Mr. Eric Hackett  
Idaho Power Corp.  
P.O.Box 70  
Boise, Idaho 83707  

January 26, 2009  

Dear Eric,  

Attached is the Project Order for the proposed Boardman to Hemingway transmission line.  

The project order is based on the Notice of Intent (NOI) that Idaho Power submitted to the Oregon Department of Energy on August 28, 2009. It reflects comments made by state agencies and the commissions of all five Oregon counties affected by the proposed project.  

The project order also reflects the comments on the NOI made by the public at the joint public information meetings that were held in October 2008, received through the project website, or sent directly to the Department by email or US mail.  

Although the Project Order is a long document, there are key points that ODOE wants to emphasize. These issues were raised repeatedly in public and agency comments, particularly from the commissioners of the five Oregon counties. Many of these issues relate directly to the proposed project’s ability to comply with the rules of EFSC, other state agencies and local governments. These issues must be addressed adequately in the Application for Site Certificate in order for ODOE to find the application complete. This could mean providing mitigation, but it could also mean modifying the route to avoid the impact. In particular, the application must address the following: 

Impact on land in the Oregon Exclusive Farm Use Zone:  
ODOE is particularly concerned about the many public and agency comments stating that Idaho Power must do more to avoid land in Oregon zoned Exclusive Farm Use (EFU). Much of the route described in the NOI is located in the EFU zone. Oregon land use law strongly protects EFU land, and allows its use only if alternatives were seriously considered and were shown not to be feasible according to criteria prescribed in the statute. Idaho Power must seriously consider route alternatives through other lands before using the EFU zone in Oregon. This includes alternatives that bypass part of Oregon by using a more direct route through Idaho.  

If the line must be sited in the EFU zone, Idaho Power must demonstrate compatibility with the prevailing farm use and with practices such as irrigation and pest and weed control.
Use of Federal Land
Many residents and elected officials expressed concern about the large use of private land, compared to the much smaller use of BLM or US Forest Service land. ODOE recognizes that only those federal agencies have the authority to grant right of way on the lands that they manage, subject to the federal regulations and state and federal mitigation requirements. However, EFSC must consider the impact on private lands as well as public lands. ODOE expects Idaho Power to work with BLM on route alternatives that minimize impact on private land, particularly farm land, even if that means requesting additional right of way from the federal agencies. If Idaho Power cannot avoid private land by seeking right of way on federal land, then that prohibition must be based on applicable federal regulations and must be documented by the federal agencies.

Habitat Impacts on Private Land
Many of the comments on the NOI documented habitat values on private land. For example, some property owners have managed their property for habitat value under agreements with ODFW or federal agencies.

The EFSC habitat standard is based on habitat value, regardless of whether the land is public or private. High category (category 1 or 2) habitat on private land is afforded the same protection under EFSC standards as similar category public land. Comments from resource agencies have focused largely on the sage grouse, but ODFW has also noted that Big Game Range is considered Habitat Category 2.

Consideration of Alternate Routes
Many comments included alternate route suggestions. Some suggestions were short detours along the route described in the NOI, and others involve a major reroute.

EFSC expects Idaho Power to seriously consider alternate routes that are feasible and would reduce impact on private land. This may involve changing the proposed route and examining routes that were not previously considered. We understand that this will take more effort and more time, and could cause the application to be submitted at a later date than originally projected. However, this step is necessary for the Council to find that the project minimizes adverse impacts on the resources protected by its standards.

ODOE would like to discuss the contents of this Project Order with you in detail and in person. Please contact the Project Officer, Adam Bless, or the Siting Manager, Tom Stoops to arrange a date when we can go over this order in detail. As always, feel free to contact ODOE at any time.

We would like to thank Idaho Power for the high level of outreach and consultation with reviewing agencies, local county governments and other stakeholders to date. We look forward to working with you in reviewing a proposal for the transmission line that meets the company’s needs and is acceptable to the many stakeholders along the route.

