -- so we will have already mitigated  
 23 for the people we know about. But then before the line  
 24 is energized, we'll make sure that all landowners  
 25 understand that if they are hearing corona noise and

1 MS. RACKNER: So we -- under our modeling,  
 2 we predict that there are 41 residences. And I believe  
 3 they are all residences. We looked at schools and  
 4 hospitals as well. But I believe they are all  
 5 residences. And there's 41 of them where there's a  
 6 prediction of an exceedance.  
 7 Now, a number of these exceedances are 1 dBA  
 8 over the threshold, but there are exceedances -- you  
 9 know, I'm not going to say exactly what it is, because I  
 10 don't want to get it wrong. But they are more  
 11 significantly -- you know, more significant of  
 12 exceedances. They are kind of all over the map.  
 13 COUNCILMEMBER JENKINS: This is Hanley.  
 14 I would like to go back to the issue of  
 15 whether or not EFSC has the authority to grant the  
 16 variance. And we have in the record evidence that DEQ  
 17 responded -- they had an internal management directive,  
 18 and they responded to Stop's discovery request, that --  
 19 that the DEQ and EQC no longer administered the noise  
 20 control program and will not process requests for  
 21 exceptions and variances, and local governments and EFSC  
 22 may enforce the noise rules. So that's directly from  
 23 DEQ.  
 24 So I think it is important to recognize that  
 25 they recognize that we have the authority to process the

1 they are bothered by it, that they have rights under a  
 2 complaint process.  
 3 COUNCILMEMBER CONDON: Thank you.  
 4 VICE CHAIR HOWE: Yes, Councillor Beier.  
 5 COUNCILMEMBER BEIER: This is Councillor  
 6 Beier, for the record.  
 7 Variances and exceptions make me a little  
 8 queasy. And I want to make sure that the Department and  
 9 the Council are on great grounds in setting forth the  
 10 parameters for issuing this exception.  
 11 So that's for the Department.  
 12 Just to make sure we feel really  
 13 comfortable. Because any time you grant a variance or  
 14 an exception, you're kind of setting a precedent and it  
 15 just -- it just makes me queasy.  
 16 But also, Kellen, if we can, before we get  
 17 done with the noise discussion, dig in a bit to the  
 18 conditions because I think that would help us all be  
 19 more comfortable.  
 20 And thank you for going through that detail  
 21 of what kind of mitigation. That makes me a lot more  
 22 comfortable in terms of the overall process.  
 23 Also, if you could remind me how many of  
 24 these noise-sensitive residences or occurrences there  
 25 are currently. I can't remember.

1 exceptions, backslash, variance requests.  
 2 And then, also, I believe it's under a DEQ  
 3 administrative rule, 340-035-0110, states that DEQ is  
 4 going to suspend their administration of the noise  
 5 program and includes, but not limited to, processing  
 6 requests for exceptions and variances.  
 7 So not only do they recognize that we have  
 8 the authority, they recognize they no longer had the  
 9 authority.  
 10 So I think that's important for us to  
 11 recognize as well.  
 12 VICE CHAIR HOWE: Any other questions from  
 13 Council of Ms. Rackner?  
 14 Okay. Counsel Rowe.  
 15 MR. ROWE: Hanley just did my job for me.  
 16 That is one of the main points I was going  
 17 to make is that there is that DEQ internal management  
 18 directive that explicitly says that EFSC staff review  
 19 applications to ensure that the proposed facilities  
 20 meet the state noise regulations.  
 21 So contrary to Mr. Anuta's assertion, this  
 22 Council and the Department don't need to go to DEQ and  
 23 EQC to request that authorization because they have  
 24 already made it explicit.  
 25 Beyond that, I don't know that there's much

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1 I can add.  
 2 I will point out, I do appreciate the  
 3 question about the conditions that have been imposed.  
 4 And we do intend to go into those in some detail under  
 5 issue NC-4 and those are in the proposed contested case  
 6 order as well.  
 7 So when we have that discussion, we should  
 8 all have those conditions in front of us so that you're  
 9 comfortable that you're really understanding them.  
 10 VICE CHAIR HOWE: Thank you, Counsel Rowe.  
 11 And on my job here, keeping people to three  
 12 minutes, I let both parties exceed that. And so I  
 13 consider it even right now.  
 14 But from here on, I'll be interrupting you  
 15 at the 3-minute limit.  
 16 So on the -- I guess we're ready for the  
 17 straw poll.  
 18 SECRETARY CORNETT: Mr. Vice Chair -- for  
 19 the record, Todd Cornett -- so there's a lot of overlap  
 20 between issues N-2, N-3, and N-4. And so you can  
 21 absolutely take a straw poll solely on this issue right  
 22 now.  
 23 Our recommendation is because there is so  
 24 much overlap to wait and do a consolidated straw poll on  
 25 issues NC-2, NC-3, NC-4, as well as the standard.

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1 As Patrick kind of pointed, under issue  
 2 NC-4, you're going to get into the conditions more. So,  
 3 again, your choice. But it's our recommendation, and  
 4 the way we've set this up is to hold until the  
 5 conclusion of all of the remaining noise control issues.  
 6 VICE CHAIR HOWE: Okay. What's the pleasure  
 7 of the Council?  
 8 COUNCILMEMBER JENKINS: This is Hanley. We  
 9 have polled on one, NC-1. I would like to go ahead and  
 10 poll on NC-2 and then consolidate 3 and 4, if we can.  
 11 SECRETARY CORNETT: That's fine.  
 12 VICE CHAIR HOWE: Council good with that?  
 13 Okay.  
 14 SECRETARY CORNETT: Okay. "Agree with the  
 15 findings of fact, conclusions of law, and conditions of  
 16 approval in the proposed contested case order pertaining  
 17 to issue NC-2."  
 18 VICE CHAIR HOWE: Sounds good.  
 19 SECRETARY CORNETT: Ann Beier.  
 20 COUNCILMEMBER BEIER: Yes.  
 21 SECRETARY CORNETT: Perry Chocktoot.  
 22 COUNCILMEMBER CHOCKTOOT: Yes.  
 23 SECRETARY CORNETT: Cindy Condon.  
 24 COUNCILMEMBER CONDON: Yes.  
 25 SECRETARY CORNETT: Hanley Jenkins.

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1 COUNCILMEMBER JENKINS: Yes.  
 2 SECRETARY CORNETT: Kent Howe.  
 3 VICE CHAIR HOWE: Yes.  
 4 SECRETARY CORNETT: Jordan Truitt.  
 5 COUNCILMEMBER TRUITT: Yes.  
 6 SECRETARY CORNETT: Thank you,  
 7 Councilmembers.  
 8 MR. RATCLIFFE: Issue NC-3 has one limited  
 9 party filed exception, Stop B2H.  
 10 The issue is whether the methodologies used  
 11 for the noise analysis to evaluate compliance with  
 12 OAR 340-35-0035 were appropriate and whether the Oregon  
 13 Department of Energy erred in approving the methodology  
 14 used to evaluate compliance with that rule.  
 15 The Hearing Officer's opinion, she first  
 16 noted that the applicant identified specific locations  
 17 within the 300-mile transmission line to set noise  
 18 monitors and collect ambient noise monitoring data to  
 19 then be used for the evaluation of predicted worst-case  
 20 operational noise to evaluate whether the proposed  
 21 facility would result in an increase of 10 dBA or above  
 22 the ambient anti-degradation standard.  
 23 In Union County, the location selected and  
 24 evaluated in the application for site certificate and  
 25 proposed order for baseline noise monitoring is referred

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1 to as MP-11. MP-11 is in proximity to I-84, Highway 30,  
 2 and a Union Pacific Railroad. Noise measurements  
 3 identified ambient noise levels at this location of  
 4 32 dBA.  
 5 The applicant's expert witness, Mark  
 6 Bastasch, confirmed that the noise level used to  
 7 evaluate compliance with the anti-ambient noise  
 8 degradation standard is based on L-50, which is an  
 9 averaging of all total hours, train noise, given its  
 10 limited duration, would be filtered out over the  
 11 sampling period.  
 12 In response to issues raised by the limited  
 13 parties through the contested case proceeding, the  
 14 applicant introduced new noise monitoring data for four  
 15 new monitoring position locations within Union County.  
 16 These are referred to as MP-100, -101, -102, and -103.  
 17 Data was collected for three weeks in  
 18 October 2021. The applicant selected the monitoring  
 19 positions to represent NSRs located closer to Morgan  
 20 Lake and the La Grande Valley.  
 21 Baseline data relies on the quietest times  
 22 of day, midnight to 5 a.m., where wind data was recorded  
 23 as calm. At these four new monitoring position  
 24 locations, the mean L-50 was 31 dBA, 36 dBA, 32 dBA, and  
 25 43 dBA, respectively.

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1 Stop -- the hearing officer also found Stop  
 2 B2H's introduction of monitoring data from Mr. Carey  
 3 Stanley should not be used to determine representative  
 4 ambient noise levels. She concluded that the data set  
 5 is too small to allow that conclusion.  
 6 She also found that OAR 340-35-0035(3)(a)  
 7 expressly authorizes the reviewing agency to approve  
 8 sound measurement procedures and the Department and its  
 9 noise consultant, Golder Associates, appropriately  
 10 vetted and concurred with the applicant's methodology.  
 11 The hearing officer also considered whether  
 12 the variance/exception should only apply to the NSRs  
 13 where exceedances are predicted to occur today.  
 14 The noise control regulations do not address  
 15 the difference between a linear and nonlinear facility,  
 16 that Council should acknowledge the difference. Either  
 17 it could be a situation where there are new NSRs or NSRs  
 18 that were inadvertently missed in the evaluation,  
 19 granting an exception or variance for the whole line  
 20 creates some flexibility for IPC to avoid an automatic  
 21 violation of the standard. The conditions assure that  
 22 if this were to occur, a full formal evaluation would be  
 23 required.  
 24 And upon a complaint filed, the same level  
 25 of mitigation for known NSRs is required, which includes

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1 the opportunity for Council review.  
 2 So that is the summary of the hearing  
 3 officer's opinion on that issue.  
 4 And Stop B2H can present oral argument.  
 5 MR. ANUTA: Karl Anuta presenting for  
 6 Stop B2H.  
 7 The -- hopefully you've had a chance to read  
 8 the exceptions and materials on this.  
 9 The crux of the dispute was over monitoring  
 10 point 11 and whether it is or is not representative.  
 11 Stop provided a spot-check with data from  
 12 Mr. Stanley that showed it was not representative.  
 13 The Idaho Power did a spot-check for a  
 14 little bit longer, but it was still nothing but a spot  
 15 check that suggested it might be representative but it  
 16 maybe not. Maybe it was not representative in the other  
 17 way.  
 18 Ultimately, the problem here is that you're  
 19 trying to set -- they are using monitoring point 11 to  
 20 set a baseline level. And the baseline level that was  
 21 chosen, which was started out at 32 and went to 31 dBA,  
 22 is way higher for a rural area than any other of the  
 23 rural counties.  
 24 And there's a chart in the record. We cited  
 25 it repeatedly in our testimony and our exceptions that

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1 shows all the other counties have baseline dBAs between  
 2 24 and 25. That's where the dBA for Morgan Lake and  
 3 Mill Creek routes should be. And we presented evidence  
 4 that showed that the fundamental problem with monitoring  
 5 point 11 is it's too close to the Union Pacific train  
 6 line where there are 25 to 35 trains per day that  
 7 increase the ambient noise level.  
 8 So that's the fundamental problem.  
 9 Here we urge you to remand for further  
 10 analysis or to conclude that what's really needed here  
 11 is to set a baseline for Union County that's same as the  
 12 baselines for the other rural counties, which is the 24  
 13 to 25 levels.  
 14 If you do that, it's going to increase the  
 15 number of NSR exceedances. But as has been pointed out,  
 16 there is a process in the conditions for complaints in  
 17 addressing those exceedances. And we think that process  
 18 should be available to all those people that are at 25  
 19 and go up from there, rather than just all those people  
 20 that are at 31 and go up from there.  
 21 And I'll talk more about the conditions when  
 22 we get to NC-4. We made a bunch of recommendations to  
 23 tighten up that language so that it really does what  
 24 Idaho Power says they want to do.  
 25 For now, I think what you really need to

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1 wrestle with is do you want to have ambient noise levels  
 2 set at a level way higher for Union County than all the  
 3 other rural counties and what's the safe thing to do  
 4 here.  
 5 We've outlined in our testimony and our  
 6 exceptions why the safe thing to do is to lower the dBA  
 7 for the baseline for Union County. I urge you to do so.  
 8 VICE CHAIR HOWE: Thank you, Mr. Anuta.  
 9 Are there any questions from Council?  
 10 Okay. Thank you.  
 11 MS. RACKNER: Again, Stop B2H's argument  
 12 about Idaho Power's noise monitoring methodology is  
 13 focused on the company's use of MP-11 to set the average  
 14 ambient sound level for NSRs in the Morgan Lake area.  
 15 However, all of these arguments were  
 16 completely invalidated by the Company's supplemental  
 17 noise monitoring in Morgan Lake area which yielded  
 18 ambient sound levels which are virtually identical to  
 19 the ones that we received at MP-11. So all this focus  
 20 on what's wrong with MP-11 is simple misdirection.  
 21 Mr. Anuta also referred to our monitoring as  
 22 spot monitoring. Well, Mr. Stanley performed spot  
 23 monitoring for three years.  
 24 Idaho Power performed monitoring round the  
 25 clock for three weeks, which was the same monitoring

1 protocol that was approved by ODOE for all the initial  
 2 monitoring. So our supplemental monitoring was robust  
 3 and lengthy and can't fairly be called spot monitoring.  
 4 Now, in response to Stop's concern.  
 5 So we did do this supplemental monitoring.  
 6 The monitoring point that we selected for the Morgan  
 7 Lake area, which was the area of most concern was right  
 8 adjacent to the park. We chose the quietest place in  
 9 the area that we could to provide the most conservative  
 10 results.  
 11 For MP-11, Idaho Power measured an ambient  
 12 sound level of 31 dBA, which is 1 dBA less than what we  
 13 had found at MP-11. One dBA, as our expert explained,  
 14 it is not perceptible to the ear. But it did create, if  
 15 we adopt that approach, which we agreed to do, two more  
 16 NSRs that will be mitigated under our plan.  
 17 Now, Stop B2H has taken exception to the  
 18 fact that the hearing officer didn't accept the  
 19 monitoring results of its own expert, Mr. Stanley, which  
 20 was indeed significantly lower than what we received  
 21 from MP-11 or 100.  
 22 But as I said, that took place at just three  
 23 and a half hours. And as pointed out by both ODOE's  
 24 expert and our expert, Mr. Stanley failed to follow the  
 25 most basic procedures for ensuring a verifiable and

1 but didn't calibrate his equipment.  
 2 His equipment also hadn't been calibrated as  
 3 required under DEQ rules. You have to have it  
 4 calibrated a year before you do your monitoring. That  
 5 didn't happen. He didn't do a calibration in the field.  
 6 I don't believe he ever admitted that that  
 7 was the problem with his monitoring, but you'd have to  
 8 read his testimony. He seemed more to be focused on the  
 9 fact that he had to agree that since he only monitored  
 10 for three hours, he can't possibly have claimed to have  
 11 captured any representative example.  
 12 And he did in his -- he did in his  
 13 monitoring results note that it was a quiet night with  
 14 no wind. Well, many nights are quite windy. There's a  
 15 lot of trees out in that area, which means that it's  
 16 loud when it's windy.  
 17 So -- so on that, I think Mr. Stanley did  
 18 acknowledge that his -- that it was just the brevity of  
 19 his monitoring meant that it really couldn't be used to  
 20 set any kind of a responsible level.  
 21 COUNCILMEMBER JENKINS: Thank you.  
 22 VICE CHAIR HOWE: Any other questions from  
 23 Council?  
 24 Okay. Thank you.  
 25 MS. RACKNER: Thank you.

1 reliable data.  
 2 And in the end, while Mr. Stanley initially  
 3 said that he produced an ambient level for the area --  
 4 he had to agree that he never really intended -- that  
 5 that's not really what his monitoring was intended to  
 6 do.  
 7 So Stop B2H also argued a list of criticisms  
 8 of Idaho Power's selection of MP-11 as the proxy. And I  
 9 see I'm out of time and I'm going to be respectful.  
 10 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 11 Are there any questions of Ms. Rackner?  
 12 Councillor Jenkins.  
 13 COUNCILMEMBER JENKINS: Sorry. This is  
 14 Hanley.  
 15 Lisa, I'm having trouble finding it, but I  
 16 was pretty sure that I had read in the exceptions that  
 17 Mr. Stanley admitted that his measurements -- and you  
 18 just alluded to that -- had problems because, one, he  
 19 didn't calibrate his equipment and, two, it was only for  
 20 the four hours; is that correct?  
 21 MS. RACKNER: So I think Mr. Stanley did  
 22 acknowledge through his attorney -- there was some email  
 23 back and forth -- that he had not calibrated his  
 24 equipment. He did something -- I can't remember --  
 25 something called like a "spot-check" of his equipment,

1 VICE CHAIR HOWE: Counsel Rowe.  
 2 MR. ROWE: Patrick Rowe, Department of  
 3 Justice on behalf of Department of Energy.  
 4 And couple comments just for context. I  
 5 know that we've already discussed the noise rules, but I  
 6 want it to make sure that council is understanding that  
 7 is, really essentially, two types of noise rules that  
 8 DEQ has. Kellen discussed these. There's a maximum  
 9 allowable noise and there's the anti-ambient degradation  
 10 standard. No one is arguing that the proposed facility  
 11 will exceed the maximum allowable noise. All we're  
 12 talking about is whether it will exceed the anti-ambient  
 13 degradation standard, meaning 10 dBA above background  
 14 levels. I just want to make sure that we're all  
 15 understanding that.  
 16 Second, with regard to the additional  
 17 supplemental monitoring that was done, I also want to  
 18 make sure that Council is appreciating that this was  
 19 done during the course of the contested case.  
 20 So Idaho Power was being responsive to  
 21 concerns that were raised. They weren't turning a deaf  
 22 ear. They are acknowledging that legitimate concerns  
 23 had been raised about the monitoring that was done at  
 24 MP-11 and whether or not it was representative.  
 25 In response to that, during the course of

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1 the contested case, they retained their noise expert to  
 2 go out and do, as Ms. Rackner just described, an  
 3 additional three weeks of supplemental monitoring.  
 4 The hearing officer held that methodologies  
 5 that Idaho Power used for the noise analysis were  
 6 appropriate. The Department agrees.  
 7 CHAIR HOWE: Thank you, Mr. Rowe.  
 8 Any questions from Council?  
 9 COUNCILMEMBER JENKINS: This is Hanley. My  
 10 question is for Patrick. The hearings officer  
 11 recommended revisions to noise condition number one to  
 12 add the additional two exceedance locations.  
 13 Does the Department support that?  
 14 MR. ROWE: I think there was actually a  
 15 correction. There were two locations that Idaho Power  
 16 had initially estimated exceedances at and then  
 17 determined that there would not be exceedances -- but  
 18 then identified two other locations where their analysis  
 19 had now projected that there would be exceedances.  
 20 So the Department does support the  
 21 correction to the NS -- the NSR numbers that are  
 22 identified in the condition.  
 23 VICE CHAIR HOWE: Any other questions from  
 24 Council?  
 25 COUNCILMEMBER JENKINS: No. My comment