Sincerely,

Adam Bless
Oregon Department of Energy
OREGON DEPARTMENT OF ENERGY

Regarding Statutes, Administrative Rules and Other Requirements Applicable to the Proposed Idaho Power Boardman to Hemingway Transmission Line Project

PROJECT ORDER

On August 28, 2008, the Oregon Department of Energy (ODOE) received a Notice of Intent (NOI) to apply to build a new aboveground 500-kV single-circuit transmission line that would connect an existing power plant near Boardman, Oregon, and the planned Hemingway substation near Murphy, Idaho. The Applicant is Idaho Power Company (IPC). The proposed transmission line would run approximately 298 miles through five Oregon counties and three Idaho counties and connect with transmission lines on either end of the project to convey electricity on a regional scale. An additional in-line substation will be located in the vicinity of Sand Hollow, Idaho. As described in the NOI, approximately 86% of the transmission line would be located on private land, with the remainder on federal land managed by the US Bureau of Land Management (BLM) or the US Forest Service (USFS). The facility would require a Site Certificate from the Oregon Energy Facility Siting Council (EFSC or the “Council”) and approval under the National Environmental Policy Act (NEPA) process, which is required for any proposed action on federally-managed lands.

On September 4, 2008, ODOE prepared the memorandum described in OAR 345-015-0120 and distributed it, together with reference to the website location of the NOI (and the offer to forward a printed copy of the NOI on request) to the officers, agencies, and tribes described in OAR 345-020-0040. In the memorandum, ODOE requested agency comments on the NOI by October 10, 2008. ODOE received comments from the Oregon Department of Environmental Quality, Oregon Water Resources Department, Oregon Department of Transportation, Oregon Parks and Recreation Department, Oregon Department of Fish and Wildlife, the Confederated Tribes of the Umatilla Indian Reservation, and the U.S. Department of the Interior, Bureau of Reclamation. Local governments including Malheur County, Umatilla County, Union County, and the cities of Ontario, Pilot Rock, Vale, Echo, and Boardman commented in writing.

On September 12, 2008, BLM published an NOI to prepare an environmental impact statement for this project in the Federal Register, to notify the public and affected agencies of the preliminary issues associated with this project. On September 25, 2008, ODOE issued a public notice of the EFSC NOI to the EFSC mailing list and to adjacent property owners as defined in OAR 345-020-0011(1)(f). This public notice was distributed jointly with the BLM to satisfy both NEPA and EFSC requirements. The notice announced a series of public information meetings to be held in Marsing, Idaho on October 21; Ontario, Oregon on October 22; Baker City, Oregon on October 23; Island City, Oregon on October 28; Pendleton Oregon, on October 29; and

1 These percentages are preliminary and are likely to change as the applicant finalizes the proposed route.

2 The NOI that BLM published in the Federal Register is a different document from the EFSC NOI that Idaho Power submitted under OAR 345 Division 20. In this project order, the term “NOI” refers to the document submitted to the Oregon Department of Energy by the applicant under OAR 345 Division 20 unless specified otherwise.
Boardman, Oregon on October 30, 2008. In the notice, ODOE requested public comments on the NOI by November 14, 2008.

Under Oregon law, ODOE must issue a project order following receipt of a Notice of Intent (ORS 469.330(3)). OAR 345-015-0160(1) requires in relevant sections that ODOE issue a project order that establishes the following:

(a) All state statutes and administrative rules containing standards or criteria that must be met for the Council to issue a site certificate for the proposed facility, including applicable standards of OAR Chapter 345, Divisions 22, 23 and 24;

(b) All local government ordinances applicable to the Council's decision on the proposed facility;

(c) All application requirements in OAR 345-021-0010 applicable to the proposed facility;

(d) All state and local permits necessary to the construction and operation of the proposed facility and the name of each agency with the authority to issue such permits;

(e) Any other data and information that must be included in the application for a site certificate to allow the Council to determine whether the proposed facility will comply with applicable statutes, administrative rules and local government ordinances;

(f) The analysis areas for the proposed facility;

(g) Public concerns that address matters within the jurisdiction of the Council that the applicant shall consider and discuss in the application for a site certificate, based on comments the Department has received;

(h) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required in OAR 345-020-0011(1)(d), any adjustments to the corridor(s) that the applicant shall evaluate in the corridor selection assessment described in OAR 345-021-0010(1)(b);

(i) If the applicant chooses to demonstrate need for a proposed electric transmission line under the economically reasonable rules, OAR 345-023-0030 and 345-023-0040, the alternatives the applicant must evaluate in the application for site certificate in lieu of construction and operation of the proposed facility in addition to the alternatives described in 0010(1)(n)(E) or (F), if any; and

(j) The expiration of the NOI, according to OAR 345-020-0060(1).

ORS 469.401(4) provides that a site certificate issued by the Council does not govern certain matters. This Project Order does not consider matters outside the Council's jurisdiction. IPC must
nevertheless comply with all statutes, regulations and local ordinances applicable to the proposed facility.