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1 would be that we make those amendments.  
 2 VICE CHAIR HOWE: Yes.  
 3 MR. ROWE: Hanley, you had noted that the  
 4 hearing officer has included those in the proposed  
 5 contested case order; correct?  
 6 Okay. So we'll need to -- I want to make  
 7 sure I'm on the same page as what you're discussing. So  
 8 let me quick look at me my -- let me take a look and  
 9 make sure that you and I are talking about the same  
 10 thing.  
 11 COUNCILMEMBER JENKINS: Okay. What you're  
 12 suggesting is that they are in the contested case order  
 13 but they're not in the proposed order?  
 14 MR. ROWE: I'm referencing, yes, correct.  
 15 There's a proposed amendment in the -- to the condition  
 16 in the proposed contested case order that revises the  
 17 list of NSRs at which there are projected exceedances.  
 18 In other words, those folks that Ms. Rackner  
 19 was describing earlier that have already been identified  
 20 as possibly having exceedances and who will  
 21 automatically be part of the mitigation process that  
 22 Ms. Rackner described. So there is a proposed amendment  
 23 to those identified NSRs. That's what I'm referring to  
 24 and that is in one of the noise control conditions.  
 25 COUNCILMEMBER JENKINS: In the contested

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1 case order?  
 2 MR. ROWE: Correct. But not currently --  
 3 not in the Department's order.  
 4 COUNCILMEMBER JENKINS: Right.  
 5 MR. ROWE: So that would be a change.  
 6 COUNCILMEMBER JENKINS: Yes. Okay. Thank  
 7 you.  
 8 VICE CHAIR HOWE: Okay. I believe we're  
 9 continuing on now to NC-4. And it's yours, Counsel  
 10 Ratcliffe.  
 11 MR. RATCLIFFE: Issue NC-4, the limited  
 12 party is Stop B2H.  
 13 The issue is whether the mitigation/proposed  
 14 site conditions adequately protect the public health,  
 15 safety, and welfare.  
 16 The proposed contested case order, the  
 17 hearing officer's opinion, the hearing officer noted  
 18 that there were -- that the proposed order -- the  
 19 Department's proposed order included five recommended  
 20 conditions to minimize and mitigate potential impacts  
 21 from operational corona noise at noise-sensitive  
 22 receptors. Through the contested case proceeding, Stop  
 23 B2H, the Department and the applicant proposed revisions  
 24 to noise control conditions 1, 2, 4 and 5.  
 25 The hearing officer rejected review of

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1 additional revisions to noise control conditions  
 2 proposed by Stop B2H in their closing argument, but  
 3 accepted revisions proposed by the Department and the  
 4 applicant. The reasoning was based on the fact that the  
 5 Department and the applicant would not have had an  
 6 opportunity to review and respond.  
 7 The hearing officer concluded that the  
 8 amended recommended conditions posed by the Department  
 9 and applicant are adequate to protect public health,  
 10 safety, and welfare.  
 11 And so this is where -- as part of the  
 12 discussion we're going to go into a bit more detail in  
 13 terms of the amended recommended noise control  
 14 conditions. And -- and I -- you know, we -- we can see  
 15 what the Council wants to do with this.  
 16 We can either pull those amended conditions  
 17 up on the screen now before the oral argument takes  
 18 place and, you know, try to work through some of that or  
 19 we can go ahead and have the oral argument first and  
 20 then have discussion on the amended conditions.  
 21 VICE CHAIR HOWE: Council prefer details now  
 22 or after oral testimony?  
 23 COUNCILMEMBER JENKINS: Yeah, I'm with Ann.  
 24 I'd do the -- this is Hanley. I'd do the testimony.  
 25 And we've got the full package.

1 MR. RATCLIFFE: Okay. So we can go ahead  
 2 and have Stop B2H come on up for oral argument, then.  
 3 MR. ANUTA: Karl Anuta appearing for Stop  
 4 B2H.  
 5 First, let me start off by pointing out from  
 6 a background perspective. Stop submitted a series of  
 7 proposed amendments to the noise control conditions to  
 8 1, 2, 3, and 4. Those are on PDF pages 38 through 48 of  
 9 our exceptions. They are outlined with the proposed  
 10 changes in red and I urge you, when you get to the point  
 11 of discussing conditions, pull those up and look at them  
 12 or have the Department pull them up so you can see how  
 13 our language actually tracks what Idaho Power claims  
 14 that it is willing to do and tries to lock down the  
 15 protections for the citizens of these counties that will  
 16 be crossed by this massive project in a way that is  
 17 functional.  
 18 Basically, the initial dispute here was that  
 19 the hearings officer rejected our conditions claiming  
 20 they were untimely. That is not correct in our opinion.  
 21 We outlined why that was. It's my understanding from  
 22 reading the responses that the Department and possibly  
 23 even Idaho Power -- although I'm not clear on that --  
 24 agree that that rejection is untimely, was  
 25 inappropriate, and that those conditions should be

1 developments in the noise control area out through the  
 2 operation of the line, not just up-front. Because as  
 3 you all know, technology changes. This line is going to  
 4 be here for a minimum of a hundred years and likely  
 5 forever. So there should be a condition that requires  
 6 ongoing monitoring and ongoing maintenance and ongoing  
 7 updated technology.  
 8 VICE CHAIR HOWE: Thank you, Mr. Anuta.  
 9 Any questions from Council?  
 10 Okay.  
 11 (Audio disruption.)  
 12 MS. RACKNER: -- to hear that you will be  
 13 going through the proposed conditions in detail, because  
 14 they are long and voluminous and there's lots of little  
 15 twists and turns in them. And I think I certainly cover  
 16 them all in three minutes.  
 17 And I think it's really important to  
 18 understand just how robust those conditions are.  
 19 And as Mr. Anuta acknowledged and  
 20 Mr. Ratcliffe referred to, many of the changes to the  
 21 conditions were either proposed by ODOE or Idaho Power,  
 22 specifically, to respond to Stop B2H's proposals.  
 23 We agreed when we heard their concerns.  
 24 There were many of those concerns that rang true for us  
 25 and we thought these are issues that we can cover.

1 considered by this Council.  
 2 The conditions that we proposed create a  
 3 complaint process that extends out to the entire one  
 4 mile. It -- they create a notification requirement in  
 5 advance of construction, not an advance of energizing  
 6 the line after it is already built. But in advance of  
 7 construction so that everybody during the whole process  
 8 knows what their rights are.  
 9 We've also proposed that -- to some  
 10 additional monitoring to verify whether the baseline  
 11 levels really are accurate.  
 12 In addition, we've proposed that the --  
 13 again, that the -- the baseline, that levels being  
 14 modified back down to the level they should be.  
 15 Ultimately, I would urge you to look  
 16 carefully at those conditions that we've proposed,  
 17 because we tried hard to create a balanced functional  
 18 set of conditions. And we are convinced that the set  
 19 that was proposed by the hearings officer does not go  
 20 far enough in some areas.  
 21 In the responses, the Department and Idaho  
 22 Power contended that some of our condition language was  
 23 redundant of other places. It's not -- we were very  
 24 careful to try to cover, for example, ongoing  
 25 maintenance in the noise area and technology

1 So I'm happy to hear that you will be  
 2 hearing more about that. And I think it's hard to talk  
 3 about Stop B2H's conditions in the abstract. And,  
 4 again, I don't have time to refer to each of them.  
 5 I will say that I think that if you -- that,  
 6 number one, they are unnecessary to meet the standard.  
 7 We disagree. We think that they are -- that they are  
 8 duplicative of -- of condition requirements that the  
 9 hearing officer already adopted in response to both ODOE  
 10 and Idaho Power's proposed changes.  
 11 And we also believe that any number of them  
 12 are just impractical.  
 13 So, for instance, I'm just going to give you  
 14 an example. And if I've got this wrong, I'll -- and  
 15 Mr. Anuta can correct me, but I believe one of the  
 16 proposals is to do ongoing monitoring during -- you  
 17 know, once the line has been energized. It is a  
 18 300-mile line.  
 19 Any kind of -- there just isn't a sensible  
 20 monitoring approach that Idaho Power could undertake.  
 21 We absolutely believe that the best way to make sure  
 22 that the line is operating as it should and not  
 23 impacting citizens is the complaint process.  
 24 So we think the most important thing that we  
 25 can do is make sure that everybody within a mile of that



1 line gets notice that -- gets notice that they have  
 2 rights under the complaint process, clearly understand  
 3 what the complaint process is, and then it will be up to  
 4 ODOE, the applicant, the complainant, and ultimately  
 5 this Council to decide what is correct and fair for each  
 6 complaint.  
 7 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 8 Any questions from Council at this time?  
 9 Okay. Counsel Rowe.  
 10 MR. ROWE: I don't have any comments, but I  
 11 just have a suggestion for how we might go about doing  
 12 this.  
 13 And the condition as -- the amended  
 14 condition as proposed is in the proposed contested case  
 15 order condition. So I suggest that we project that on  
 16 the screen and that you also have it in front of you,  
 17 because sometimes I notice on this screen it is  
 18 difficult because it doesn't seem to capture the full  
 19 content.  
 20 So if you were -- if you have -- in the  
 21 proposed contested case order, if you start at page  
 22 205 -- and I would suggest we literally just go through  
 23 it paragraph by paragraph and we allow Mr. Anuta to come  
 24 back up, and when there are sections of the proposed  
 25 condition for which he has proposed an amendment or a

1 our hard copies starting on page 205.  
 2 CHAIR HOWE: Correct.  
 3 MR. ROWE: We have other proposed changes by  
 4 Stop.  
 5 Do we want to go through these and then  
 6 listen here what Stop's suggestions are.  
 7 MR. RATCLIFFE: This is my idea and you can  
 8 handle it however you want.  
 9 If it were me, I would go through paragraph  
 10 by paragraph and Mr. Anuta can identify whether or not  
 11 Stop has proposed any revision to that particular  
 12 paragraph.  
 13 If he hasn't, then there's really nothing to  
 14 consider except do you accept what's proposed?  
 15 If Stop has proposed a revision to a  
 16 particular paragraph, Mr. Anuta can explain why he  
 17 thinks it's necessary and Idaho Power would be allowed  
 18 to respond and the Department as well.  
 19 MR. ROWE: So I guess maybe it's an  
 20 opportunity for both to come up to the table.  
 21 CHAIR HOWE: Mr. Anuta and Ms. Rackner, it  
 22 might be best if both of you come up as we work  
 23 through -- sounds like paragraph by paragraph the  
 24 sections of the conditions.  
 25 Okay. So I guess I'll start with paragraph

1 revision, he'll be allowed to explain his position and  
 2 then Idaho Power and the Department be allowed to  
 3 respond.  
 4 MS. TARDAEWETHER: I have the proposed  
 5 contested case order up here. I also -- because this  
 6 is -- under the -- in the order where the hearing  
 7 officer discusses the condition, she does highlight  
 8 where there are changes from the proposed order under --  
 9 down here at the bottom, which, Patrick, that's where  
 10 you pointed us to.  
 11 MR. ROWE: Actually, I wouldn't go -- I  
 12 would show what has been changed.  
 13 MS. TARDAEWETHER: Well, I guess what I'm  
 14 offering is that Sarah has provided this and this is --  
 15 and I know initially -- give it a minute here.  
 16 MR. ROWE: Kellen, can you go to page 205?  
 17 MS. TARDAEWETHER: Sure.  
 18 MR. ROWE: And I think it is important that  
 19 the Council understand the changes that have already  
 20 been made compared to what was in the proposed order,  
 21 because there have been significant revisions.  
 22 MS. TARDAEWETHER: Okay. I'm just going to  
 23 shrink it. I'll keep it a little bit.  
 24 MR. ROWE: So we have the changes that are  
 25 proposed by the hearings officer on the screen and in

1 1. Begins with "prior."  
 2 Are there any suggested changes from Stop on  
 3 that paragraph?  
 4 MR. ANUTA: I'm trying to get there on my  
 5 computer.  
 6 VICE CHAIR HOWE: Okay.  
 7 MR. ANUTA: Unfortunately, my printer didn't  
 8 print all of the pages, so I normally would have it in  
 9 front of me.  
 10 And from a process standpoint, I might  
 11 suggest that another way to do this would be to pull up  
 12 the Stop recommended conditions, which has all the same  
 13 language that you have there and then has, in red, our  
 14 proposed additions, because that would show you what  
 15 we're actually proposing.  
 16 I know what PDF page those are in our  
 17 exceptions. I don't know where in your record exactly  
 18 those exceptions are and which page of the -- those you  
 19 should look at to get the same ones.  
 20 But, for example, on that first noise  
 21 control condition one, we did propose a paragraph in  
 22 advance of that -- (audio disruption) -- the 41 NSR  
 23 property owners and then it lists.  
 24 We suggested that it should start with prior  
 25 to construction all NSRs within one mile of the facility

1 will be notified in writing that they may be impacted  
2 and that they will be informed of the mitigation process  
3 and the complaint process. And then we outline specific  
4 notice suggestions.

5 MS. TARDAEWETHER: I'm sorry.  
6 What does counsel want me to project on the  
7 screen?

8 Are we pulling up and are we looking at  
9 their -- the proposed contested case order condition  
10 language or am I navigating to the document? Because  
11 I'm not sure what you're looking at.

12 What does Council want to look at?  
13 VICE CHAIR HOWE: Do we want -- do we want a  
14 red-lined version of changes that have been proposed?

15 COUNCILMEMBER JENKINS: I don't have that in  
16 front of me. What I have is the proposed contested case  
17 order.

18 VICE CHAIR HOWE: That's what I have here.

19 COUNCILMEMBER JENKINS: Yeah. So if we can  
20 project on the screen --

21 VICE CHAIR HOWE: The changes.

22 COUNCILMEMBER JENKINS: -- what Mr. Anuta is  
23 referring to then, at least, I can compare the two.

24 SECRETARY CORNETT: For the record, Todd  
25 Cornett.

1 notice is adequate that the -- that it goes to everyone  
2 within one mile so that everybody who might be affected  
3 knows what the mitigation and the complaint process is.  
4 That's the intent of this.

5 MR. ROWE: Karl, just before we get into the  
6 rationale for your proposed changes, I just want to  
7 clarify one thing.

8 "Initiate discussions" is already in the  
9 proposed contested case order. That was something that  
10 Idaho Power and the Department had recommended.

11 So that's -- so I don't know that it's  
12 accurate to state that that's something you have  
13 proposed changing.

14 MS. TARDAEWETHER: For the record, Kellen  
15 Tardaewether. So I'm just going to --

16 VICE CHAIR HOWE: You don't have a mic.

17 MS. TARDAEWETHER: For the record, Kellen  
18 Tardaewether. So I'm just going to kind of toggle in  
19 between. I'm going to go from the proposed contested  
20 case order beginning of the condition and then we're  
21 going to go over to the proposed condition.

22 Because as represented by Mr. Anuta, the  
23 redline should be to -- anyhow, I feel like there might  
24 be items missing.

25 For instance, the bold is 18 -- NSRs 118 and

1 We're just trying to figure out the process  
2 right now.

3 (Discussion for presentation.)

4 SECRETARY CORNETT: For the record, Todd  
5 Cornett.

6 So could somebody please articulate exactly  
7 what we're seeing.

8 So the red text is what you're proposing to  
9 add in addition to the hearing officer's proposed  
10 condition; is that correct?

11 MR. ANUTA: That is correct.

12 For the record, this is Karl Anuta.

13 The red text you see here are the changes  
14 that Stop proposes in the condition that the hearings  
15 officer put in the proposed contested case order where  
16 we're suggesting adding language that's in red. We're  
17 suggesting removing language that's in red strike out.

18 So, for example, if you look at what we've  
19 proposed there as sub (c), it says, "prior to  
20 construction the certificate holder will," and then  
21 "work" was struck out and "initiate discussions" was put  
22 in.

23 So this language is what we suggested for  
24 the beginning of the noise control condition one. And  
25 the premise here is that we want to make sure that the

1 132 were added. And then over here, I don't see 118 and  
2 132. I feel like maybe we should be looking at the  
3 proposed contested case order.

4 MR. ANUTA: We erred -- when I was putting  
5 this together we did not capture the changes. And I  
6 suspect that's because the version that I'm using here  
7 was based -- was what we submitted and we somehow missed  
8 that change. Because "initiate discussions" is in here  
9 and the proposed one.

10 MS. RACKNER: And just --

11 MR. ROWE: Go ahead, Lisa.

12 MS. RACKNER: Well, what I'm wondering is  
13 I'm a little concerned because when we were going --  
14 going through Stop's proposed changes, it did feel to us  
15 that a lot of -- am I not using -- okay. It did feel to  
16 us that a lot of them had already been addressed, maybe  
17 in different words, and I'm wondering -- I'm a little  
18 concerned about what we're doing right now, which is  
19 looking at different versions of conditions. Some of  
20 which may -- the redlining may be right; some of it  
21 which the redlining might be wrong.

22 And I'm wondering if -- if we want to go  
23 through this and consider Stop's proposals, if we could  
24 focus on what the hearing officer adopted.

25 And then, Karl, if you could say, well, this

1 is why we think it's inadequate and this is the change I  
2 would propose.

3 Maybe kind of separate and apart from the  
4 redlining that you provided. We could at least start on  
5 a conceptual basis where you could say I'm -- because,  
6 again, it gets to the point where we thought -- well, we  
7 thought we covered this. And it's just in different  
8 words.

9 But if you look at it and say, no, this  
10 is -- this is the change that needs to happen in order  
11 to make it more effective, then we can have a  
12 conversation about that. Or well, I don't know whether  
13 the Council wants to have a conversation about it.  
14 Maybe you want to just talk to each other, but that  
15 feels to me like the better approach here, given where  
16 we are with lots of different pieces of paper with  
17 different redlining around.

18 COUNCILMEMBER JENKINS: Yeah. This is  
19 Hanley.

20 I want to talk about what your concepts are  
21 that are different than what the hearings officer has  
22 already suggested in her draft proposed order.

23 I don't want to go word by word here.

24 I want to know what concept do you feel is  
25 not captured in the hearings officer's proposed

1 VICE CHAIR HOWE: Okay. Ms. Rackner, what  
2 would be your response to that?

3 MS. RACKNER: So this gets to a point where  
4 I was saying we think your concern is covered in a  
5 different condition.

6 This particular condition is specific to  
7 those landowners for whom we do predict an exceedance  
8 and requires us to mitigate and -- and to work on a  
9 mitigation plan with them.

10 So it wouldn't be appropriate to address all  
11 the folks going -- all the NSRs in the area for whom no  
12 exceedance is -- is expected.

13 But in, I believe, it's condition three, is  
14 it -- can -- here -- and I can pull up all -- I have so  
15 many documents pulled up on my little tiny screen here.  
16 Let me see what I can find.

17 VICE CHAIR HOWE: I think Kellen has got it  
18 right here.

19 MS. RACKNER: Okay. So it is condition two.

20 So in condition two -- and maybe you could  
21 look at that, Karl, and see if that satisfies your  
22 concern.

23 That requires us to -- to create a new  
24 version of X-7, which is the list in the application  
25 that includes all landowners up to one mile and to send

1 condition?

2 CHAIR HOWE: Yeah. And this is Kent. And I  
3 agree with that. I think we have the proposed contested  
4 case order on the screen, which this is. Right?

5 That's the final document that we're wanting  
6 to know do we need to change or add.

7 Mr. Anuta can tell us paragraph by paragraph  
8 if that has the language that they are hoping to have.

9 MR. ROWE: And then allow Lisa to respond.

10 VICE CHAIR HOWE: Correct. Does that work?

11 Okay. So if we start with this paragraph  
12 that we're looking at on the screen, do you have  
13 suggestions that you would like to see made to that  
14 paragraph?

15 MR. ANUTA: Karl Anuta. Yes.

16 Stop would propose that this paragraph be  
17 expanded to cover not just the 41 NSRs listed, but all  
18 potential NSRs within one mile of the facility and that  
19 there be -- that there be a written notice that includes  
20 the parameters of the mitigation, what are the options,  
21 and what's the complaint process that will ultimately  
22 exist there.

23 And we felt that the generic -- that the  
24 language that the hearings officer used in her first  
25 paragraph there did not capture that level of detail.

1 notices to those. And inform the recipient that they  
2 are the owner of an NSR and tell them about the  
3 requirements of the conditions which include the  
4 complaint and mitigation conditions.

5 And also let them know that prior to  
6 construction, the certificate holder will develop and  
7 submit to the Department an operational noise complaint  
8 response plan.

9 So that's the place where we propose  
10 language. I think that gets, Karl, to your concern.

11 MR. ANUTA: May I respond? I'm happy to do  
12 so.

13 VICE CHAIR HOWE: Yes.

14 MR. ANUTA: Okay. I didn't want to take up  
15 extra time, if -- the -- that does get some of the  
16 issue. That does not, in our view, get all of the  
17 issue. Because that we added -- in addition to  
18 notifying everyone within one mile, we added a specific  
19 paragraph that proposed the specifics of the notice --  
20 the notice and what it would cover. I think the  
21 language that the hearings officer covered was not quite  
22 as detailed or -- and it was more of a broad brush. And  
23 so we were trying -- apologies.

24 MS. RACKNER: Could you maybe --

25 MR. ANUTA: Thank you. That's the first

1 time in many years somebody has told me to speak up.  
2 It's usually the opposite.

3 MS. RACKNER: And, Karl, could you -- and by  
4 the way, I guess I would ask the Council's permission,  
5 do you mind hearing a conversation between us just to  
6 try to --

7 So, Karl, would you mind pointing out  
8 what -- what you think is missing from what the hearing  
9 officer adopted?

10 MR ANUTA: Let me find that section. I did  
11 not see -- and perhaps I missed it in condition two -- a  
12 list of what the notice to the landowners within one  
13 mile would include. Like, the list that we included in  
14 our (b) of our proposed condition one.

15 If you can point me to that --

16 MS. RACKNER: Yeah, just look at 2A. The  
17 certificate holder will send notices to all landowners  
18 listed in the updated attachment X-5, which notice shall  
19 inform the recipient that the recipient is the owner of  
20 an NSR and the requirements of noise control conditions  
21 1 and 2.

22 And by the way, there are stray numbers in  
23 the proposed contested case order. But I believe this  
24 means noise control conditions one and two as adopted by  
25 the Council.

1 attention, Councilmember Beier, to subsection (c) of  
2 amended noise control condition one, which talks  
3 about -- which talks about what Idaho Power will propose  
4 and also is specific to any folks -- again, this was in  
5 response to something Stop B2H brought up, was that if  
6 there is someone who has a health condition that they  
7 believe would be exacerbated by sound levels, then they  
8 can request a much more robust -- an even much more  
9 robust set of mitigation. So I think it's in there.  
10 Because I think it's everything that we -- that -- that  
11 we were ordered to do and required to do and we offered  
12 to do.

13 I believe it's all in there. And -- and  
14 I -- I do wonder if maybe one of the ways to address  
15 Mr. Anuta's concerns is that if the full set of  
16 conditions just gets provided to the landowners. So  
17 every landowner can just look through and say this is  
18 everything Idaho Power is required to do. You have  
19 rights. You can take advantage of them.

20 COUNCILMEMBER JENKINS: If I might make a  
21 suggestion. I've got an idea there. But go ahead,  
22 Council.

23 COUNCILMEMBER BEIER: For the record, I'm  
24 comfortable with that approach. I think that we  
25 implement the conditions and need to enforce them and

1 So the noise conditions one and two talk  
2 about mitigation obligations and also talk about the  
3 complaint process.

4 COUNCILMEMBER BEIER: This is Councillor  
5 Beier.

6 It seems as if the list that B2H is  
7 proposing of what is in the notice is a little bit more  
8 specific as to spelling out what Idaho Power has agreed  
9 to in terms of mitigation.

10 And I think it's -- I think, as stated, the  
11 information is there. It's just not as specific as what  
12 B2H is proposing for notice language to the expanded  
13 list of -- help me on the acronym, but NSRs.

14 So it's whether or not I think the Council  
15 and the Department feel like we need that next granule  
16 level of information in this condition.

17 The only thing that I don't see aligning is  
18 the details of the mitigation information that would be  
19 required in the -- in the condition. I think the  
20 complaint process is clearly outlined in condition two.

21 So that information is there. Though, not  
22 necessarily in the particulars of a notice requirement.

23 Excuse me, if I'm misinterpreting.

24 MS. RACKNER: No. I don't think you're  
25 misinterpreting. But I would like to just direct your

1 having the public know what those conditions are should  
2 be helpful.

3 MS. RACKNER: And before you respond, I just  
4 want to say one more thing, which is, that given where  
5 we are in the process, particularly, where we're  
6 thinking about making changes to wording on the fly, as  
7 a lawyer, that makes me a little nervous.

8 And so I -- I think the best way to make  
9 sure everybody knows exactly what their rights are is to  
10 give them the full set of robust conditions as opposed  
11 to us now trying to revise the conditions themselves and  
12 to try to provide some different notice.

13 I do have one other alternative that I think  
14 we have out there, which is that if the Council is not  
15 comfortable with just providing the full list of  
16 conditions to each landowner, we could have an agreement  
17 that we will work with ODOE as to a different notice.  
18 Again, I just feel like we're safer, though, just going  
19 with those conditions.

20 VICE CHAIR HOWE: Counsel Ratcliffe.

21 MR. RATCLIFFE: Yeah. So one thing I want  
22 to point out here is we, if memory serves -- and I  
23 think, Kellen, maybe perhaps you could correct me if I'm  
24 wrong.

25 But I think we have one change to a

1 condition that has already been accepted by the Council  
2 through the straw poll.

3 We have another one that is on the table  
4 still that we're planning to do, you know, at the end of  
5 this process related to the blasting notice.

6 And my recommendation, again, is the changes  
7 to conditions constitute material changes that require a  
8 material change hearing before we get to final order on  
9 this.

10 So if that alleviates any concerns here  
11 about, you know, having a chance to wordsmith conditions  
12 and make sure that Department staff and I have not made  
13 errors in trying to translate. There will be an  
14 opportunity to comment on the changes to conditions that  
15 get made before this gets to a final order.

16 MS. RACKNER: Thank you.

17 MR. ANUTA: And since I've been sitting here  
18 trying to bite my lip, if you don't mind, I have a  
19 number of different thoughts on the process issue.

20 My suggestion would be you listen to  
21 Stop's reasons for wanting a change to the existing  
22 order and what we're suggesting and you can go work with  
23 the Department or suggest that the Department look at  
24 our changes or Ms. Rackner's suggested change now of  
25 providing all the conditions, and then come up with a

1 VICE CHAIR HOWE: Okay. I think we've --  
2 COUNCILMEMBER JENKINS: Hear from Patrick.  
3 VICE CHAIR HOWE: Good idea.

4 COUNCILMEMBER JENKINS: I don't read --

5 MR. ROWE: We have filed --

6 COUNCILMEMBER JENKINS: -- condition two  
7 that way.

8 MR. ROWE: I'm sorry, Hanley. You don't  
9 read condition two in what way.

10 COUNCILMEMBER JENKINS: Condition two does  
11 require that you go back to condition one.

12 MR. ROWE: That's the way I read it. I  
13 mean, this condition was, as Ms. Rackner pointed out,  
14 put in in response to concerns raised by Stop.

15 I read the condition as -- like, the plain  
16 language of it says certificate holder -- not the  
17 Department. The Department does not want to get into  
18 the business of sending these notices. That's on Idaho  
19 Power.

20 COUNCILMEMBER JENKINS: We all agree on  
21 that.

22 MR. ROWE: Certificate holder will send the  
23 notices to the landowners. In the attachment,  
24 Ms. Rackner indicated that attachment is landowners  
25 within one mile. That notice shall tell those folks you

1 proposed final order that will then go out to hearing or  
2 a change hearing if -- as Mr. Ratcliffe calls it.

3 From a substantive standpoint, the  
4 difference between what we proposed and what Ms. Rackner  
5 is proposing is that most people, when they get in the  
6 mail a list of conditions that is written in legalese,  
7 they are going to go, what? What does that mean?

8 So what we were proposing was a notice to  
9 people that they had some rights, here's the outline of  
10 what those rights are, and here's the processes that are  
11 available.

12 And that was the intent of our changes to  
13 condition one which we were trying to get at the  
14 entirety of the folks.

15 And as I read condition two, it doesn't  
16 necessarily require that kind of notice to everybody in  
17 the -- that kind of notice being the kind we proposed of  
18 here's your rights outlined in a simplistic form and  
19 here's where you can find more information -- that does  
20 not appear, as I saw it, in condition two.

21 Instead, it focuses in on the process and  
22 the plan, and that's great, and it sets out those  
23 things, but it didn't provide the notice. And that's  
24 why we proposed the language at the beginning of  
25 condition one.

1 own a noise-sensitive receptor and what the requirements  
2 of noise control conditions one and two are.

3 Now, I agree it's not clear how they will  
4 tell the landowners what the requirements of those  
5 conditions are.

6 So what Council needs to determine is are  
7 you satisfied with this?

8 Is it appropriate, as Ms. Rackner suggested,  
9 to provide them the language of the condition? Or do  
10 you want to do something that Mr. Anuta has suggested,  
11 yeah, or potentially both, and have, you know, kind of  
12 an easy-to-understand summary of it?

13 VICE CHAIR HOWE: Yeah, I think that's what  
14 we want to pose to the Council right now, yeah, to move  
15 forward.

16 So Councillor Condon.

17 COUNCILMEMBER CONDON: Cindy Condon.

18 I would prefer both. I mean, there are  
19 people who -- I think Mr. Anuta is correct. Can get  
20 lost in the conditions themselves and a list would be  
21 appropriate. There are others that would want to say  
22 where did this list come from and dive deeper.

23 And so I would prefer we have notice in  
24 plain language for the public to -- to clearly  
25 understand plus the conditions.

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1 MR. ANUTA: Stop would certainly agree with  
 2 that.  
 3 VICE CHAIR HOWE: Councillor Jenkins.  
 4 COUNCILMEMBER JENKINS: I don't have a  
 5 problem with that. I don't know how Todd is going to  
 6 reflect that.  
 7 VICE CHAIR HOWE: Okay. Sounds like we got  
 8 somewhere right then.  
 9 COUNCILMEMBER CONDON: Cindy Condon. I  
 10 just -- I'm not clear on all the exhibits. And I just  
 11 want to make sure that attachment X-7. What's the title  
 12 of X-7? Does it include everyone within one mile?  
 13 MS. RACKNER: Yes. Everyone within one  
 14 mile. And -- and it needs to be updated because it is  
 15 old and a few things have changed over time.  
 16 COUNCILMEMBER CONDON: Right. And just a  
 17 follow-up. To distinguish between X-4 and -5 that are  
 18 referred to in condition one, those are the identified  
 19 NSRs.  
 20 MS. RACKNER: Yes. And exceedances. Yes.  
 21 Or it may not just be exceedances, but actual, I  
 22 believe --  
 23 COUNCILMEMBER CONDON: I just want to  
 24 understand the difference.  
 25 MS. RACKNER: Yeah. Those are the folks for

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1 whom exceedances.  
 2 COUNCILMEMBER CONDON: Yeah. Okay. Thank  
 3 you.  
 4 VICE CHAIR HOWE: Okay. So we've got --  
 5 have we dealt with condition one or just the first  
 6 paragraph?  
 7 MR. ANUTA: Stop did have a few other  
 8 additional proposed changes to condition one.  
 9 VICE CHAIR HOWE: Okay.  
 10 MR. ANUTA: And those would be in  
 11 paragraph -- what was in Exhibit 1 -- or excuse me, in  
 12 condition one, the first paragraph if I -- or excuse me,  
 13 the second paragraph. We had suggested adding language  
 14 in what was, I think, sub (b), if I'm reading it right.  
 15 VICE CHAIR HOWE: Ms. Tardaewether, we are  
 16 on condition one --  
 17 MR. ANUTA: Yeah, condition 1(b). There we  
 18 go.  
 19 We had suggested adding some language in  
 20 the -- about six, seven lines down. There's a sentence  
 21 that says if this review is deferred to the  
 22 Department -- to the Department, Stop had suggested  
 23 adding language to clarify that appeals from the  
 24 Department would be taken to EFSC. That's sort of  
 25 implicit in your rules, as I read them. But we wanted

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1 it to be clear in the material that -- in the condition  
 2 that it would go to EFSC ultimately.  
 3 If you look at the lines up there, it's  
 4 the -- where it says -- the sentence on the left side  
 5 that the line that starts with "review to the  
 6 Department."  
 7 We suggested that the word "appeals would be  
 8 taken to EFSC" be added after that to make it clear in  
 9 the condition that any appeal would go to EFSC,  
 10 ultimately.  
 11 Next one down. Review of the Department.  
 12 MR. ROWE: Patrick Rowe, DOJ.  
 13 I guess I'm not quite following that,  
 14 because the way it is set up is that the dispute does go  
 15 to the Council, unless the Council Chair decides, we  
 16 don't want to handle this one. We're going to defer it  
 17 to the Department.  
 18 VICE CHAIR HOWE: Right. That's the way I  
 19 read that part.  
 20 MR. ROWE: I'm sorry.  
 21 COUNCILMEMBER BEIER: Councillor Beier.  
 22 The default assumption is that any dispute  
 23 comes to the Council. If the Council made a decision to  
 24 direct the Department to weigh on it, that's separate.  
 25 But the default assumption is any dispute comes directly

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1 to the Council.  
 2 MR. ROWE: That's the intention and that's  
 3 the way I read this language --  
 4 MR. ANUTA: Our concern was it -- it  
 5 actually says that the Council Chair can defer the  
 6 dispute to the Department, not the Council. And we  
 7 wanted the Council to have the last word rather than  
 8 just saying, oh, well, there's a dispute it goes -- and  
 9 then the Council Chair, for some reason, I'm sure it  
 10 probably wouldn't happen, but if they did, just defer  
 11 it. And the rest of the Council is going, wait, we want  
 12 to hear that one.  
 13 MR. ROWE: I follow you there. And Todd may  
 14 want to weigh in on this some more on that.  
 15 The intention of that is because Council has  
 16 a ton of business and we don't have any sense right now  
 17 of how many of these types of disputes might get  
 18 referred to the Council.  
 19 Council Chair coordinates prior --  
 20 coordinates with the Department prior to every month's  
 21 meeting as to the agenda for that meeting.  
 22 So if in a particular month there's a dozen  
 23 of these disputes and Council already has a lot of  
 24 business on that month's agenda, the Council Chair has  
 25 the discretion to decide -- would have the discretion to

1 refer that.  
2 If that -- if those 12 disputes  
3 automatically go to the Council, then the idea of trying  
4 to be efficient with that month's Council meeting is  
5 lost, because now the 12 disputes are already in front  
6 of the Council. That was the intention behind that.

7 So do you understand why it says "Council  
8 Chair" rather than "Council"?

9 MR. ANUTA: And we understood. We're  
10 uncomfortable with just having the chair do the  
11 deferral. And Stop is also uncomfortable with the idea  
12 that if there was a deferral and the Department says,  
13 oh, here's our decision, there should still be an appeal  
14 back to the Council, ultimately. That was the Stop's  
15 position, is that the Council should be the last word.

16 MR. ROWE: Okay. The Department is  
17 comfortable with this provision. So now it is clearly  
18 in your hands, Council.

19 And I don't know, Ms. Rackner, if you have  
20 anything you'd like to add.

21 MS. RACKNER: No. Not at all.

22 VICE CHAIR HOWE: Okay. Where is the  
23 Council on this suggestion?

24 COUNCILMEMBER JENKINS: This is Hanley. And  
25 usually in the situations where the Council Chair makes

1 chair, I wouldn't have any issues. But we're making the  
2 decision -- this is a long-term decision, I guess I -- I  
3 have -- I do have concern about that.

4 SECRETARY CORNETT: For the record, Todd  
5 Cornett.

6 Just from a practical standpoint, Council  
7 also sets policy. So if in some circumstances the  
8 Council Chair did defer that to staff and there were no  
9 appeal rights but then -- and as Councilmember Jenkins  
10 indicated, you know, in my secretary report at the  
11 following Council meeting, I would provide that update.

12 And if Council was uncomfortable with that,  
13 you would set the policy to say we do not want to have  
14 any of these done by staff. We want all these done by  
15 Council.

16 So there is -- there is a check in there.  
17 Council has that -- as a body, has that authority to put  
18 a check on the Council Chair if you believe that that --  
19 you know, is being abused for whatever reason.

20 VICE CHAIR HOWE: Okay. So to try to keep  
21 us moving on, does the Council feel we need to make any  
22 changes to that language? No.

23 Okay. And Councilor Chocktoot.

24 COUNCILMEMBER CHOCKTOOT: Yes.

25 VICE CHAIR HOWE: You're okay with it?

1 the decision, it is referred to the next Council meeting  
2 as an information item where that has happened. So if  
3 we have an issue, it's probably going to come up within  
4 the next Council meeting.

5 So I'm comfortable with this language. I'm  
6 not concerned that the Council Chair is going to abuse  
7 that opportunity.

8 VICE CHAIR HOWE: Others?

9 COUNCILMEMBER CONDON: Cindy Condon.

10 I guess I do have a bit of concern that --  
11 so there's -- there's no appeal. If the Department  
12 makes a decision, reviews and makes a decision, so  
13 there's no right to come back to the Council.

14 Am I -- as I read it, once it's been  
15 deferred to -- to the Department, we have now washed our  
16 hands of it. I mean, with no opportunity to voice as a  
17 Council.

18 MR. ROWE: The way the condition is written,  
19 yes. But again, the default is to the Council. This is  
20 only in a situation where the Council Chair determines  
21 that for this particular -- these disputes or this  
22 particular meeting we're going to have the Department  
23 handle it. The assumption is it's going to the Council.