As provided in ORS 469.330(4), ODOE or the Council may amend this Project Order at any time. The definitions in ORS 469.300 and OAR 345-001-0010 apply to the terms used in this Project Order, except where otherwise stated or where the context indicates otherwise.

THEREFORE, pursuant to 345-015-0160(1), the Oregon Department of Energy orders that:

I. DEFINITIONS (see ORS 469.300 and OAR 345-001-0010)

As used in this Project Order:

"Energy facility" means the proposed high voltage transmission line. The term “energy facility” does not include any related or supporting facility. If a reference is intended to apply to both the energy facility and its related or supporting facilities, the term “facility” is used.

“Related or supporting facilities” means any structure, proposed by the applicant, to be constructed in connection with the construction of the energy facility. The Council interprets the terms “structure, proposed by the applicant, to be constructed in connection with” as meaning that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility.

“Facility” means an energy facility together with any related or supporting facilities.

“Energy facility site” means all land upon which an energy facility is located or proposed to be located.

“Related or supporting facilities site” means all land upon which related or supporting facilities for an energy facility are located or proposed to be located. For pipelines, this includes the right of way, any construction right of way and associated laydown or staging area.

“Site” means all land upon which a facility is located or proposed to be located.

II. STATUTES, ADMINISTRATIVE RULES, RELATED PERMITS OR OTHER APPROVALS AND DISCUSSION OF SPECIFIC INFORMATION

This section identifies the Oregon statutes and administrative rules that IPC must address in the application and related state permits and approvals. This section discusses specific information to be included in the application.

1. Energy Facility Siting Council

Statute and Rule References: Statutes pertaining to the regulation of energy facilities, starting at ORS 469.300, Administrative rules in OAR Chapter 345, Divisions 1, 21, 22, 24, 26 and 27.
**Permit:** An energy facility site certificate is required before construction or operation.

**Discussion:** Section V below describes specific application requirements under OAR 345-021-0010.

All general standards in OAR Chapter 345, Division 22, apply to the proposed facility. If the Council issues a site certificate for the proposed facility, the certificate holder must implement a compliance plan, as described in OAR 345-026-0048. The site certificate will contain the mandatory conditions, applicable site-specific conditions, and monitoring conditions described in OAR 345-027-0020, -0023 and -0028.

2. **Oregon Department of Agriculture – Plant Conservation Biology Program**

**Statute and Rule References:** ORS Chapter 564, OAR Chapter 603, Division 73

**Permit:** None required.

**Discussion:** The Oregon Department of Agriculture ("ODA") provides technical review and recommendations regarding compliance with the Council’s threatened and endangered species standard (OAR 345-022-0070) as it relates to plant species.

OAR 603-073-0070 contains the state list of endangered and threatened plant species. OAR 603-073-0080 gives ODA the authority to designate candidate plants. If IPC finds any state-listed threatened or endangered plant species that may be affected by the proposed facility, IPC must address the requirements of OAR 603-073-0090(5)(d)(A)-(E) in the application.

IPC should include in its application a list of both state- and federally-listed endangered, threatened, and candidate plant species that have potential to occur in the analysis area. IPC should identify these species based on a review of literature, consultation with knowledgeable individuals, and reference to the list of species on the Oregon Natural Heritage Program.

IPC should include in its application a description and the results of a field survey for the listed plant species. A qualified individual shall conduct the field survey during the season or seasons appropriate to the plant species under consideration. The field survey report should include written descriptions of the survey methods and areas surveyed. IPC should consult with the Oregon Department of Agriculture, Native Plant Conservation Program, regarding field survey methods, appropriate survey seasons and qualifications of field survey personnel.

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3 OAR 345-022-0070 applies only to state-listed plant and animal species. However, OAR 345-021-0010(1)(q) requires applicants to consider plant and animal species listed as endangered or threatened under both state and federal law. This requirement applies because the Council, in making its decision, must be mindful of possible adverse impacts to federally listed species. Note also that OAR 345-022-0070 applies to all lands affected by a proposed facility including state, federal and private lands.
3. Department of Environmental Quality – Water Quality

Statute and Rule References: ORS Chapters 468 and 468B, OAR Chapter 340, Division 45.

Permits: NPDES Construction Storm Water 1200-C Permit (“NPDES”) and Clean Water Act Section 401 Water Quality Certificate

Preliminary agency comments on the NOI request that IPC determine the potential for stormwater discharge to a surface water body and total disturbed area in order to evaluate whether the 1200-C construction stormwater permit is required for the proposed project. Projects less than one acre or without the potential for discharge to a surface water body or conveyance to surface water (e.g. drainage ditch or storm sewer) are not required to obtain coverage under the 1200-C construction stormwater permit.

Under OAR 345-021-0000(7), the ODOE shall not find a site certificate application complete unless the applicant has submitted to the ODOE a copy of each federally-delegated permit application. The applicant must also provide a letter or other indication from the Oregon Department of Environmental Quality (DEQ) stating that the agency has received a permit application from the applicant, identifying any additional information the agency is likely to need from the applicant based on the agency’s review of the application as submitted and estimating the date when the agency will complete its review and issue a permit decision.

The U.S. Environmental Protection Agency has delegated authority to DEQ to issue NPDES Storm Water Discharge permits for construction and operation activities. The Council does not have jurisdiction over the federally-delegated NPDES permit, but the Council may rely on the determinations of compliance and the conditions in the federally-delegated permit in making its determination about whether other standards and requirements under the Council’s jurisdiction are met. In particular, site certificate holders have frequently relied on the Erosion and Sediment Control Program (ESCP) that is required for the 1200-C permit as evidence of compliance with the EFSC Soil Protection standard and with some applicable land use ordinances. If Idaho Power will cite the ESCP in support of compliance with Council standards, then the complete ESCP must be provided for the application to be complete.

4. Department of Environmental Quality – Hazardous Materials

Statute and Rule References: ORS Chapters 465 and 466; OAR Chapter 340, Divisions 100 through 122

Permit: None required

Discussion: IPC must include in the application a list of all hazardous materials that potentially would be stored or used at the facility site during construction and operation.
IPC must comply with DEQ regulations concerning the use, clean up and disposal of hazardous materials.

The DEQ hazardous materials program implements requirements of the US EPA and is considered a federally delegated program. However, information on hazardous materials use and storage is important in determining the potential for spills that could adversely impact soils and potentially affect the cost and success of site restoration. Therefore, the application should include sufficient information on hazardous materials use and storage to assess compliance with the Soils and Retirement standards. A complete application would include sufficient information on plans and programs for hazardous materials storage for DEQ to comment on their adequacy in the course of their comments on the Application for Site Certificate.

5. Department of Environmental Quality – Noise Control Regulations

Statute and Rule References: ORS 467.020, ORS 467.030, OAR 340-035-0035

Permit: None required

Discussion: The proposed facility must comply with the noise control regulations applicable to industrial facilities at OAR 340-035-0035. The requirement is incorporated in the general standard of review, OAR 345-022-0000.

IPC shall include a noise analysis in the application. The analysis must contain information to support a finding by the Council that the proposed facility would comply with the requirements of OAR 340-035-0035.

The DEQ noise regulations have been most frequently applied to fixed site industrial facilities such as power plants. However, the regulations apply to all energy facilities. The application should provide the distance between the transmission line and the nearest noise sensitive receptors as that term is defined by DEQ. The application should include baseline sound measurements at the noise sensitive receptors most likely to be affected. Because of the effect that terrain has on noise transmission, multiple baseline noise measurement will probably be necessary. Baseline noise measurements must be taken under conditions when low ambient noise is expected. The application should include information on noise from the transmission line under reasonably expected weather conditions, including weather conditions that typically result in greater noise production. The application should not rely on literature or projected data for sound production from the transmission lines, but should be based on actual measurements of existing transmission lines of similar design under similar weather conditions. If IPC requests a wide corridor, the noise analysis must be conservatively based on the assumption that the transmission line will not be in the center of the corridor but will be placed on the edge of the corridor that is closest to the most limiting noise sensitive receptors. The application should provide evidence that the noise from the transmission line, as measured at the maximally affected noise sensitive receptor, will not exceed the ambient degradation rule of 10 dB above baseline, or the absolute levels listed in Table 8 of OAR 345-035-035.
6. Oregon Department of Fish and Wildlife

Statute and Rule References: ORS Chapters 496, 498, 506, and 509; OAR Chapter 635, Divisions 100, 415, and 425

Permit: None required

Discussion: The Oregon Department of Fish and Wildlife (ODFW) provides technical review and recommendations on compliance with Council rules set forth in OAR 345-021-0010(1)(p) and (q) and 345-022-0040, -0060 and -0070. ODFW will base its review and recommendations on state policies concerning Wildlife, Threatened and Endangered Wildlife Species, Protection and Propagation of Fish, Food Fish Management, Fish Passage and Screening Devices, and Placing Explosives in Waters.