24 COUNCILMEMBER CONDON: Yeah. It's  
25 difficult, I guess, for me -- I mean, with the current

1 COUNCILMEMBER CHOCKTOOT: Yes.

2 VICE CHAIR HOWE: Okay. So I think we can  
3 move on. We have a majority of the Council is okay with  
4 that language.

5 So the next -- what do we do? Did that take  
6 care of condition one completely?

7 MR. ANUTA: This is Mr. Anuta.

8 That takes care of the Stop recommendations  
9 for condition one.

10 VICE CHAIR HOWE: Okay. Let's go to  
11 condition two.

12 And your suggestion on the first paragraph,  
13 are there any?

14 MR. ANUTA: Let me find my version. It's  
15 not the same language.

16 MS. TARDAEWETHER: For the record, Kellen  
17 Tardaewether. I have a clarification question.

18 So, Mr. Anuta, you were proposing that the  
19 notice language in front of condition one, but the  
20 notice language is actually in condition two.

21 So are we addressing the -- having the  
22 notice conversation in the context of potentially  
23 changing condition two?

24 Are you comfortable with that, Mr. Anuta?

25 Because then, basically, we aren't trying to

1 add the notice portion to condition one.  
 2 MR. ANUTA: Whether you add it to one or  
 3 two, as long as it is there. If it fits better here,  
 4 that's fine. But the more detail -- and actually, I'm  
 5 more comfortable with what Mr. Rowe suggested, sending  
 6 both a notice that has the kind of summary and then  
 7 actually the conditions and putting that here.  
 8 SECRETARY CORNETT: Mr. Vice Chair -- for  
 9 the record, Todd Cornett -- so whether it goes in  
 10 condition one or condition two, I think we can evaluate.  
 11 As Jesse indicated, that would be a material  
 12 change. The language that I have -- and this is not  
 13 actual language because we would have to clarify this  
 14 and fit it in.  
 15 But as I sort of noted it, notice will  
 16 include both an easy-to-understand plain-language  
 17 summary as well as their rights with respect -- with --  
 18 of their rights with respect to the noise control  
 19 conditions as well as the noise control conditions  
 20 themselves.  
 21 So the full, sort of, spectrum is what I  
 22 have reflected. Again, whether it is in condition 2(a)  
 23 or in 1, we can kind of look to see where it might be  
 24 the most appropriate.  
 25 So if that satisfies everybody.

1 MR. ANUTA: I don't see any issues with  
 2 paragraph (b). I believe we had some language at the  
 3 end of -- let's see.  
 4 So yeah, it was -- I think the -- my  
 5 language is confusing, maybe, because it is not in the  
 6 right place. But I know what we were intending.  
 7 Our intent here was to try and make sure  
 8 that in addition to the -- the plan outlining all those  
 9 stuff and providing the information that specifies what  
 10 needed to be done to file a complaint, we wanted to make  
 11 sure that the materials outlined the process for  
 12 reaching a resolution of that complaint.  
 13 I think with the changes that you've  
 14 suggested to part 2(a), that actually covers it, because  
 15 it outlines all of it with the conditions.  
 16 So I think that there's nothing there that  
 17 needs to be there in addition.  
 18 And I'm looking down. I think -- it wasn't  
 19 until -- I think it was (e) sub (3) that we had another  
 20 change that we were proposing. And that was a bigger  
 21 issue. That was down in the section that talked about  
 22 the -- identifying the process for a noise complaint.  
 23 And there were three subparts.  
 24 Kellen, if you could scroll down to sub (e)  
 25 I think it is.

1 MR. ANUTA: Yeah. It works for Stop.  
 2 VICE CHAIR HOWE: Okay. That works then.  
 3 Was there anything else in condition two?  
 4 Or do we need to go paragraph by paragraph?  
 5 COUNCILMEMBER JENKINS: So with respect to  
 6 that issue, I guess I would ask if Lisa or Patrick have  
 7 any comments.  
 8 MS. RACKNER: On where the change should be  
 9 made, which condition?  
 10 COUNCILMEMBER JENKINS: Combine the two  
 11 on --  
 12 MS. RACKNER: In condition two.  
 13 COUNCILMEMBER JENKINS: -- on Todd's  
 14 proposal.  
 15 MS. RACKNER: Oh, we're fine with Todd's  
 16 proposal. But we would say that the language belongs in  
 17 condition two and not condition one.  
 18 VICE CHAIR HOWE: Patrick?  
 19 COUNCILMEMBER JENKINS: Condition two that  
 20 currently talks about notices. So it seems like it  
 21 would fit better there. Yeah, 2(a).  
 22 VICE CHAIR HOWE: Thank you, Councillor  
 23 Jenkins. I was moving too fast there. Sorry.  
 24 Okay. So on condition two, the remainder of  
 25 it --

1 There we go. There's subpart (1), there's  
 2 subpart (2), and then in subpart (3) it said -- it talks  
 3 about how the -- if they were not included in the area  
 4 in X-5, the certificate holder shall -- yeah -- model  
 5 the sound levels and we -- we suggested adding "model  
 6 and monitor the sound levels."  
 7 Because our -- Stop was concerned that just  
 8 modeling the sound levels wouldn't necessarily give you  
 9 an accurate answer as to what was going on and what  
 10 should happen. You needed to also monitor them.  
 11 So our suggestion was to add "and monitor"  
 12 there wherever in the sentence is appropriate.  
 13 VICE CHAIR HOWE: Councillor Jenkins.  
 14 COUNCILMEMBER JENKINS: This is Hanley.  
 15 Are you suggesting sample or what do you  
 16 mean by "model"?  
 17 Is that long-term model -- I mean "monitor."  
 18 Do you mean long-term monitoring or just  
 19 simply do a sample?  
 20 MR. ANUTA: We were suggesting monitoring of  
 21 some sort. We had not defined how long that monitoring  
 22 would take place, but presumably since what you're  
 23 trying to get at here is what's going on with this  
 24 particular NSR. You would need, at least, enough  
 25 monitoring to have some sense of what's the noise levels



1 over some period of time. We did not specify a period  
 2 of time.  
 3 Our intent was not to make it permanent  
 4 monitoring. It was monitoring to figure it out. Okay.  
 5 What's the issue here and then what -- how can we fix it  
 6 down the road.  
 7 Because this process is all for figuring  
 8 out, okay, what do we do about those people that we  
 9 didn't have on the list as expected NSRs.  
 10 MS. RACKNER: So from our point of view,  
 11 this could become completely burdensome and difficult  
 12 to do what Mr. Anuta is suggesting.  
 13 We have modeling that should show whether or  
 14 not there is an exceedance. If the complainant is  
 15 concerned about the result of that modeling, then the  
 16 complainant can do their own monitoring and provide that  
 17 to Idaho Power to at least substantiate that there  
 18 is an -- that there is an issue there.  
 19 So, you know, our concern is, again, we have  
 20 a 300-mile line. And a lot of NSRs. And while we  
 21 certainly respect that nobody will bring a complaint  
 22 unless they honestly believe that there's been an  
 23 exceedance, we also anticipate that a lot of people who  
 24 hear corona may assume there is an exceedance and we may  
 25 get a lot of complaints.

1 we're going to do some of our own monitoring. Probably  
 2 longer term. Maybe more state-of-the-art equipment, but  
 3 at least it doesn't shift in every single instance over  
 4 to Idaho Power the responsibility to do very expensive  
 5 noise monitoring. So that's our concern about it.  
 6 MR. ANUTA: And if I might point out, this  
 7 is a policy issue for the Council because shifting the  
 8 burden is precisely what Stop is looking for here.  
 9 We think the burden should be on the  
 10 billion-dollar utility who is building the line to  
 11 monitor in some fashion whether there's a problem or  
 12 not. It should not be on the landowner who doesn't have  
 13 the thousands of dollars to do, as Ms. Rackner  
 14 described, the monitoring.  
 15 So that sort of shifting the burden was  
 16 precisely what Stop was trying to do with this suggested  
 17 language.  
 18 VICE CHAIR HOWE: Comments from Council?  
 19 MR. ROWE: Patrick Rowe, DOJ.  
 20 I'll quickly make my comment and then  
 21 Councillor Condon has a question.  
 22 As Ms. Rackner pointed out, they could do,  
 23 you know, quote/unquote, "down-and-dirty monitoring,"  
 24 which is -- I'm not -- I can't say I have personal  
 25 experience with these, but I understand there are simple

1 Modeling the kind of monitoring that's  
 2 responsible takes thousands of dollars for each  
 3 monitoring position. And that's probably an  
 4 underestimate. You're -- Idaho Power pays the bills, so  
 5 I don't know.  
 6 So our concern is that it could become just  
 7 completely infeasible if in every case somebody hears  
 8 corona and has this concern. They are able, then, to  
 9 shift the burden over to Idaho Power to do comprehensive  
 10 modeling.  
 11 And I will say that kind of the spot-check  
 12 idea. I mean, we -- our acoustical engineers just  
 13 couldn't get behind the idea that you could set a  
 14 responsible ambient based on going out for an hour.  
 15 So we don't know that -- we don't know that  
 16 that's going to be a solution to try to do something  
 17 quick and easy there.  
 18 Now, if the complainant does some monitoring  
 19 on their own, whatever it is, I mean, there's all kinds  
 20 of levels of monitoring. Idaho Power performs kind of  
 21 expensive state-of-the-art monitoring, but there's a lot  
 22 of ways to do less expensive monitoring. If the  
 23 complainant does some monitoring, even if it's quick and  
 24 dirty that demonstrates an exceedance that hasn't been  
 25 addressed, Idaho Power at that point could decide, okay,

1 phone apps that do noise monitoring. Idaho Power could  
 2 then come out and do more sophisticated monitoring and  
 3 then that dispute would be presented to the Council for  
 4 resolution.  
 5 MS. RACKNER: And I will just say that is  
 6 what we had in mind that something quick and easy that  
 7 anybody with a smartphone could do.  
 8 VICE CHAIR HOWE: Okay. That being the  
 9 case, then where is the Council on the language?  
 10 Does it achieve what we've just kind of been  
 11 discussing?  
 12 COUNCILMEMBER JENKINS: So let me make sure  
 13 who we are dealing with here. These are people who have  
 14 not been identified through the prior modeling process  
 15 as having a noise impact facility.  
 16 VICE CHAIR HOWE: Right.  
 17 COUNCILMEMBER JENKINS: So what this  
 18 condition proposes is that there be additional modeling  
 19 done by Idaho Power. And then if the landowner still  
 20 has an issue, they can provide evidence and then it  
 21 comes to us or the Chair. I don't have a problem with  
 22 that process.  
 23 VICE CHAIR HOWE: Where is the rest of the  
 24 Council?  
 25 COUNCILMEMBER CONDON: So I think -- I was

1 sort of hung up on sub issue (3). But what happens next  
2 is pretty clearly outlined in subsections four and five  
3 that says, if there's alternative data, here's the  
4 responsibility of IPC and ultimately the Council, so I'm  
5 comfortable with the language.

6 VICE CHAIR HOWE: I'm seeing head nods.  
7 Do you need to say something, Councillor  
8 Condon?

9 COUNCILMEMBER CONDON: Yeah. I had  
10 indicated I had a question. Actually, I was just going  
11 to comment -- make the same comment that Mr. Rowe made  
12 but wanted to verify that that was true.

13 I think there is a phone app -- actually, I  
14 think I've used it -- that measures decibels. And then  
15 if that's enough, if that is what Idaho Power would  
16 accept, then hopefully the people impacted would know  
17 that that's a measure -- you know, I think if the public  
18 reads monitoring or whatever, they might think, Oh, my  
19 gosh, I have to, you know, buy monitoring equipment,  
20 whatever. I just think the public should be made aware  
21 this is what we'll accept.

22 So because we're -- or, at least, I'm  
23 thinking given this conversation that that's acceptable.

24 You know, a phone app or some -- something  
25 less than.

1 MR. RATCLIFFE: Mr. Anuta, I think there may  
2 be one of your proposals you haven't pointed out to  
3 Council. And that goes with regard to a revision to  
4 condition 2(a). You had made a proposal about  
5 submitting the -- they are going to -- Idaho Power will  
6 outline a complaint plan. And I believe you had made a  
7 proposal that -- that be submitted to the Department for  
8 approval. And once approval is obtained, distributed to  
9 all NSR properties within one mile.

10 So I just wanted to point that out to you if  
11 you wanted to discuss that with Council.

12 MR. ANUTA: We thought that made sense. I  
13 don't know if Idaho Power objects to that at all.

14 MS. RACKNER: I don't know that we object to  
15 that. I think we felt in our briefing that it was a  
16 little redundant because we were -- the conditions  
17 themselves are going to explain that there's a complaint  
18 process through ODOE and they can contact ODOE.

19 But I don't know that we have an objection  
20 to the details of the complaint process going out to  
21 everybody, so that they have it in the first place.

22 VICE CHAIR HOWE: Okay. Good. And then  
23 Councillor Condon had a question on (c).

24 MR. ROWE: Is that an instruction from  
25 Council that you would like this condition to state that

1 MS. RACKNER: Yeah. And -- and I will say,  
2 because I don't have a lot of personal experience with  
3 what all the options are out there.

4 I -- I really can't say in this moment that  
5 that -- maybe it's the monitor -- a monitoring  
6 methodology of the complainant's choice. Or which may  
7 include -- I don't know. Yeah, we're a little bit --  
8 trying to do this in realtime. But -- but we are  
9 certainly comfortable.

10 That was the idea that our modeling that we  
11 did to our mind -- not that this is legal -- legally the  
12 case, but kind of created this rebuttable presumption  
13 that there wasn't no exceedance at this NSR. But if the  
14 person at the NSR is able to show in any way, like, no,  
15 we really think that the ambient anti-degradation  
16 standard has been exceeded by more than 10 dBA, whether  
17 it's a cell phone monitoring, then it would be incumbent  
18 upon Idaho Power to present its own monitoring data.

19 And if there's a dispute, then, again,  
20 hopefully they can resolve it. A lot of disputes can be  
21 resolved. But ultimately, it could come to the Council  
22 to look at the data presented by the complainant versus  
23 what Idaho Power brings.

24 VICE CHAIR HOWE: Okay. I think we've  
25 reached agreement, then, on condition two.

1 the complaint will -- complaint plan will be distributed  
2 to the NSR property owners?

3 VICE CHAIR HOWE: Yes.

4 MS. RACKNER: And again, that's the same  
5 list -- I'm just saying that as we write it up, that  
6 would be the same list of the X-7 that will have been  
7 updated.

8 MR. ROWE: Yes, that's the way I'm seeing  
9 it.

10 VICE CHAIR HOWE: Do I see head nods? Okay.  
11 Yes.

12 And then, Councillor Condon, you had a  
13 question on (c).

14 COUNCILMEMBER CONDON: Yes, Cindy Condon.  
15 On condition (2)(c), I just want to be clear. In the  
16 fourth line from the bottom, it reads -- well, I'll read  
17 the added language in (C) and will specify the  
18 information that the complainant -- so this is the NSR;  
19 right?

20 The complainant must include in its  
21 complaint including the date the certificate holder  
22 received the complaint, the nature of the complaint,  
23 weather conditions of the date for which the complaint  
24 is based, including wind speed, temperature, relative  
25 humidity, and precipitation.

1 So we're expecting that the public will  
 2 collect all that information with their home weather  
 3 center.  
 4 Is that the --  
 5 MS. RACKNER: We thought a smartphone app.  
 6 I've got that all on my phone.  
 7 COUNCILMEMBER CONDON: And could be. I'm  
 8 just wondering if at the moment -- I don't have my  
 9 complaint procedure in front of me. I've missed the  
 10 day. It's the next day -- I mean, so I guess looking  
 11 up -- I don't know how you get wind speed for  
 12 ten o'clock in the morning two days earlier. I just  
 13 want to make sure it's reasonable as opposed to making  
 14 it a little bit too detailed -- or more detailed than it  
 15 needs to be.  
 16 MS. RACKNER: And I believe this was  
 17 Department language, so maybe better responded to by  
 18 Kellen or Patrick.  
 19 MR. ROWE: I honestly can't remember if it  
 20 was Department language or not. I know we were  
 21 discussing this quite a bit.  
 22 I understand the concern. And I can't tell  
 23 you if that type of information is available just  
 24 through the app.  
 25 If you're concerned about the -- the

1 simply modify this to say if complainant has available  
 2 the wind speed, that gives them both the information  
 3 about what kind of things you're looking for but makes  
 4 it optional rather than mandatory.  
 5 COUNCILMEMBER TRUITT: Jordan Truitt, for  
 6 the record.  
 7 Wondering if in the notification that a  
 8 brief description of how and where some of this  
 9 information could be accessed to somebody who may not  
 10 know how to look up on NOAA's website what the previous  
 11 24-hour conditions were. Just a brief tutorial on how  
 12 to collect some of the parameters as much as possible.  
 13 Because you still -- if there's a complaint,  
 14 I believe you still have to quantify the complaint with  
 15 relative data that has to support your complaint.  
 16 If it's just, it was loud last night, how do  
 17 you -- how do you support that?  
 18 And so I do recognize that is, for many,  
 19 difficult information to gather. But if there's a  
 20 starting point on how to get there, that might help.  
 21 COUNCILMEMBER JENKINS: This is Hanley.  
 22 And what I would suggest there is just  
 23 simply saying such as including wind speed, temperature,  
 24 yeah.  
 25 MS. RACKNER: I believe that's the easiest.

1 rationale for it is because those -- those are the  
 2 factors that impact -- have an impact on noise. That's  
 3 the idea behind it. I suppose you could -- rather than  
 4 make it mandatory, you could make it a discussion and  
 5 then if they don't have that information but then Idaho  
 6 Power is able to pull that information from whatever  
 7 sources they have, then when the dispute is presented to  
 8 Council, there's potentially more evidence favoring  
 9 Idaho Power's analysis.  
 10 So -- but I think we would be -- I think at  
 11 a minimum, we should let folks know that these are the  
 12 types of things that you ought to be thinking about  
 13 collecting if you don't want to make it mandatory. I  
 14 would be all right with that.  
 15 MS. RACKNER: Yeah, I believe we would, too,  
 16 because I also thought that this was the type of  
 17 information you could look up for any one day on the  
 18 internet as well.  
 19 Now, I know not everybody has internet  
 20 access, but --  
 21 MR. ANUTA: Or knows how to operate a  
 22 smartphone sufficient to gather all that data.  
 23 For whatever it is worth, Stop would  
 24 suggest -- this was not one we had picked up on before,  
 25 but since Councillor Condon has flagged it, that you

1 I think the most important thing would be for the -- to  
 2 know the date and the time that the person believes they  
 3 experienced the exceedance. Because then at that point,  
 4 Idaho Power or the Council can go back and try to -- and  
 5 perhaps discern what was happening in that location at  
 6 that evening.  
 7 THE COURT: Okay. Sounds like we have some  
 8 Council direction on that one. All -- all in agreement,  
 9 such as language being added.  
 10 MS. RACKNER: And I'd like to make a request  
 11 for a five-minute break, if we could.  
 12 VICE CHAIR HOWE: Yeah, I was trying to get  
 13 us -- we're done with condition two.  
 14 MR. ANUTA: We did have some additional  
 15 language further on down in subpart (5).  
 16 VICE CHAIR HOWE: Okay. Let's go ahead and  
 17 take a break now and we'll come back.  
 18 MS. RACKNER: I am okay with finishing up  
 19 the condition. I was just observing that it was almost  
 20 three hours.  
 21 COUNCILMEMBER CONDON: Thank you.  
 22 THE COURT: Okay. Subsection (5).  
 23 MR. ANUTA: Subsection (5) of subpart (e).  
 24 And so further down, Kellen, if you're in  
 25 (e), there should be a 5 -- no, you're -- you're in (f).