ODFW provided detailed comments on the NOI by letter dated October 20, 2008. The main contact person for ODFW for the proposed project will be Rose Owens at headquarters and Colleen Fagan in the La Grande office.
7. Department of Geology and Mineral Industries

Statute and Rule References: OAR 345-021-0010 and 345-022-0020

Permit: None required.

Discussion: The Department of Geology and Mineral Industries (DOGAMI) provides technical review and recommendations on compliance with the Council’s structural standard, OAR 345-022-0020. In its application, IPC must include a geotechnical report that includes, as a minimum, the information required by OAR 345-021-0010(1)(h). IPC should submit a full geotechnical report meeting the guidelines of DOGAMI open file report 00-04 “Guidelines for Engineering Geologic Reports and Site Specific Seismic Hazard Reports”. Also relevant is the information required by OAR 345-021-0010(1)(i).

ODOE recognizes that detailed onsite geotechnical work usually cannot take place until the final route is selected and access from landowners is obtained. If a geotechnical report at the level of detail described in the DOGAMI open file report cannot be prepared for these reasons, IPC should include the conclusions reached in a direct consultation with DOGAMI regarding the level of geotechnical investigation practical for the application, and DOGAMI’s concurrence with IPC’s plans to complete the geotechnical investigation prior to start of construction.

8. Oregon Parks and Recreation Department

Statute and Rule References: ORS 97.740 and ORS 358.905, OAR Chapter 736, Division 51

Permit: An archaeological permit may be required to conduct archaeological investigations of the site.

Discussion: The Oregon Parks and Recreation Department provides technical review and recommendations on compliance with Council standards in OAR 345-022-0040 (Protected Areas), OAR 345-022-0080 (Scenic and Aesthetic Values), and OAR 345-022-0100 (Recreation).

The State Historic Preservation Office (SHPO) provides technical review and recommendations in reference to the Council’s Historic, Cultural and Archaeological Resources Standard (OAR 345-022-0090). Protection for archaeological sites, objects, and human remains on both state and private lands is the primary concern of SHPO, including compliance with Section 106 of the National Historic Preservation Act.

SHPO anticipates IPC’s compliance with Section 106 through the applicant’s communication with SHPO, the EFSC process, and the BLM’s Environmental Impact Statement. The application should include an archaeological and cultural survey conducted by a qualified archaeologist. The ODOE recommends that IPC work as early
as possible with the SHPO to ensure that IPC provides required information in SHPO’s preferred formats.

9. Oregon Department of State Lands – Removal-Fill

Statute and Rule References: ORS 196, OAR Chapter 141, Division 85

Permit: A removal-fill permit is required if 50 cubic yards or more of material is removed, filled or altered within a jurisdictional water of the State (OAR 141-085-0015).

Discussion: IPC should include information in the application to support a finding of whether a removal-fill permit is or is not needed. The application should include complete wetland delineation for all areas to be affected by the proposed facility. If a removal-fill permit is needed, the application must include an itemized demonstration of compliance with each applicable provision of ORS 196.825 and OAR 141-085-0029.

In Oregon, the removal fill permit is issued by the Department of State Lands (DSL) separately from the 404 permit issued by the US Army Corps. DSL will review a joint permit application (JPA) for compliance with DSL wetland mitigation requirements. Note that in some cases the DSL wetland mitigation success criteria may differ from and exceed those of the Corps.

To be complete, the application must include a wetland delineation of the entire width of the proposed corridor. DSL must concur with the delineation. If jurisdictional wetlands occur within the proposed corridor then the Council may impose conditions requiring their avoidance. ODOE expects that the transmission line will span wetlands. However, access roads and temporary laydown area are considered part of the site and must be delineated as well.

10. Oregon Department of State Lands – Easement

Statute and Rule References: ORS 273, OAR Chapter 141, Division 112

Permit: Easement for constructing transmission line on state land

Discussion: IPC should include an application for an easement on trust and non-trust land in their facility application. The facility application must include an itemized demonstration of compliance with each applicable provision of OAR 141-122.