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1 So there we go.  
 2 This was a discussion of what happens if  
 3 there's a dispute. And this was the same issue that we  
 4 raised earlier. We had suggested at the end of this  
 5 that you clarify that the EFSC chair may direct the  
 6 Department to make the determination. We had suggested  
 7 adding language at the end of that.  
 8 But if there has been a delegation, the  
 9 Department decision can still be appealed to EFSC, and  
 10 that goes back to Stop's point of we didn't want the  
 11 Department to be the final decision-maker.  
 12 And your earlier discussion may be  
 13 sufficient for that issue. But we -- I wanted to flag  
 14 that we wanted to clarify there as well, that ultimately  
 15 even if there is a deferral, it should come back to the  
 16 Council because that's the ultimate last word.  
 17 VICE CHAIR HOWE: Counsel Rowe, that  
 18 language that you referred to before, I think clarified  
 19 that it -- it comes to Council.  
 20 MR. ROWE: Well, the default is to Council.  
 21 CHAIR HOWE: Right. Right.  
 22 MR. ROWE: The issue here is similar to the  
 23 prior one, which is if the Chair is going to direct the  
 24 Department to make the determination that the Chair, in  
 25 his or her discretion, has determined that -- that

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1 coming month's business they would prefer that the  
 2 Department make the determination.  
 3 So to me there's -- I don't understand what  
 4 the point of the deferral to the Department would be if,  
 5 ultimately, it's coming back to the Council anyhow.  
 6 If the idea behind referring it to the  
 7 Department is efficiency of Council meetings, it's still  
 8 going to end up before the Council under Mr. Anuta's  
 9 proposal.  
 10 VICE CHAIR HOWE: Right. Right.  
 11 So, Mr. Anuta?  
 12 MR. ANUTA: That, Mr. Rowe, is absolutely  
 13 correct. Our approach is to say it needs to ultimately  
 14 go to Council, even if it's been deferred to Department,  
 15 that may take care of some of the process.  
 16 Some people get deferred and have the  
 17 Department make a decision may be fine with that. But  
 18 if somebody ultimately wants a Council ruling on their  
 19 complaint, they ought to be able to appeal a Department  
 20 decision on a deferral back to the Council to really get  
 21 a Council vote on it.  
 22 But from a policy perspective from Stop, the  
 23 Council should be the last word, rather than the Council  
 24 Chair making an executive decision, which may be from an  
 25 efficiency standpoint totally appropriate, but from the

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1 standpoint of policy, we wanted the Commission to be the  
 2 final backstop, regardless.  
 3 VICE CHAIR HOWE: Okay. Where is the  
 4 Council on this one? Where we ended up on condition  
 5 one?  
 6 COUNCILMEMBER JENKINS: Support where we  
 7 ended up on condition one.  
 8 This is Hanley.  
 9 VICE CHAIR HOWE: Okay. I'm seeing head  
 10 nods.  
 11 COUNCILMEMBER CONDON: I would not be in  
 12 favor. I wasn't in favor.  
 13 VICE CHAIR HOWE: Okay. Councillor  
 14 Chocktoot.  
 15 COUNCILMEMBER CHOCKTOOT: Yes.  
 16 VICE CHAIR HOWE: Okay. I think we've got a  
 17 majority on that one to leave it like it was understood  
 18 in condition one.  
 19 Okay. I think we'll take a, what, 10-minute  
 20 break? Come back at 11:05 and start on condition three,  
 21 I guess.  
 22 (A break was taken.)  
 23 (No audio from 11:05 a.m to 11:08 a.m.)  
 24 MS. RACKNER: Okay. The site certificate  
 25 and the timelines in the site certificate for responding

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1 and working with landowners, because if they don't do  
 2 what's required by the site certificate, they will be  
 3 out of compliance with the site certificate and subject  
 4 to enforcement.  
 5 But it makes no sense to -- to place them in  
 6 that -- (audio disruption) --  
 7 MR. ANUTA: -- included a determination that  
 8 if they reached this point in the process the applicant  
 9 will be considered to be in violation of the site  
 10 certificate and subject to enforcement until they work  
 11 out with the NSR property owner a mutually agreed upon  
 12 mitigation plan in order to create incentive for the  
 13 applicant to work out that plan.  
 14 VICE CHAIR HOWE: Okay. Ms. Rackner.  
 15 MS. RACKNER: So we just disagree. We have  
 16 obligations under the site certificates. If we don't  
 17 follow the very detailed requirements for what we do in  
 18 response to a complaint, then we could be found in  
 19 violation of the site certificate.  
 20 But to suggest that any complaint,  
 21 meritorious or not, somehow places us out of compliance.  
 22 Makes virtually no sense. It also gives an enormous  
 23 amount of inappropriate, undeserved leverage to a  
 24 landowner. Just as Mr. Anuta is suggesting what if  
 25 there is someone who could be unreasonable at Idaho

1 Power working on this issue, it's equally possible that  
2 there could be a landowner that could also be  
3 unreasonable. Those things can happen, which is why you  
4 have rules that everybody has to follow and if they  
5 follow the rules, they are in compliance.

6 MR. ANUTA: And if I could respond briefly  
7 on the point. This part of the process is after it has  
8 been determined that there is a noise -- corona noise  
9 issue that exceeds the standard. This is after -- it is  
10 not just a complaint and then they are working it out.  
11 This is further down in the plan where it says that if  
12 it is determined pursuant to the process described above  
13 that this condition -- that this condition -- the corona  
14 noise at the complainant's property exceeds the  
15 standard.

16 So this is where there has already been  
17 Idaho Power and the complainant working together. They  
18 are working it out. There is an exceedance. Stop's  
19 position is there needs to be an incentive at that point  
20 for Idaho Power to work things out.

21 The process that Ms. Rackner is describing  
22 would require the complainant, who has already been  
23 found to have a problem, to come to the Council and ask  
24 that the Council find that there's a violation of the  
25 site certificate because Idaho Power won't work with

1 Okay. Council, you've heard both sides.  
2 Do we feel there's language change needed  
3 here or not?  
4 Councillor Condon?  
5 COUNCILMEMBER CONDON: Cindy Condon.  
6 And I might be reading this incorrectly.  
7 But so what -- how does Idaho Power read this provision  
8 if there isn't a mutually -- I'm not reading that  
9 there's a returned -- that what happens if.

10 So what you're proposing is that they're not  
11 in violation of the certificate, so -- so then what?

12 MR. ROWE: Councillor Condon, this is  
13 Patrick Rowe, Department of Justice. Go down to sub  
14 (3).

15 COUNCILMEMBER CONDON: Yes. Okay.

16 MR. ROWE: So it's (f) sub (3), that -- that  
17 outlines the process Ms. Rackner just referred to.

18 COUNCILMEMBER CONDON: But doesn't that  
19 start with if through the efforts described above the  
20 certificate holder executes an agreement with the NSR?

21 MR. ROWE: Going down, the next sentence  
22 says, if an agreement can't be reached.

23 COUNCILMEMBER CONDON: Okay. Apologies.  
24 Yes. Thank you.

25 MS. RACKNER: They are long and complicated.

1 them to get a mutually agreeable agreement.

2 Our suggestion is put the burden on the  
3 applicant and say, okay, either you reach an agreement  
4 or you are in violation automatically.

5 VICE CHAIR HOWE: Ms. Rackner.

6 MS. RACKNER: Well, I'd also like to point  
7 out that if we can't reach an agreement, then there is  
8 another process, and that process is coming to the  
9 Council.

10 So of -- let's say, you have an actual  
11 exceedance, but let's say you have a landowner that is  
12 saying I -- you know -- that is asking for something  
13 that seems completely out of proportion and  
14 inappropriate, so the parties cannot come to an  
15 agreement. Then that's why we are able to come to the  
16 Council. The Council can tell -- at that point can tell  
17 Idaho Power either do what the landowner is asking you  
18 to do or tell the landowner that feels like an  
19 overreach. Here's, instead, what we think should  
20 happen. But there's just no reason to be holding Idaho  
21 Power in some "out of compliance" until they have --  
22 until we have gone through the process.

23 And as long as Idaho Power is faithful to  
24 the process, abides by Council rules and determinations,  
25 they should be seen to be in compliance.

1 They loop back on themselves. I totally get it.

2 VICE CHAIR HOWE: Okay. So back to the  
3 Council, are we feeling there's any language change  
4 needed or not?

5 COUNCILMEMBER JENKINS: I think it is  
6 covered. I don't think it is appropriate to find  
7 somebody in violation if it is still being disputed.

8 VICE CHAIR HOWE: Right.

9 COUNCILMEMBER JENKINS: Agreed.

10 VICE CHAIR HOWE: Okay. Councillor  
11 Chocktoot.

12 COUNCILMEMBER CHOCKTOOT: Yes.

13 VICE CHAIR HOWE: Okay. We've got that one  
14 done.

15 Now, do we move to condition three or --

16 MR. ANUTA: I'm looking to see. I don't see  
17 any other changes that we proposed that we didn't  
18 already address. And two -- we did suggest language  
19 further on down in sub (3) that would suggest that  
20 the -- Council remain the appellate body, but this is  
21 the same issue that you have discussed before as to  
22 whether or not there should be a deferral by the Chair  
23 as an option.

24 It's Stop's position that Council should  
25 remain the appellate body even if there's a deferral.

1 There are no other suggested changes to condition two  
 2 from Stop.  
 3 VICE CHAIR HOWE: Let's move on to condition  
 4 three, then. First paragraph.  
 5 MR. ANUTA: There are a number of specific  
 6 changes that Stop recommended to the first paragraph of  
 7 condition three. And, conceptually, they all focus on  
 8 the same thing.  
 9 Stop's position is there should be long-term  
 10 inspection, monitoring, and maintenance for the entire  
 11 operational life of the project.  
 12 And that we suggested some specific things  
 13 that should be done to protect the lines and in terms of  
 14 maintenance. And we suggested language that would --  
 15 that would require the certificate holder to monitor and  
 16 inspect the line over time. And that the inspections of  
 17 that sort would take place on the schedule that aligns  
 18 with the OPUC, utility wildfire plans or more frequently  
 19 if the Department felt there were needed to be more  
 20 frequent.  
 21 And that when -- when Idaho Power completes  
 22 an inspection or monitoring of the line, that they  
 23 should do a monitoring and maintenance and report and  
 24 submit it to the Department so that the Department can  
 25 track where things are going.

1 In the proposed contested case order, the --  
 2 the hearing officer discusses these revisions and the  
 3 Department and Idaho Power's responses, and ultimately  
 4 she declines to adopt these revisions.  
 5 So in your proposed contested case order,  
 6 there's noise condition three, isn't there.  
 7 So your noise condition three, as it stands  
 8 now, according to the PCCO, is what it says in the  
 9 proposed order. Give me a minute, there's a delay here.  
 10 So this is the condition as it stands, so I  
 11 don't know if Council wants to take a minute to -- I'll  
 12 let Jesse or Patrick read what the -- okay.  
 13 So there's Mr. Anuta's. And then the  
 14 hearing officer provides her basis and rationale under  
 15 her discussion of condition three.  
 16 Oh, can I -- I'm going to slowly scroll  
 17 through.  
 18 MS. RACKNER: I'm sorry. Someone let me  
 19 know when it is time for me to respond.  
 20 MS. TARDAEWETHER: Yes.  
 21 VICE CHAIR HOWE: So, Mr. Anuta, is this  
 22 what you were working off of?  
 23 MR. ANUTA: Correct. That's what I -- the  
 24 red language there is what Stop proposed as changes to  
 25 three. And I think Ms. Rackner probably has some

1 And then finally that the certificate holder  
 2 is required to upgrade and apply new technologies as  
 3 they become available to mitigate corona noise issues.  
 4 Stop's point there was that we don't know what future  
 5 technology in terms of noise mitigation might be for  
 6 corona noise, but if there is additional technology that  
 7 comes into existence, that Idaho Power should be  
 8 required to stay current on that and to apply those  
 9 upgraded technologies, maybe there will be a new type of  
 10 conductor that will help reduce noise or new type of  
 11 metal or tower or something.  
 12 We were just trying to get at the idea that  
 13 for the life of the project you've got to stay on top of  
 14 the technology and apply upgraded technology to help  
 15 reduce corona noise for the people being affected by the  
 16 project.  
 17 MS. TARDAEWETHER: For the record, Kellen  
 18 Tardaewether here.  
 19 I've got it pulled up on the screen. It  
 20 took me a minute just to kind of orient. I want to  
 21 orient Council of where we're at.  
 22 So in front and on the screen, I have the  
 23 amended condition language that Mr. Anuta just verbally  
 24 presented with his rationale and the edits just to help  
 25 Council.

1 responses to those, conceptually if not specifically.  
 2 VICE CHAIR HOWE: Yeah.  
 3 MS. RACKNER: Yeah. So what's been proposed  
 4 here is pretty completely impractical.  
 5 We have a 300-mile transmission line. It  
 6 will get bird feces on it at times. The idea that Idaho  
 7 Power would immediately need to clean off that bird  
 8 feces does not make a lot of sense.  
 9 Similarly, we have a 300-mile transmission  
 10 line. Now, it seems completely hypothetical to me, but  
 11 even if there were some type of new conductor that would  
 12 right -- that could reduce corona noise, it would be at  
 13 least hundreds of millions of dollars for us to  
 14 re-conductor this line, just to buy the conductor  
 15 itself, let alone string a new conductor.  
 16 For those -- and I do want to say one thing,  
 17 is that, yes, the company has to -- on a regular basis,  
 18 it has to maintain the line; it has to be trimming  
 19 vegetation; it needs to be out there making sure the  
 20 line is in good working order.  
 21 We also have the situation where we don't  
 22 know if anyone is going to be bothered by the noise on  
 23 this line at this point. Lots of people live near high  
 24 voltage transmission lines and are not bothered at all.  
 25 I'm not saying there won't be anyone. There may be

1 legitimate complaints, but we don't know. That's very  
2 hypothetical. Given the extreme expense of that type of  
3 monitoring or tech -- technological upgrades that  
4 Mr. Anuta is referring to and given a chance that we  
5 don't really know how the public is going to perceive  
6 the corona noise on this line, it just makes perfect  
7 sense to do this on a complaint basis.

8 If a human being or group of human beings  
9 are bothered by the noise on the line, then that is  
10 something Idaho Power needs to address.

11 If there's a nick in the line that's causing  
12 corona, that is something Idaho Power needs to address.

13 If its modeling was wrong, such that there  
14 is an exceedance where we didn't think there was going  
15 to be one, that's something that Idaho Power needs to  
16 address.

17 Just the sheer reality of what it's like to  
18 build and maintain a 300-mile 500 kV line suggests that  
19 the complaint approach is a human being bothered, let's  
20 fix that. That that's the best way to deal with this.

21 MR. ANUTA: And Stop and Idaho Power have a  
22 clear policy difference on that. We think the utility  
23 should be regularly maintaining -- we're not suggesting  
24 daily, but they need to be regularly maintaining,  
25 monitoring, and upgrading.

1 My lack of knowledge on transmission lines.

2 Do transmission lines generally degrade and  
3 get replaced from time to time? And if so, does the  
4 Department have a role in that -- is that an amendment  
5 process or?

6 I guess the first question is do they  
7 degrade over time? And would you expect more corona  
8 noise as time goes on?

9 MS. RACKNER: That is nothing that I have  
10 ever heard.

11 What I have heard is that damage to the line  
12 can cause corona.

13 Now, I will say that transmission lines do  
14 get maintained, I mean, for nicks and scrapes and all  
15 the types of things that can happen with a 300-mile  
16 line. They do need to get maintained on a regular  
17 basis. But I have never heard that they degrade over  
18 time such that corona would begin to increase. And I'm  
19 going to look back and make sure that --

20 Okay. I got the go-ahead that that was  
21 correct.

22 COUNCILMEMBER CONDON: Yeah. My expectation  
23 is that Idaho Power maintains its line, its assets, and  
24 so that goes without saying. It was just the  
25 degradation of the line over time I was --

1 VICE CHAIR HOWE: Okay. Council.

2 MR. ROWE: If I may, Patrick Rowe,  
3 Department of Justice. I would also point out that  
4 there is another recommended site certificate condition.

5 And the hearing officer pointed this out in  
6 her ruling on this -- her analysis of this proposed  
7 condition. That recommended organizational expertise  
8 condition one addresses transmission maintenance  
9 inspection plan and requires Idaho Power to inspect,  
10 monitor, and maintain the facility. That coupled with  
11 the complaint process that Ms. Rackner has -- that we've  
12 been discussing, the Department is comfortable with this  
13 condition as is.

14 COUNCILMEMBER JENKINS: Mr. Chair, this is  
15 Hanley.

16 My concern with the upgrades is our purpose  
17 is to make sure that the standard is met. It's not to  
18 make sure that all possible noise is eliminated.

19 And so, you know, I don't believe that by  
20 performing upgrades to reduce the noise is part of the  
21 requirement to meet the standard.

22 VICE CHAIR HOWE: Other Councillors? Leave  
23 the language?

24 Councillor Condon.

25 COUNCILMEMBER CONDON: Just a question.

1 MS. RACKNER: Yeah.

2 VICE CHAIR HOWE: Okay. So we're saying no  
3 changes to noise control condition three are needed.  
4 Okay.

5 Councillor Chocktoot.

6 COUNCILMEMBER CHOCKTOOT: Yeah. I think the  
7 document needs to stay the same.

8 VICE CHAIR HOWE: Okay. Thank you.

9 So we move on then to condition four.

10 MR. ANUTA: Actually, Stop had proposed an  
11 addition -- an addition either to three or as a new four  
12 that essentially requires the development of a  
13 monitoring plan and data collection plan for corona  
14 noise at the 41 NSRs that have already been identified  
15 over the life of the project.

16 So Stop's concept here was that we already  
17 know that those -- from the modeling that there's likely  
18 to be a problem there. The utility should develop a  
19 monitoring plan for over the entire life of the project  
20 for those locations that it may be if agreements are  
21 reached and upgrades are done, there doesn't seem to be  
22 a problem, but the utility should monitor them because  
23 their data already shows that there is likely to be a  
24 problem at those key NSRs.

25 And that then at the end of each ten-year

1 period of operation, the certificate holder should do an  
2 assessment to determine if there is new technology that  
3 would further reduce corona noise or problems and advise  
4 the Department on that.

5 And to the extent that our -- Stop's view is  
6 that your standards are you're trying to protect the  
7 public, health, welfare, and safety and noise situation.