11. Water Resources Department – Water Rights Division

Statute and Rule References: ORS Chapters 537 and 540, OAR Chapter 690, Divisions 1 through 410, ORS Chapter 538 (withdrawal of municipal/county water)

Permit: A Limited Water Rights permit is required if new water rights are necessary for the project.
Discussion: The uses of water anticipated for this facility are for construction purposes, road watering and dust abatement. IPC should include information in the application to support a finding of whether a water right is or is not needed. The application must identify the sources of water to be used during construction and operation of the proposed facility, the quantity of water needed, and the means of disposal of all water discharges from the proposed facility.

Unless obtained from a Municipal supplier, water used in the construction, dust abatement, and road watering will require Limited Licenses. Such licenses cannot authorize use or discharge of water outside a single basin; therefore multiple Limited Licenses may be required.

Jerry Sauter of WRD commented on the NOI in writing. Mr. Sauter’s comments are attached and are incorporated in this Project Order.

12. Oregon Department of Land Conservation and Development

Statute and Rule References: ORS Chapter 469, Division 504

Permit: None required

Discussion: The proposed facility must comply with the Council’s General Standard regarding Land Use (OAR 345-022-0030) to ensure the facility complies with statewide planning goals adopted by the Land Conservation and Development Commission. IPC has indicated in the NOI that it will seek a Council determination under ORS 469.504(1)(b) for compliance with applicable statewide planning goals. The final selection of land use path is not made until the application for site certificate is submitted. However, once made in the application, the election of land use path is final.

The Department of Land Conservation and Development (DLCD) issues no permit but will provide additional review for compliance with statewide planning goals and with directly applicable DLCD rules.

13. Oregon Department of Transportation

Statute and Rule References: OAR 734-051, OAR 734-055

Permit: Access Management permit and Utility Facility permit

Discussion: Any utility installations within the right of way of a state highway in Oregon will require a utility permit issued by the Oregon Department of Transportation (ODOT). No utilities may be installed within an interstate highway right of way. Utilities may cross an interstate highway but may not be sited longitudinally within the operating interstate highway right of way.
Any access from Oregon state highways would require an access permit, which also
would be issued by the Pendleton District ODOT Office. ODOT does not typically allow
access to utilities from an interstate highway. Randy Randolph of the Pendleton office
would be coordinating the permit work for this project. He can be reached at 541-278-
3450.

III. TRIBES

Statute and Rule References: OAR 345-020-0011(p)

Permit: None required.

Discussion: The application should include evidence of consultation with affected tribes
regarding archaeological and cultural sites and materials that may be found on the
proposed site of the facility, and natural and cultural resource issues to ensure protection
for tribal rights and resources. In preparing the NOI, IPC contacted the State Commission
on Indian Services requesting that it identify appropriate tribes for future consultation.
Tribes identified as being expected to have an interest in the proposed project (including
alternate corridors) are the Burns-Paiute Tribe, Confederated Tribes of the Umatilla
Indian Reservation (CTUIR), Confederate Tribes of Warm Springs, Nez Perce Tribe, and
Confederate Tribes of the Colville Reservation.

In addition to EFSC approval, the project requires a BLM Right-of-Way Grant. Part of
BLM’s responsibility includes government-to-government consultation with affected
Indian tribes.

ODOE understands that CTUIR has made a written request for government-to-
government consultation with BLM. In a letter dated October 20, 2008, CTUIR also
requested government-to-government consultation with the Oregon Department of
Energy. ODOE and CTUIR representatives held a kickoff meeting at the CTUIR
headquarters on October 31, 2008. A representative of BLM Vale District also attended.
CTUIR raised certain issues that are of concern and are not addressed by any State
agency. CTUIR also indicated that it would provide comments and applicable tribal
concerns in writing.

Particular concerns raised by the CTUIR included but were not limited to:

1. Certain viewsheds may have cultural significance even though they are
outside the formal reservation. CTUIR states that those viewsheds should
be protected.

2. Some viewsheds and habitat areas cannot be surveyed yet because they are
in roadless areas. Moreover, some of these viewsheds and habitat areas
cannot be accessed during the winter. This creates a “chicken and egg”
situation, where the applicant must explain how it determined that a
certain route is appropriate without being able to access it during winter
months. ODOE concurs and believes the Application should explain how IPC can select segments of the route that it cannot physically access. Aerial photography may provide limited information if this is dense canopy.

3. CTUIR asked if the transmission line would enable certain wind facilities, in particular the one at Burnt River. If so, CTUIR believes that impacts of those enabled facilities should be part of the environmental impact evaluation. Under the regulatory framework laid out in Oregon law, EFSC can only review the facility being applied for, and cannot make findings or impose conditions regarding other facilities that may be proposed by someone else. However, the question of other enabled facilities may apply to the BLM review under NEPA.