8 And so because technology changes, in order  
9 to meet that standard, you have to require the -- or you  
10 should require the applicant to stay up-to-date on  
11 technology and to report to the Department on upgrades  
12 or changes in technology.

13 VICE CHAIR HOWE: Ms. Rackner.

14 MS. RACKNER: We had the same response; that  
15 we believe that the complaint process is the correct  
16 process.

17 And I just do want to remind everybody that  
18 those 41 NSRs will have received mitigation at that  
19 point.

20 If at any point they believe that the --  
21 conditions have changed such that something new is  
22 required, they can make that complaint.

23 VICE CHAIR HOWE: Okay. Council, you've  
24 heard both sides. Nothing from Council.

25 So any language changes needed?

1 specific changes to condition four or condition five.  
2 We recommended that they be removed because they allow  
3 for ongoing issues to -- that we didn't think were  
4 necessary.

5 VICE CHAIR HOWE: So no changes to condition  
6 four or five. I don't think we need to belay that any  
7 more and can move on. Is that right?

8 COUNCILMEMBER JENKINS: This is Hanley.

9 VICE CHAIR HOWE: Oh, okay. Yeah.

10 MS. RACKNER: Did we already make a  
11 determination on the exception and variance?

12 MR. ANUTA: That's what this relates to. So  
13 our opposition -- so our suggested removal was because  
14 these recognize the possibility of a variance or  
15 exception and our position earlier, as I articulated  
16 was, you shouldn't grant a variance.

17 So to the extent you have granted a  
18 variance, if you are going to do that in your final  
19 order, you should keep them.

20 But to -- as to our position in our  
21 exceptions was because they acknowledge the existence of  
22 a variance that we didn't think you should grant, they  
23 needed to go away.

24 But if you are going to grant the variance,  
25 then you absolutely should keep them.

1 Two heads no over here. Three, four, five.  
2 And Councillor Chocktoot.

3 COUNCILMEMBER CHOCKTOOT: If this is the  
4 appropriate time for that language change, then I think  
5 we need to make it.

6 But for the document itself, I believe it  
7 covers it. That's how I read it.

8 VICE CHAIR HOWE: Councillor Chocktoot, we  
9 can't hear you, can you speak up a bit?

10 COUNCILMEMBER CHOCKTOOT: You can't hear me?

11 VICE CHAIR HOWE: We're turning your volume  
12 up a little to see if that helps. Try again.

13 COUNCILMEMBER CHOCKTOOT: Can you hear me?

14 VICE CHAIR HOWE: Yes, much better.

15 COUNCILMEMBER CHOCKTOOT: Okay.

16 VICE CHAIR HOWE: Yeah, go ahead.

17 COUNCILMEMBER CHOCKTOOT: Okay. If it needs  
18 to be changed, I think we need to change it.

19 But how I read it, it covers everything as  
20 it is. And for the future, we can't really dictate  
21 what's going to happen.

22 VICE CHAIR HOWE: Yes, I think we agree.

23 Okay. So Council's ready to move then on to  
24 condition four.

25 MR. ANUTA: Stop did not propose any

1 VICE CHAIR HOWE: Okay. So I think we can  
2 move forward through four and five and we're now  
3 up to -- whoa --

4 MR. ANUTA: That's it.

5 CHAIR HOWE: We're through. Okay.

6 COUNCILMEMBER JENKINS: This is Hanley.  
7 I want to thank both of you helping us

8 through that process. I think it was very beneficial  
9 for us and, hopefully, it was beneficial for you.

10 VICE CHAIR HOWE: Okay. I think I turn it  
11 back over to Counsel Ratcliffe.

12 MR. RATCLIFFE: No. I believe where we're  
13 at then is a straw poll on issues three and four  
14 combined, as well as the overall standard.

15 SECRETARY CORNETT: For the record, Todd  
16 Cornett.

17 If Council is ready, I can read the straw  
18 poll.

19 VICE CHAIR HOWE: We're ready.

20 SECRETARY CORNETT: So "agree with the  
21 findings of fact, conclusions of law, and conditions of  
22 approval in the proposed order pertaining to the noise  
23 control regulations that are not related to the issues  
24 in the contested case and in the proposed order -- in  
25 the proposed contested case order pertaining to issues



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1 NC-3 and NC-4, with the following modifications" -- and  
 2 this would be specific changes to condition two,  
 3 condition 2(a), to include language at the appropriate  
 4 location and the specific language. Notice will include  
 5 both an easy-to-understand plain-language summary of  
 6 property owner rights with respect to noise control  
 7 conditions as well as the noise control conditions.  
 8 And then also under 2(a), complaint plan  
 9 will be distributed by certificate holder.  
 10 Again, appropriate language in appropriate  
 11 location.  
 12 And then under subsection (c), in the  
 13 parenthetical prior to the first word, which is  
 14 "including," we would add "such as."  
 15 And that is it.  
 16 VICE CHAIR HOWE: Sounds good.  
 17 SECRETARY CORNETT: Perry Chocktoot.  
 18 COUNCILMEMBER CHOCKTOOT: Yes.  
 19 SECRETARY CORNETT: Hanley Jenkins.  
 20 COUNCILMEMBER JENKINS: Yes.  
 21 SECRETARY CORNETT: Kent Howe.  
 22 VICE CHAIR HOWE: Yes.  
 23 SECRETARY CORNETT: Cindy Condon.  
 24 COUNCILMEMBER CONDON: Yes.  
 25 VICE CHAIR HOWE: Ann Beier.

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1 COUNCILMEMBER BEIER: Yes.  
 2 SECRETARY CORNETT: Jordan Truitt?  
 3 COUNCILMEMBER TRUITT: Yes.  
 4 SECRETARY CORNETT: Thank you,  
 5 Councilmembers.  
 6 VICE CHAIR HOWE: Okay. I believe now we're  
 7 ready to move on to the land use standard issues. We've  
 8 got 9, 5, 7, and 8. And so --  
 9 Did I do something wrong there? 9, 5, 7, 8.  
 10 That's what's on my list.  
 11 MR. RATCLIFFE: Right. I only have 9 and 5.  
 12 VICE CHAIR HOWE: I've got them on here, but  
 13 not 7 and 8.  
 14 (Discussion on agenda items.)  
 15 MR. RATCLIFFE: Okay. Yeah. I think that's  
 16 right. So 7 and 8 had -- we had kind of -- the intent  
 17 was to have covered those along with kind of the  
 18 procedural issues at the outset.  
 19 Where, you know, the recommendation was that  
 20 there wasn't sufficient substantive information in those  
 21 exceptions to be able to allow the Council to -- to make  
 22 an informed decision on those. So that's why we ended  
 23 up with 9 and 5.  
 24 VICE CHAIR HOWE: Okay. Ms. Tardaewether,  
 25 9 -- 9 and 5.

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1 MS. TARDAEWETHER: Kellen Tardaewether.  
 2 Bear with me as I kind of come out of the  
 3 noise and let's go over -- so the Council's Land Use  
 4 Standard requires the Council to find that the proposed  
 5 facility complies with the local applicable substantive  
 6 criteria and statewide planning goals as adopted by the  
 7 LCDC or the Land Conservation and Development  
 8 Commission.  
 9 Applicable substantive criteria from the  
 10 affected -- are the criteria from the affected local  
 11 government's acknowledged comprehensive plan and land  
 12 use ordinances that are required by the state -- that  
 13 are required by the statewide planning goals identified  
 14 as applicable to a proposed facility.  
 15 Based on -- based on the facility type.  
 16 And the applicable substantive criteria, the  
 17 goalpost in Council's rules for that preliminary  
 18 application is submitted.  
 19 And so for land use for the jurisdictions  
 20 where the land use applies, that was 2013.  
 21 The analysis area for land use is one  
 22 half-mile from the site boundary. So that is the area  
 23 that is -- oops, looked at -- I wasn't ready for that.  
 24 And then the -- because this is a long linear facility,  
 25 we talked about the jurisdictions it crosses. It's five

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1 counties in Oregon. It crosses Malheur, Baker, Union,  
 2 Umatilla, and Morrow County. There's also some facility  
 3 components in North Powder and Huntington, Oregon.  
 4 So those are all of the local governments  
 5 that must comply with the land use standard.  
 6 And so the land use section in the proposed  
 7 order is very -- is very long. Right? Because  
 8 criteria -- I'm going to go to the next slide here --  
 9 that's -- the table is kind of small.  
 10 But these are the criteria that are  
 11 identified by the local governments. The applicant in  
 12 its Exhibit K also identifies criteria that is  
 13 applicable to the facility.  
 14 I'm going to kind of just go through these  
 15 pretty quickly. My presentation is fairly short on land  
 16 use just so we can go and talk to the -- I don't know.  
 17 The meatier stuff are the items that are related to the  
 18 contested case issue. So I'm kind of just doing a quick  
 19 overview of land use. And this is kind of the layout in  
 20 the section.  
 21 There are lots of land use conditions, and a  
 22 lot of them are -- I don't -- I'm kind of air quoting  
 23 "typical conditions" that would apply to setbacks of  
 24 certain -- certain structures. Same with compliance  
 25 with local permits, comprehensive and conditional use

1 permit submission under each county as per their  
 2 criteria.  
 3 So in Umatilla and Union County, as we can  
 4 kind of see on the top of each slide, I have a summary  
 5 of the -- the zones that are crossed by the facility.  
 6 In Umatilla and Union County, the facility  
 7 does cross forest lands. So under OAR  
 8 660-006-0025(4)(q), it establishes that new electric  
 9 transmission lines with right-of-ways up to 100 feet are  
 10 conditionally permissible uses within forest lands.  
 11 And we're kind of going back to that --  
 12 going back to the actual final right-of-way width of the  
 13 facility. And it is anticipated to be the 300 feet in  
 14 forest lands and that is to ensure that there is enough  
 15 vegetative clearance for hazard trees. And this is a  
 16 safety and fire prevention part of the operation and  
 17 maintenance of the transmission line. So this is  
 18 related to that wider right-of-way in forest lands.  
 19 The transmission line would satisfy  
 20 OAR 660-006-0025 (4)(q). However, the permanent access  
 21 roads that would be necessary to service  
 22 the transmission line in operation, those would be  
 23 located within the hundred foot right-of-way for which  
 24 the structures are allowable.  
 25 So the applicant requests that the Council

1 maintaining, you know, vegetative clearance in the -- in  
 2 the utility right-of-way.  
 3 Let me make sure. Okay. Now I'm done.  
 4 Sorry.  
 5 MR. RATCLIFFE: Thanks.  
 6 So issue LU-9, the limited party is Myers.  
 7 The issue is whether the applicant  
 8 adequately analyzed the risk of wildfires from the  
 9 operation of the proposed transmission line especially  
 10 during red flag warning weather conditions and the  
 11 impact, the proposed transmission lines will have on  
 12 Mr. Myers' ability to use an aerial applicator on his  
 13 farmland.  
 14 So in the Hearing Officer's proposed  
 15 contested case order, she first provided a definition of  
 16 what a red flag warning is.  
 17 It's a forecast warning issued by the  
 18 national weather service to inform the public,  
 19 firefighters, and land management agencies that  
 20 conditions are ideal for wildland fire combustion and --  
 21 rapid spread. Red flag warnings are often preceded by  
 22 a fire weather watch, which indicates weather conditions  
 23 that could occur in the next 12 to 72 hours.  
 24 A national weather service has developed  
 25 different zones across the nation for providing weather

1 take an exception to the statewide policy embodied in  
 2 goal four for the forest lands in Umatilla and Union  
 3 Counties.  
 4 And Jesse will go over those more in more  
 5 detail. But that's just kind of the setup background  
 6 for that portion.  
 7 So this is in Union County, which has the  
 8 same note about the forest lands.  
 9 And then Baker County. Shout out to  
 10 Umatilla County over here. Hi, guys. And Union. Oh,  
 11 Scott left. Okay.  
 12 All right. So -- and this is just a really  
 13 high-level overview. And that -- that's basically my  
 14 presentation, unless Council has any specific questions  
 15 to the proposed order, we can pass it off to Jesse.  
 16 VICE CHAIR HOWE: Floor is yours,  
 17 Mr. Ratcliffe.  
 18 MR. RATCLIFFE: Thank you.  
 19 MS. TARDAEWETHER: For the record, Kellen.  
 20 I did have a couple conditions here. I'll  
 21 just leave them up here. This is kind of -- this  
 22 relates to the wider right-of-way and forest lands and  
 23 then there's also the right-of-way clearing assessment  
 24 which talks about -- has that built-in agency  
 25 consultation. And this is the applicant's proposal for

1 alerts, such as red flag warnings, to more discrete  
 2 areas. These zones are monitored and factored into the  
 3 applicant's determination of whether to imitate a public  
 4 safety power shutoff. So a little bit of background on  
 5 what that is.  
 6 So the Hearing Officer's opinion concluded  
 7 that the risk of wildfire during red flag warning  
 8 weather conditions was adequately evaluated in the 2022  
 9 wildfire mitigation plan which was submitted by the  
 10 applicant during the contested case.  
 11 The potential fire risk zones along the  
 12 proposed route were evaluated in that mitigation plan.  
 13 The hearing officer found that evidence on  
 14 the record demonstrates that the distance between  
 15 structures -- the height of structures and soil type  
 16 result in low risk of the potential for large dust  
 17 devils to interact with the transmission line and cause  
 18 a fire.  
 19 Based on review of the data regarding fire  
 20 size and cause in the area, which is Morrow County, the  
 21 likelihood of a catastrophic project-related wildfire  
 22 during the operation is very low.  
 23 Therefore, there is no need for the  
 24 applicant to have a soil rehabilitation plan in place in  
 25 response to potential fire-related damage to

1 agricultural soils on Mr. Myers' property.  
2 Hearing officer found that the applicant  
3 provided expert testimony that evaluated the fuel source  
4 on Mr. Myers' property, including herbaceous, grass and  
5 grain vegetation.

6 Based on this fuel source, any fire on or  
7 near Mr. Myers' property is expected to be low intensity  
8 and fast moving. Given wind conditions in there area,  
9 low-intensity, fast-moving fires do not cause  
10 significant damage to soils.

11 Hearing officer found that the applicant  
12 identified potential impacts to agricultural operations,  
13 including accessibility to fields for aerial spraying.

14 Specifically under the agricultural  
15 mitigation plan, the applicant would be required to work  
16 with landowners, microsite the line, siting the line  
17 along the edge of fields or existing rights-of-way and  
18 negotiate right-of-way easements.

19 Finally, the hearing officer concluded that  
20 ORS 215.275 sub (5) does not require that there be no  
21 impacts from the transmission line to agricultural  
22 operations. The potential impacts to aerial spraying  
23 have been identified and evaluated, and the  
24 preponderance of evidence demonstrates that the  
25 applicant will generally reduce the intensity and

1 this zone as a critical fire risk, again, this zone has  
2 statistically the same number of red flag warnings  
3 issued on average as other zones that were classified as  
4 high -- critical -- high critical fire risk zones.

5 In addition, the ALJ was incorrect in  
6 finding that high winds pose little risk for wildfires  
7 caused by transmission line ignition.

8 In my supporting evidence I presented in  
9 multiple filings showing the 500 kV transmission lines  
10 have ignited fires in comparable landscapes. Idaho  
11 Power has confirmed this fact.

12 Furthermore, the ALJ was incorrect in  
13 finding that if a fire were to occur on my farm, it  
14 would have minimal soil impact. And there's no need for  
15 the IPC to have a soil rehabilitation plan in place.

16 Quite frankly, contrary to Idaho Power's  
17 expert witness, Mr. Madison, the facts provided in my  
18 direct testimony are a hundred percent accurate and  
19 specifically unique to this cropping system.

20 As supporting evidence, I provided a signed,  
21 written testimony of a local farmer that experienced the  
22 fire in his cropland. That fire impacted his soil  
23 negatively for over six year.

24 This is a well-documented testimony that  
25 completely contradicts Mr. Madison's findings. It is

1 frequency of impacts to farmlands.

2 That, again, is the summary of the hearing  
3 officer's findings and conclusions with respect to this  
4 issue and we're ready for Mr. Myers' oral argument.

5 MR. MYERS: -- we're directly -- or the  
6 applicant adequately analyzed the risk of wildfires from  
7 operation and during red flag warnings.

8 I request that you reverse the ALJ's  
9 decision, specifically the ALJ was incorrect in finding  
10 that Idaho Power adequately analyzed the risk of  
11 project-related wildfire during red flag warning,  
12 weather warning conditions, and in operation as well.

13 It's clear in the IPC's 2022 fire mitigation  
14 plan that they failed to include the zone that  
15 potential -- that poses a highest level of risk. That  
16 zone is over our farm. That's a weather service  
17 designated zone over our farm. It's not a zone that you  
18 talked about prior to this and that groups  
19 weather issues that are similar issued by the weather  
20 service itself.

21 The -- the IPC failed to include our zone as  
22 a critical fire zone risk or at-risk zone. They failed  
23 to include this. This zone includes our cropland, our  
24 farm. And this zone also makes up 25 percent of the  
25 proposed transmission line link. The IPC misclassifying

1 very clear that a much larger risk exists than what was  
2 assessed.

3 In essence, the risk on our section of farm  
4 has not been addressed and certainly not as adequately.

5 Judge Webster was incorrect in finding I did  
6 not timely offer testimony from the article by  
7 Zhaolin Gu into the hearing record. I presented this  
8 article within the filing deadline in my declaration  
9 testimony, and it is critical evidence -- crucial  
10 evidence related to my issue, should not be overlooked.

11 VICE CHAIR HOWE: Mr. Myers, you need to  
12 wrap up.

13 MR. MYERS: By leaving out this zone over  
14 our farm plays out in a number of different ways, but we  
15 are at risk of soil damage in a fire. Fires do happen.  
16 These lines do light fires. That's -- that's a fact.  
17 And our environment, locally, is at risk.

18 Because we don't have a large history of  
19 fires in our area is because we got lucky. And because  
20 local residents are diligent about not mishandling fire  
21 in any way to have a fire take off.