4. CTUIR noted that during route selection, it is more concerned about the overall environmental impact and on impact to cultural resources on all lands included ceded lands, rather than just on whether or not the route crosses the formal reservation.

IV. APPLICABLE LOCAL GOVERNMENT ORDINANCES

Statute and Rule References: Applicable Substantive Criteria from Comprehensive Land Use plans of Malheur, Baker, Union, Umatilla and Morrow Counties.

Permit: Conditional Use Permits and Zoning Permits.

Discussion: In the memorandum described at OAR 345-015-120 and distributed on September 4, 2008, the Department requested the rules and local government ordinances that apply to the facility, the list of local permits required for the project, and information required by the affected local governments in their review of the application for site certificate. At its meeting in Boardman, Oregon, on July 25, 2008, the EFSC appointed the commissions for these counties as a “Special Advisory Group”.

Union and Umatilla County have responded in writing with applicable rules, ordinances and comprehensive plan goals and polices. The criteria and comments provided by those counties are included in this Project Order in their entirety.

ODOE has received draft land use criteria and comments from Morrow County and anticipates final criteria and comments. ODOE has contacted Baker and Malheur Counties and anticipates applicable substantive land use criteria from those counties as well. The application should therefore address each applicable ordinance, rule, and comprehensive plan goal and policy as it would for a conditional use permit directly from the counties.
Malheur County has not yet supplied substantive criteria but has sent written comments in a letter signed by all three members of the County Court. That letter is incorporated into this Project Order.

ORS 215.275: Regardless of route selected, it appears that large portions of the corridor will be in the exclusive farm use (EFU) zone. The application must therefore establish whether the facility is a “utility facility necessary for public service” under ORS 215.283(1)(d). That definition in turn is defined in more detail at ORS 215.275. The analysis of compliance with ORS 215.275 will therefore be an important element of Exhibit K. Although the transmission line may be a permitted use in the EFU zone if the criteria set forth in ORS 215.275(2) are met, DLCD rules and county substantive criteria regarding the avoidance of significant adverse impact on farming practices or increases in the cost of farming operations still apply. A detailed Agricultural Impact Mitigation Plan is required and the facility must meet the requirements of sections (4) and (5) of ORS 215.275 regarding mitigation and minimization of agricultural impacts. In particular, ODOE received many public comments regarding weed control, compatibility with aerial spraying and with irrigation. The effect of stray voltage on agriculture was also raised in public comment. The ORS 215.275 analysis must show that these potential impacts will not create a significant adverse impact or significant cost increase on farming operations on EFU land in Oregon.

The core of the 215.275 analysis is the alternatives analysis. The statute requires that IPC consider reasonable alternatives to the EFU zone. That project purpose is different from the IRP review performed by the Public Utility Commission. It must clearly state why only a transmission line that begins in the Hemingway area and ends somewhere near Boardman (Eastern Morrow or Western Umatilla counties) can allow Idaho Power to meet its obligations.

Federal lands and other habitat lands are an alternative to the farm zone that must be seriously considered. Although the project must also meet the EFSC Habitat standard, that alone is not reason to use the EFU zone unless use of the alternative would violate another rule or statute or cannot be used for one of the other factors in ORS 215.275(2). In the South Mist pipeline case, the Council found that the EFU zone could be used if necessary to avoid ODFW Category 1 or 2, but not category 3 or lower. ODOE recognizes that the resource agencies, such as USFS and BLM, prefer that habitat lands be avoided. However, that preference is not reason enough to eliminate those lands unless that preference is required by regulation. For example, if federal or state rules allow use of habitat land with mitigation, then a corridor using habitat land would be considered a reasonable alternative to the EFU zone.

If there are certain locations that the transmission lines “must” cross, the application must explain why. For example, the Sand Hollow substation appears to be a key location. EFSC does not regulate the transmission line in Idaho, but locating a route in Idaho must
be considered an alternative to locating in the Oregon EFU zone. If the Sand Hollow substation drives part of the route in Oregon (for example, if it precludes following the existing PPL line to the south of Malheur valley), then the application must demonstrate that the substation is essential to the project and cannot be relocated someplace that allows avoidance of the EFU zone in Malheur county.