22 Things will change if a transmission line is  
23 installed. It's a different environment.

24 You can't say that because we haven't had  
25 fires prior to this, that it's not an issue. We just

1 got lucky and we've had people that care about not  
 2 lighting a fire by accident. And it does happen.  
 3 And we haven't had a lot of -- we're very  
 4 rural.  
 5 VICE CHAIR HOWE: Okay. Thank you very  
 6 much.  
 7 Are there questions from Council?  
 8 Councillor Beier.  
 9 COUNCILMEMBER BEIER: This is Councillor  
 10 Beier.  
 11 We just touched on the fire component -- the  
 12 wildfire component of your exception. But if you could  
 13 give us 20 to 30 seconds on the aerial application and  
 14 your concerns vis-à-vis the power line and how you apply  
 15 to your property.  
 16 MR. MYERS: Absolutely. Absolutely.  
 17 The IPC has tried to mitigate that with  
 18 lines going around fields and so on, they mentioned  
 19 that. Right?  
 20 In my case, it runs right through a -- a  
 21 section and a half of ground that had been continuously  
 22 farmed for 60 to 80 years.  
 23 I'm stuck with a line going right through my  
 24 field. What am I going to do?  
 25 I can't -- it's like -- there's no

1 Our understanding is that risk zone 641  
 2 includes Marrow and Umatilla County. And I do want to  
 3 ensure the Councilmembers that in the wildfire  
 4 mitigation plan itself, the company has thoroughly  
 5 addressed wildfire risk in those counties.  
 6 With respect to the public safety shutoff  
 7 plan, again, that's the plan for de-energizing lines in  
 8 certain emergency situations, that is a living document.  
 9 It only covers the transmission lines that have been  
 10 built. It's because it's dynamic and it has to always  
 11 change. So B2H has not been added to that -- to that  
 12 plan yet.  
 13 But it certainly will before it's energized.  
 14 And the company will have an appropriate plan for  
 15 that -- the PSPS.  
 16 So Mr. Myers also alleges that the hearing  
 17 officer erred by failing to consider evidence concerning  
 18 the risk of fire ignition with respect to 500 kV lines.  
 19 However, there was substantial evidence in  
 20 this case by our expert addressing this issue. And as  
 21 Idaho Power's expert witness explained, fires from  
 22 high -- extra high voltage lines, like a 500 kV line,  
 23 are extremely rare. They are much less likely to cause  
 24 fires because they are subject to stricter safety and  
 25 engineer requirements. They are high above the tree

1 mitigation here. It goes right through it. Right  
 2 through the middle of it.  
 3 I don't even know if I can farm it. I  
 4 can't -- what am I -- the pilot is not going to want to  
 5 go anywhere near that. I don't know the regulations  
 6 there. For my case, it is a disaster. There's no great  
 7 option. I appreciate that question. Immensely, I  
 8 really do.  
 9 VICE CHAIR HOWE: Thank you, Mr. Myers.  
 10 MS. RACKNER: Good morning. Lisa Rackner  
 11 for the record.  
 12 Mr. Myers' exceptions raise a number of  
 13 issues and I'm going to try to briefly address each of  
 14 them.  
 15 But before I do that, I just want to provide  
 16 a little bit of context about the company's wildfire  
 17 mitigation plan and public safety shutoff plan for  
 18 de-energizing lines. The company needs to --  
 19 Sorry about that. The company filed its  
 20 most recent -- it's 2022 plan with the Public Utility  
 21 Commission and that plan was approved.  
 22 Now, our understanding from Mr. Myers'  
 23 exceptions was his concern that the public safety power  
 24 shutoff plan doesn't include risk zone 641. That was an  
 25 issue he brought up for the first time.

1 line and they are a much wider right-of-way around --  
 2 around it.  
 3 So the hearing officer correctly found that  
 4 the risk that a fire would be started from a 500 kV line  
 5 was extremely -- was extremely low.  
 6 With respect to -- I know Councilmember  
 7 Beier wanted to know about the aerial spraying and the  
 8 issue there.  
 9 My understanding is that -- is that there  
 10 is -- B2H is planned right now to be routed through  
 11 Mr. Myers' farmland; that that was unavoidable. There  
 12 were a number of other constraints that led that to be  
 13 the case.  
 14 My understanding is that micro-siting of that  
 15 line is available, but to the extent there is some  
 16 impact on the aerial spraying operations planned on his  
 17 plan (sic), and we acknowledged that there will be --  
 18 that will become part of right-of-way negotiations and  
 19 there will be discussions about -- compensation for the  
 20 diminution of value of his farmlands for that reason.  
 21 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 22 Are there questions from Council?  
 23 Okay. Counsel Rowe.  
 24 MR. ROWE: Anything I add will just be in  
 25 addition to comments that Ms. Rackner made.

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1 The hearing officer considered Mr. Myers'  
 2 arguments. She found that Idaho Power had adequate --  
 3 (audio disruption) --  
 4 Okay. Sounds like everybody is back on  
 5 board.  
 6 This is Patrick Rowe, Department of Justice.  
 7 Just two brief comments.  
 8 Again, the hearing officer did find that  
 9 Idaho Power had adequately analyzed the risk of  
 10 wildfire. She cited to the wildfire mitigation plan.  
 11 With regard to the aerial spraying issue, in  
 12 addition to the measures that Ms. Rackner referenced  
 13 with regard to potential compensation to Mr. Myers, the  
 14 Department would also point out the recommended land use  
 15 condition 14 would require the certificate holder to  
 16 finalize and implement an agricultural mitigation plan.  
 17 That plan is described in attachment K-1 of the  
 18 application for site certificate. It includes measures  
 19 to avoid, mitigate, repair, and/or provide compensation  
 20 for impacts that may result from the construction or  
 21 operation of the project on privately owned agricultural  
 22 land.  
 23 THE COURT: Okay. Council, does anyone feel  
 24 there are changes needed to the language of land use  
 25 condition number nine?

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1 Councillor Condon.  
 2 COUNCILMEMBER CONDON: Cindy Condon.  
 3 And this is to, I think, Mr. Myers and  
 4 Ms. Rackner.  
 5 I'm a little bit confused and I think it has  
 6 been mentioned. But the substantial disagreement about  
 7 the zone being adequately -- this specific zone that  
 8 Mr. Myers -- on Mr. Myers' property.  
 9 It just sounds diametrically opposed. No --  
 10 no review or no analysis and then --  
 11 MS. RACKNER: I think that the -- I think  
 12 it's a disagreement about what it's called.  
 13 So in the wildfire mitigation plan, Idaho  
 14 Power did analyze the area that B2H is going to be going  
 15 through.  
 16 So -- and we felt that that was adequate and  
 17 we do feel that that was adequate. In his exceptions  
 18 for the first time, Mr. Myers' brought up -- he said,  
 19 well, you didn't look at this whole zone. And that was  
 20 the first time we had ever heard that. He also was  
 21 specific that we hadn't brought it up in the power  
 22 safety shutoff portion, which is kind of -- which is a  
 23 different document.  
 24 But to the extent, perhaps, he meant, you  
 25 didn't consider it at all in the wildfire mitigation

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1 plan itself, I think the answer is we didn't say we're  
 2 looking at the zone. We said we're looking at the route  
 3 that B2H goes through, which would be the zone of  
 4 concern for the purposes of our analysis. So -- so I  
 5 think we may just be crossing each other.  
 6 To -- so, I guess, that's the answer if  
 7 Mr. Myers is really referring to the wildfire mitigation  
 8 plan itself.  
 9 If Mr. Myers is, as he says in his  
 10 exceptions, really concerned about, well, what's in your  
 11 public safety shutoff plan? What is your plan for  
 12 de-energizing lines in the Morrow County/Umatilla County  
 13 area?  
 14 Then the answer is Mr. Myers is correct. We  
 15 don't have that in our public safety shutoff plan yet,  
 16 because that's a living document, as is the wildfire  
 17 mitigation plan.  
 18 But, particularly, the electrical  
 19 consequences of shutting off a plan. It's just very  
 20 technical and it is going to be very specific to the  
 21 line that you are talking about and what that line is  
 22 connected to. So B2H would not yet be included.  
 23 It is a living document. It will be  
 24 included.  
 25 COUNCILMEMBER CONDON: Thank you. And I do

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1 understand the difference between the power safety  
 2 shutoff.  
 3 But is Mr. Myers still here? I just want to  
 4 be clear. I -- in his remarks today, at least I don't  
 5 remember that he mentioned specifically the power  
 6 safety. I heard it as the wildfire mitigation analysis.  
 7 MS. RACKNER: That's what he said today and  
 8 that's why I answered the way I did.  
 9 COUNCILMEMBER CONDON: I just want to be  
 10 clear that we might be able to get some agreement that,  
 11 no, it was adequately or not analyzed.  
 12 MS. RACKNER: I don't see Mr. Myers in the  
 13 room.  
 14 COUNCILMEMBER CONDON: Thank you.  
 15 VICE CHAIR HOWE: Okay. With that, does  
 16 Council feel there's any changes needed to land use  
 17 condition nine?  
 18 Hearing none, I think we're ready for the  
 19 straw poll.  
 20 SECRETARY CORNETT: So it would be to "agree  
 21 with the findings of fact, conclusions of law, and  
 22 conditions of approval in the purposed contested case  
 23 order pertaining to issue LU-9."  
 24 VICE CHAIR HOWE: Sounds good.  
 25 SECRETARY CORNETT: Kent Howe.

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1 VICE CHAIR HOWE: Yes.  
2 SECRETARY CORNETT: Ann Beier.  
3 COUNCILMEMBER BEIER: Yes.  
4 SECRETARY CORNETT: Hanley Jenkins.  
5 COUNCILMEMBER JENKINS: (No audible  
6 response.)  
7 SECRETARY CORNETT: Jordan Truitt.  
8 COUNCILMEMBER TRUITT: Yes.  
9 SECRETARY CORNETT: Perry Chocktoot.  
10 COUNCILMEMBER CHOCKTOOT: Yes.  
11 SECRETARY CORNETT: Cindy Condon.  
12 COUNCILMEMBER CONDON: No.  
13 SECRETARY CORNETT: Thank you,  
14 Councilmembers.  
15 VICE CHAIR HOWE: Okay. Counsel Ratcliffe,  
16 it's back to you.  
17 MS. TARDAEWETHER: Okay. So our other land  
18 use issue is land use issue five.  
19 The limited party is Irene Gilbert.  
20 The issue statement is whether calculation  
21 of forestlands must be based on soil class or whether it  
22 is sufficient to consider acreage where forest is the  
23 predominant use.  
24 This was addressed by the hearing officer on  
25 a ruling on motion for summary determination, as a

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1 number of the other issues that the Council has been  
2 considering over the past few days have.  
3 Once again, that means that the hearing  
4 officer reached a conclusion that there were no  
5 materials -- issues of fact and that the issue is  
6 appropriate for disposition on interpretation of the  
7 law.  
8 The Hearing Officer's ruling concluded that  
9 Ms. Gilbert did not provide an adequate explanation as  
10 to how or why the Union County comprehensive plan or the  
11 Union County zoning ordinance are not compliant with  
12 goal four of the state's land use process.  
13 The hearing officer found that Ms. Gilbert  
14 did not previously claim that Union County applied an  
15 incorrect cubic foot per acre per year standard, or that  
16 Union County incorrectly identified the soil class in  
17 its comprehensive planning map, nor did she cite any  
18 applicable statute or administrative rule requiring  
19 Union County or the applicant to use a soil capacity  
20 standard of 20 cubic feet per acre per year when  
21 determining the predominant use and differentiating  
22 between farmland and forestland.  
23 The hearing officer concluded that Union  
24 County Planning Direct testimony from Mr. Mark Hartell  
25 confirms that the applicant worked with the Union County

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1 planning staff to determine the predominate use of each  
2 of the 61 parcels located in the timber grazing zone and  
3 used SSURGO soil data, the Union County tax law data,  
4 and GIS software in making that determination.  
5 And the hearing officer found that the  
6 amount of impacted forestland acreage specifically is  
7 not material to the goal four compliance analysis and  
8 that overall there were no issues of material fact on  
9 this issue.  
10 So that's the summary of the hearing  
11 officer's ruling on motion for summary determination as  
12 it appears in the proposed contested case order. And  
13 that brings us to oral argument from Ms. Gilbert.  
14 MS. GILBERT: To appear here would be  
15 humorous if it were not so sad. Let me get to my --  
16 The contested case here and the dismissal  
17 was with summary determination and findings of fact from  
18 the Administrative Law Judge are absolutely not correct.  
19 Summary judgment is not permissible if the  
20 opposing party demonstrates there are factual disputes  
21 going to the merit of the challenged agency decision. I  
22 did do that. And she indicated -- the statements that  
23 she made are just flat out incorrect.  
24 This contested case is regarding whether  
25 local land use rules that failed to comply with the

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1 state land use rules can be used to determine  
2 forestland. There are three of you with the experience  
3 in land use law.  
4 Can you ethically make a determination that  
5 a county planner can use county rules over state  
6 statutes when they conflict with one another.  
7 Scott Hartell, in his deposition, said this  
8 is the only document that he used to identify what was  
9 forestland in the combined area.  
10 It's -- the -- it shows only land that has  
11 67 -- 67 cubic feet per square acre or greater as  
12 forestland, did not even evaluate most of the land that  
13 is being called range or agricultural land.  
14 So anyway, there are multiple disputes of  
15 law. The overlying issue is whether the 2008 and 2011  
16 land use rule changes apply when a local government  
17 fails to update local land use regulations within one  
18 year as is required by the statute.  
19 Is the developer required to determine soil  
20 capacity for all soils in the combined ag. timber  
21 classification?  
22 The answer is yes. The Union County planner  
23 stated that was the only documents that he used to  
24 identify forestland.  
25 The hearings -- I'm just amazed, anyway.

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1 The Council needs to approve an exception to the summary  
 2 determination on this issue and allow a contested case  
 3 to move forward or remand to the hearings officer to  
 4 correctly identify forestland per the LCDC rules.  
 5 Evaluation of changes to related Council  
 6 rules -- they need to evaluate the changes to the  
 7 related council rules that are impacted by this  
 8 forestland decision, including LC-7 and LC-8.  
 9 Lisa Rackner even stated that it would be a  
 10 relatively small number of issues that could be handled  
 11 through summary determination and then the  
 12 Administrative Law Judge went ahead and approved all 33  
 13 that were requested.  
 14 We have disagreements of fact.  
 15 The proper identification of forestland is  
 16 critical to landowners. It has a significant impact on  
 17 the payment Idaho Power must pay the landowners when  
 18 they condemn land for the transmission line. One  
 19 Malheur County landowner said he was offered 3500  
 20 dollars, 3,500 for a 100 year right-of-way for a road  
 21 that crosses approximately one mile of his property.  
 22 VICE CHAIR HOWE: Ms. Gilbert, you need to  
 23 wrap it up.  
 24 MS. GILBERT: Yes, I know.  
 25 Anyway, leaving these landowners vulnerable

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1 to that kind of offer is not ethical. It's not -- it's  
 2 just not okay.  
 3 So I guess, thank you.  
 4 VICE CHAIR HOWE: Thank you.  
 5 Any questions from Council?  
 6 Okay. Thank you.  
 7 MS. GILBERT: This one will go to the  
 8 Supreme Court.  
 9 MS. RACKNER: So as Ms. Gilbert says, this  
 10 was an issue that the hearing officer disposed of on a  
 11 motion for summary determination.  
 12 In her DPO comments and petition,  
 13 Ms. Gilbert had argued that Idaho Power and Union County  
 14 failed to appropriately determine forestlands in Union  
 15 County based on soil class as is required by the Union  
 16 County rules but, instead, made an evaluation of what  
 17 land should be designated based on the current use of  
 18 that land.  
 19 But as the company demonstrated in its  
 20 motion for summary determination, that simply wasn't the  
 21 case.  
 22 So as some important background, the only  
 23 impacted forest acres in Union County are located in  
 24 hybrid forest farm zones.  
 25 Union County requires Idaho Power to

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1 determine whether the impacted parcels in the -- in the  
 2 hybrid zones should be considered forestland or farmland  
 3 and then apply the relevant land use standards based on  
 4 the predominant use of the impacted parcel.  
 5 Per the Union County zoning ordinance  
 6 predominant use is determined by soil type. And that's  
 7 exactly how Idaho Power, working with Union County, did  
 8 determine it.  
 9 So the un rebutted evidence in the record  
 10 shows that to determine the appropriate soil  
 11 classifications for each lot, Idaho Power worked with  
 12 Union County to analyze the soil data based on the  
 13 Natural Resources Conservation Services Soil Survey  
 14 Geographic database, which people refer to as "SSURGO,"  
 15 which was consistent with what was stated in  
 16 Mr. Hartell's deposition.  
 17 Any lot with soils consistent with  
 18 forestlands were designated as such. Now, there were  
 19 some parcels for which there was no soil data available.  
 20 And Idaho Power just conservatively assumed that was  
 21 forestland.  
 22 Now, when Union County reviewed these  
 23 determinations, including a review -- they included a  
 24 review of the current use of the land, but there were no  
 25 parcels for which that predominant use changed forest to

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1 agricultural land. So contrary to Ms. Gilbert's  
 2 arguments, the determination of forestland were made  
 3 entirely based on soil type.  
 4 Now, in her reply brief on summary judgment,  
 5 Ms. Gilbert did raise a different argument. Instead of  
 6 asserting that Idaho Power failed to rely on soil type,  
 7 she now argued that Idaho Power used the wrong approach  
 8 for its soil analysis. And she argue that Union County  
 9 failed -- and Idaho Power failed to apply what she  
 10 believes to be a state planning rule that any parcel  
 11 consisting primarily of soil types with timber  
 12 production capacity of 20 cubic feet per acre must be  
 13 considered forestland.  
 14 However, Ms. Gilbert never identified any  
 15 state statute or regulation to support that position and  
 16 that's why the hearing officer rejected her argument.  
 17 And I see I'm out of time. But if you have  
 18 any other questions, I'd be happy to hear them.  
 19 VICE CHAIR HOWE: Thank you, Ms. Rackner.  
 20 Questions from Council?  
 21 Okay. Counsel Rowe.  
 22 MR. ROWE: Patrick Rowe, Department of  
 23 Justice on behalf of Department of Energy.  
 24 As has been discussed, the issues related to  
 25 Union County zoning -- zoning code issue, evidence on

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1 the record shows that the applicant properly consulted  
2 with Union County on how to interpret and apply the  
3 requirements of that code.  
4 Union County Planning Director testified in  
5 the contested case and affirmed that the applicant's  
6 approach to evaluating both farm and forestlands in  
7 Union County was appropriate.  
8 So the Department agrees that it was -- it  
9 was appropriate for the hearing officer to dismiss this  
10 issue on summary determination.  
11 VICE CHAIR HOWE: Any questions from  
12 Council?  
13 Okay. Does Council feel that there's any  
14 changes needed to land use condition five?  
15 Hearing none. We're ready for a straw poll.  
16 SECRETARY CORNETT: Okay. So this will be  
17 for both the land use standard and issue LU-5.  
18 So agree with the findings of fact,  
19 conclusions of law, conditions of approval in the  
20 proposed order pertaining to land use stand -- land use  
21 standards that are not related to the issues in the  
22 contested case and in the proposed contested case order  
23 pertaining to issue LU-5.  
24 Jordan Truitt.  
25 COUNCILMEMBER TRUITT: Yes.

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1 SECRETARY CORNETT: Hanley Jenkins.  
2 COUNCILMEMBER JENKINS: Yes.  
3 SECRETARY CORNETT: Kent Howe.  
4 VICE CHAIR HOWE: Yes.  
5 SECRETARY CORNETT: Cindy Condon.  
6 COUNCILMEMBER CONDON: Yes.  
7 SECRETARY CORNETT: Ann Beier.  
8 COUNCILMEMBER BEIER: Yes.  
9 SECRETARY CORNETT: Perry Chocktoot.  
10 COUNCILMEMBER CHOCKTOOT: Yes.  
11 SECRETARY CORNETT: Thank you,  
12 Councilmembers.  
13 VICE CHAIR HOWE: Okay. We have a few  
14 remaining items. Adoption of minutes and some other  
15 things.  
16 Do we want to break for lunch and come back  
17 or go through?  
18 SECRETARY CORNETT: Entirely Council's  
19 discretion. So we have a couple remaining things for  
20 this agenda item and then the two minutes -- the draft  
21 minutes for the two Council meetings. So it is entirely  
22 your choice if you want to push through or if you want  
23 to take a break and come back.  
24 VICE CHAIR HOWE: What's Council's pleasure?  
25 Get a little food and come back and work through it?

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1 Working lunch. Okay. We'll take a  
2 15-minute break and be back -- do we need 15? Or do we  
3 want 10? Start at 12:30 or 12:35?  
4 Okay. 12:35 we'll come back.  
5 (A break was taken.)  
6 VICE CHAIR HOWE: Okay. I'm calling the  
7 Council back to order. So we're ready.  
8 I'll turn it over to Secretary Cornett.  
9 SECRETARY CORNETT: For the record, Todd  
10 Cornett.  
11 Thank you, Mr. Vice Chair.  
12 So we have one holdover issue, and that is  
13 the -- give me one second -- that is the structural  
14 standard.  
15 So at the beginning of day one, on the  
16 structural standard, Council had some questions. There  
17 was some interest in a condition related to notification  
18 related blasting.  
19 And so thanks to Christopher Clark, we  
20 tasked him with doing some research. He found some  
21 information related to the Oregon Department of  
22 Transportation. Provided that to us. Sarah was able  
23 to package that into condition language.  
24 So I have proposed condition language.  
25 Yeah, actually, I can just read it or if you would like

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1 me to share it on the screen.  
2 What's your preference?  
3 Okay. Maybe I will just email it to you.  
4 Okay. Give me one minute, please.  
5 Okay. It should only be just a minute.  
6 Give you a chance to eat a little bit more, too.  
7 So with the -- I'll work on the preamble.  
8 So this would be to "agree with the findings  
9 of fact, conclusions of law, and conditions of approval  
10 in the proposed order pertaining to the structural  
11 standard that are not related to issues in the contested  
12 case with the following modifications to be included in  
13 the draft framework blasting plan, Section 3.3.2,  
14 blasting and notification and safety procedures, which  
15 is an existing section of the plan under recommended  
16 soil protection condition one."  
17 And then the specific language we'll bring  
18 up on the screen.  
19 Okay. And I will -- you can see it, but I  
20 will read it.  
21 So this would be in addition to the  
22 notification that was previously in there -- in the  
23 newspaper. Not in place of it, but in addition to.  
24 So at least 14 days prior to any blasting  
25 necessary during construction of the facility,



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1 certificate holder shall ensure that its construction  
 2 contractor identifies all landowners of record and  
 3 occupants within 1250 feet of blasting actions and  
 4 provide notifications to those landowners and  
 5 occupants -- which I spelled incorrectly -- the blasting  
 6 schedule, potential hazards -- potential risks and  
 7 hazards, and of measures that will be taken to monitor  
 8 and minimize any ground shaking impacts.  
 9 VICE CHAIR HOWE: Any comments from Council?  
 10 COUNCILMEMBER BEIER: For the record, this  
 11 is Councilmember Beier.  
 12 And thanks to staff for addressing this  
 13 issue.  
 14 I know we heard testimony earlier today that  
 15 this really doesn't get at the heart of the issue, but  
 16 at least people will have notice and -- and understand  
 17 that there will be some impacts to their neighborhoods.  
 18 So thank you to staff.  
 19 VICE CHAIR HOWE: Councillor Condon.  
 20 COUNCILMEMBER CONDON: Thank you.  
 21 I'm just wondering if it would be beneficial  
 22 to have it as part of the notice contact information.  
 23 So, you know, should you have -- have  
 24 concern -- concerns -- you know, contact information --  
 25 contact Idaho Power, the blasting company. I don't know

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1 who would be contacted. But I'm wondering if that would  
 2 be helpful.  
 3 CHAIR HOWE: What does the rest of the  
 4 Council think of that suggestion?  
 5 COUNCILMEMBER TRUITT: Jordan Truitt.  
 6 I guess I suppose it -- I guess it depends  
 7 on who sends the notification out and who the  
 8 appropriate contact would be, whether it's a blasting  
 9 contractor or -- but, yeah.  
 10 VICE CHAIR HOWE: Does that look good,  
 11 Council?  
 12 Okay. Okay.  
 13 So what action do you need from Council?  
 14 SECRETARY CORNETT: A straw call as well.  
 15 VICE CHAIR HOWE: Roll call? Okay.  
 16 SECRETARY CORNETT: Cindy Condon.  
 17 COUNCILMEMBER CONDON: Yes.  
 18 SECRETARY CORNETT: Kent Howe.  
 19 VICE CHAIR HOWE: Yes.  
 20 SECRETARY CORNETT: Jordan Truitt.  
 21 COUNCILMEMBER TRUITT: Yes.  
 22 SECRETARY CORNETT: Perry Chocktoot.  
 23 COUNCILMEMBER CHOCKTOOT: Yes.  
 24 SECRETARY CORNETT: Ann Beier.  
 25 COUNCILMEMBER BEIER: (No audible response.)

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1 SECRETARY CORNETT: Hanley Jenkins.  
 2 COUNCILMEMBER JENKINS: Yes.  
 3 SECRETARY CORNETT: Thank you,  
 4 Councilmembers.  
 5 MR. RATCLIFFE: All right. So that has  
 6 taken us through all of the exceptions and oral  
 7 argument. We have also gone through all of the  
 8 standards now between the July and August meetings.  
 9 Where that is going to take us to is now,  
 10 based on the results of those straw polls, some work on  
 11 the part of myself and the staff to incorporate some of  
 12 the recommended changes that the Council would like to  
 13 see.  
 14 We'll be putting together a document that  
 15 will incorporate those changes. And where we have, you  
 16 know -- as the Council is probably familiar with, when  
 17 we get to this kind of draft final order stage, there  
 18 are a number of kind of scrivener's corrections that are  
 19 just meant to reflect that this is a final document  
 20 instead of a proposed document, so there will be those  
 21 sorts of changes.  
 22 But in addition where we do have these  
 23 proposed changes to conditions in particular, that will  
 24 trigger this material change hearing where, you know,  
 25 there will be an opportunity to comment on the -- those

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1 proposed changes specifically.  
 2 So when we get back together again, there  
 3 are going to be a couple of components here.  
 4 You know, it will be a review of the draft  
 5 final order and then this material change hearing, and  
 6 then that will ultimately culminate in the Council's  
 7 vote on the site certificate.  
 8 But before we get to leave this agenda item,  
 9 there's one other housekeeping thing that I want to note  
 10 here.  
 11 MR. ROWE: Jesse, I'm sorry to interrupt --  
 12 sorry to interrupt. Before we get off the scrivener  
 13 error issue, I just want to point out that I've just  
 14 been conferring with Secretary Cornett that if any of  
 15 the parties or limited parties have scrivener error  
 16 corrections that they would like to suggest, that they  
 17 do so and we believe a week from today would be  
 18 appropriate.  
 19 MR. RATCLIFFE: Okay.  
 20 MR. ROWE: And that would be scrivener  
 21 corrections to the proposed contested case order or to  
 22 the proposed order.  
 23 MR. RATCLIFFE: All right. Thank you for  
 24 that clarification.  
 25 So the one other housekeeping thing I wanted

1 to note was in reference to a comment that I made  
2 towards the beginning of the meeting where I was going  
3 over some of the procedural issues that had been raised  
4 on the contested case record. And one of the issues had  
5 been some conditions that have been proposed at closing  
6 argument.

7 And we just went through some of those  
8 conditions here with Mr. Anuta and Idaho Power with  
9 regard to the noise standard.

10 Most of the other conditions the hearing  
11 officer had addressed as saying I don't think these are  
12 timely filed, however, you know, here are the other  
13 reasons that I am not planning to adopt them if she  
14 didn't plan to adopt them.

15 And, essentially, the reasoning on all of  
16 those was the conditions that show up in the proposed  
17 contested case order and the proposed order are  
18 sufficient as they are. The ones that have been  
19 adopted. They are sufficient as they are to demonstrate  
20 a finding of compliance with whatever the Council  
21 standard is that -- that's in play, whether it's land  
22 use or waste minimization or whatever it is.

23 There are a handful of those conditions that  
24 she did not add that extra sentence on to; however, by  
25 implication, the reasoning is the same. She didn't

1 SECRETARY CORNETT: That's a good question.  
2 For the record, Todd Cornett.

3 So what we're -- the next Council meeting --  
4 which I think I may have missed that in my secretary  
5 report -- we're looking at September 27th, which is  
6 Tuesday. We'll be in Salem. So either remote or in  
7 Salem, you know, as available for Councilmembers. And  
8 we would then be getting the draft of the final order --  
9 at least two weeks ahead of time -- out. We'll try to  
10 get it out earlier than that, but we're already on the  
11 clock. So that would hopefully give Councilmembers and  
12 Idaho Power and limited parties an opportunity to look  
13 at that. We will identify any material changes.

14 So, you know, structurally, you know, you're  
15 looking at the proposed order and the proposed contested  
16 case order.

17 What then happens is those get folded kind  
18 of together in a way to become the draft of the final  
19 order, which you will then be looking at. And as we  
20 talked about earlier, any material changes that are  
21 identified -- and we will call those out specifically so  
22 people don't have to comb through it to kind of figure  
23 out where those are. There will be a material change  
24 hearing, so those who want to make comment on those can.

25 And then if Council is ready, you could be

1 adopt the conditions because she had separately  
2 concluded that those standards had been satisfied with  
3 the conditions that were in the proposed order or  
4 proposed contested case order.

5 And so I just wanted to -- to note that for  
6 Council that that is probably, you know, something that  
7 I would suggest that in coming back to you with the  
8 draft final order that we take that implicit, you know,  
9 reasoning from the -- the hearing officer and make that  
10 explicitly consistent with her statements with respect  
11 to the other -- other conditions, just so that we don't  
12 have a reasoning gap there, as it exists in the proposed  
13 contested case order.

14 So if there are any questions on that, ask  
15 away, but that's all I have on that one.

16 VICE CHAIR HOWE: Any questions from  
17 Council?

18 Any action needed today from Council?

19 MR. RATCLIFFE: No, other than just kind of  
20 a head nod that -- that we're headed in the right  
21 direction on that one.

22 VICE CHAIR HOWE: Yeah. Okay. Councillor  
23 Beier.

24 COUNCILMEMBER BEIER: Timing? Calendar?  
25 Just curious.

1 issuing a final decision during that Council meeting in  
2 September.

3 VICE CHAIR HOWE: Cindy Condon.

4 COUNCILMEMBER CONDON: Cindy Condon.

5 Just a quick question. Monday -- I think it  
6 was Monday -- we discussed some language where "would"  
7 was replaced for "will." And agreed to change it there.

8 And -- I should have brought it up at the  
9 time, but I think that's used throughout the proposed  
10 order. And if staff could just take a look at that for  
11 the same reasons.

12 SECRETARY CORNETT: Yeah. Again, for the  
13 record, Todd Cornett.

14 So Sarah Esterson responded to that. And  
15 the way she had responded to that, you know, the -- the  
16 documents, as they are moving through the process, are  
17 either the Department's documents, so the draft proposed  
18 order; that's our. The proposed order, that's our. The  
19 proposed contested case order; that's the Hearing  
20 Officer's. The final order is your document.

21 And so the way we structure some of the  
22 recommendations on findings, we recommend Council -- so  
23 there's a lot of language like that that gets converted  
24 from those, you know, documents that are moving up  
25 through the process that are not your documents to the


1 final version which is your document. So we will make  
 2 those changes within the final -- or at least the draft  
 3 of the final order.  
 4 COUNCILMEMBER CONDON: Thank you.  
 5 VICE CHAIR HOWE: And so kind of head nods  
 6 from Council regarding the superfluous conditions being  
 7 removed and brought back to us in the September meeting?  
 8 MS. TARDAEWETHER: Sorry. I just wanted to  
 9 follow up on the -- the -- the will/would -- and for the  
 10 record, Kellen Tardaewether. Did I say that?  
 11 And Todd is absolutely correct. A lot of  
 12 the tenses and the recommends and the order language,  
 13 all of those change when -- in the final order. And I  
 14 think that we -- we have flagged where you identified it  
 15 with -- you know, relative to that sentence and wanting  
 16 to change it to a "shall."  
 17 But this is like the -- using "would"  
 18 instead of "will," it is -- I guess we do that for all  
 19 of our -- all of our projects and all of our documents,  
 20 so -- and it doesn't necessarily mean that every "would"  
 21 is going to turn into a "shall." Because some of it is  
 22 just actually temporal.  
 23 It's just like -- because even in the final  
 24 order it's still -- they are going to -- it is still  
 25 going to do -- so -- so I just want to be very clear.

1 will be an opportunity for comment. And that -- I was  
 2 trying to scroll through the details of how that hearing  
 3 is supposed to work.  
 4 I didn't get to it on the fly quite fast  
 5 enough here. But I think that the -- the point here is  
 6 that for the interested parties that when we send out  
 7 notice of the meeting, those -- all those details about  
 8 the opportunity for -- for argument and comment on the  
 9 material changes will be included.  
 10 COUNCILMEMBER JENKINS: So, Mr. Chair, does  
 11 that material change hearing occur on the 27th?  
 12 SECRETARY CORNETT: For the record, Todd  
 13 Cornett.  
 14 What constitutes material changes, you know,  
 15 can be fairly narrow. So it is not everything that the  
 16 Council decided is going to be a material change. But  
 17 we will, you know, thoroughly evaluate that and again  
 18 call out those material changes.  
 19 So at this point, I can't tell you if it's 3  
 20 or 15. You know, but we will call those out and those  
 21 will be available for oral comment.  
 22 VICE CHAIR HOWE: Didn't we decide a year  
 23 ago the "shalls" become "must"?  
 24 SECRETARY CORNETT: Yeah. There was some  
 25 conversation about that. I do not recall. We would

1 It's some -- not every would is going to turn into a  
 2 shall, because some places it just won't make sense.  
 3 It's just kind of the tense -- we do it. Anyhow, it's  
 4 just a tense of how we include in the documents.  
 5 COUNCILMEMBER CONDON: Thank you.  
 6 And I -- I just want to reiterate. So  
 7 "would" to me is a conditional element. So the would  
 8 do, if applies, and so "will" or "shall" or "must" is  
 9 not as conditional. And so I just want to be clear  
 10 about that. That's the issue.  
 11 SECRETARY CORNETT: Yeah.  
 12 For the record, Todd Cornett. Thank you.  
 13 We absolutely totally agree with that.  
 14 And to Kellen's point, you know, if it is in  
 15 a condition and it is being a mandatory, in those, we  
 16 absolutely, will/shall. You know, but again, depending  
 17 upon other circumstances, you know, it may be -- the  
 18 word "would" may be the appropriate word.  
 19 So we will evaluate all of those in context,  
 20 you know, of the structure of the findings, the  
 21 conditions, whatever it is. And any of those changes  
 22 will be in strike out, so you will be able to see those.  
 23 MR. RATCLIFFE: And I'm just responding.  
 24 Mr. Anuta just handed me a note about the  
 25 material change hearing. And it is a hearing. There

1 have to go back and look at that.  
 2 VICE CHAIR HOWE: Just remember that.  
 3 SECRETARY CORNETT: Yeah.  
 4 VICE CHAIR HOWE: Okay. Then is the next  
 5 item --  
 6 SECRETARY CORNETT: If I may -- if you'll  
 7 allow me, just before we conclude agenda item B. So the  
 8 work involved for this agenda item was monumental. And  
 9 I know everybody knows that. But I think it is worth  
 10 stating for the record that the amount of effort put in  
 11 by everybody -- by the limited parties, by Idaho Power,  
 12 by Department of Justice, by my staff, by Council, this  
 13 has been monumental. The amount of time and effort  
 14 preparing for this meeting and then going through this  
 15 meeting is very, very significant.  
 16 So I just want to call out to everybody, you  
 17 know, my appreciation for the commitment, the time, the  
 18 complete effort put into this.  
 19 I know not everybody is in agreement on all  
 20 of the outcome, but I just want to recognize the serious  
 21 effort that went into this. So thank you to everybody  
 22 who participated in there.  
 23 VICE CHAIR HOWE: I second that.  
 24 Okay. So we're ready to move to approval of  
 25 minutes as -- going back to the June 23rd/24th meeting

1 minutes and the July 22 meeting minutes.  
 2 Do we have a motion?  
 3 COUNCILMEMBER JENKINS: This is Hanley.  
 4 I so move, and as prepared.  
 5 VICE CHAIR HOWE: For both dates?  
 6 COUNCILMEMBER JENKINS: Yes.  
 7 VICE CHAIR HOWE: Is there a second?  
 8 COUNCILMEMBER TRUITT: This is Jordan.  
 9 I will second.  
 10 VICE CHAIR HOWE: Okay. Ready to call the  
 11 roll, Secretary Cornett?  
 12 SECRETARY CORNETT: Give me one second.  
 13 Kent Howe.  
 14 VICE CHAIR HOWE: Yes.  
 15 SECRETARY CORNETT: Ann Beier.  
 16 COUNCILMEMBER BEIER: (No audible response.)  
 17 SECRETARY CORNETT: Hanley Jenkins.  
 18 COUNCILMEMBER JENKINS: Yes.  
 19 SECRETARY CORNETT: Jordan Truitt.  
 20 COUNCILMEMBER TRUITT: Yes.  
 21 SECRETARY CORNETT: Perry Chocktoot.  
 22 COUNCILMEMBER CHOCKTOOT: Yes.  
 23 SECRETARY CORNETT: Cindy Condon.  
 24 COUNCILMEMBER CONDON: Yes.  
 25 SECRETARY CORNETT: Motion carries, Mr. Vice

1  
 2 CERTIFICATE  
 3  
 4  
 5 STATE OF WASHINGTON )  
 ) ss.  
 6 COUNTY OF KITSAP )  
 7  
 8 I, CRYSTAL R. McAULIFFE, a Certified Court  
 9 Reporter in and for the State of Washington, do hereby  
 10 certify that the foregoing transcript of the Energy  
 11 Facility Siting Council Meeting on AUGUST 31, 2022, is  
 12 true and accurate to the best of my knowledge, skill and  
 13 ability.  
 14 IN WITNESS WHEREOF, I have hereunto set my hand  
 15 and seal this 9th day of September, 2022.  
 16  
 17   
 18 *Crystal R. McAuliffe*  
 19 CRYSTAL R. McAULIFFE, RPR, CCR #2121  
 20 Oregon CCR 22-0002  
 21  
 22  
 23  
 24  
 25

1 Chair.  
 2 VICE CHAIR HOWE: Is there any other  
 3 business for the good of the order?  
 4 SECRETARY CORNETT: Mr. Chair, there is no  
 5 more business from staff's perspective.  
 6 VICE CHAIR HOWE: Anything from Council?  
 7 Okay. The time is now 12:57 p.m., and the  
 8 August 29th, 30th, and 31st, 2022 meeting of the Energy  
 9 Facility Siting Council is now adjourned.  
 10  
 11 (Adjourned at 12:57 p.m.)  
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 13  
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