The issue of cost is one in which the statute calls for some judgment. The statutes states that cost associated with one or more of the factors at 215.275(2) can be a consideration but not the sole consideration. The Council has found in the past that if an increase in cost would render the project infeasible, then a cost of that magnitude is a valid consideration. But, if the project can avoid EFU zone by adding some length, or if the impacts associated with use of non-farm alternatives can be mitigated at additional cost, those costs cannot be the sole reason for use of the EFU zone.

Cities that commented include Vale, Ontario, Echo, Pilot Rock, and Boardman, Oregon. Malheur and Umatilla Counties, in particular, suggested alternative routes. As a minimum, the alternate routes noted in the section of this order on public and agency comments must be considered. If one of those alternate routes would enable Idaho Power to avoid the EFU zone, then that route must be used unless it is infeasible according to the criteria of ORS 215.275(2). In some cases, the people who suggested alternate routes provided detailed maps. In other cases the alternate routes were in the form of general suggestions. In such cases, we expect Idaho Power to make a good faith effort to explore those possible routes and give them sufficient consideration to see if a reasonable way to avoid the EFU zone can be found. Idaho Power’s efforts to consider the alternate routes that avoid the EFU zone must be described in full detail, especially if the application states that an alternate was not practical for one of the reasons listed in ORS 215.275(2). All of the public and agency comments were forwarded to the applicant, the EFSC members, and to BLM in their entirety and in their original form.

V. FEDERAL REQUIREMENTS

Although federal permitting requirements are matters outside the Council's jurisdiction, IPC must comply with all federal requirements applicable to the proposed facility. ODOE received comments from the Department of the Navy and the Bureau of Reclamation, which will be forwarded to the applicant and to BLM. This list is not a comprehensive list of federal permits or requirements, but only those that commented on the proposed project.

VI. OTHER CONSTRUCTION-RELATED REGULATIONS

If the Council issues a site certificate, the certificate holder must comply with construction-related regulations that apply to the proposed facility. As provided under ORS 469.401(4), the site certificate does not address these regulations.

VII. APPLICABLE REQUIREMENTS FROM OAR CHAPTER 345, DIVISION 21
The Application for a Site Certificate (ASC) should include the information described in OAR 345-021-0010(1), as discussed below. The application should include the information described in OAR 345-021-0010(2) and (3). IPC must also submit the information required by OAR 345-021-0000, particularly the information in sections (6) and (7) regarding the status of non-federally-delegated and federally delegated permits.

(a) Exhibit A – General Information about the Applicant

Paragraphs (A) through (D) apply. Note that paragraph (B) calls for a list of “participating persons, other than individuals.” “Person” is defined in OAR 345-001-0010(45). Include in the application information about all third-party entities (persons other than individuals) that are important to the project.

(b) Exhibit B – General Information about the Proposed Facility

All paragraphs apply except (A)(i), (A)(vi), (A)(vii), and (A)(viii).

The description of the proposed facility in the application will form the basis for the description of the facility in the site certificate. The site certificate will require that IPC will build the facility “substantially as described”. Exhibit B will also provide the basis for the project description in the notice of application that ODOE will issue to reviewing agencies and public. Therefore, Exhibit B should describe the project in enough detail for members of the public and reviewing agencies to make informed comments. It should describe the project sufficiently for ODOE staff to verify that the constructed project meets any representations that were the basis for any findings of compliance with applicable regulations for standards but need not include descriptive material that IPC would not want to be held to in a condition.

Some members of the public were confused by the descriptions of corridor width in the Notice of Intent. The Application for Site Certificate should be very clear about the width of the proposed corridor. It should provide the reader with a clear understanding of the difference between corridor and right of way. For purposes of this Project Order, the term “corridor” refers to the area that EFSC would find in compliance with applicable standards and would authorize the transmission line. “Right of way” is the area where Idaho Power has acquired an easement from the land owner, and is the area within which the line would actually be constructed. The corridor could be a wide area, in order to allow flexibility in selecting the final alignment. However, the right of way must be no wider than required for construction and operation.

The application must explain the reason for the width of right of way that is selected. If Idaho Power states that a wide right of way is needed for construction, it must explain clearly why construction could not be done on narrower right of way. EFSC may direct Idaho Power to acquire a narrower right of way in areas that are important for agriculture or for habitat, and it may allow
wider right of way at certain locations for laydown and staging. The application
must specify how much permanent right of way Idaho Power will request, and it
must justify that width of right of way. The application must also explain in detail
what limitations would be placed on the property owner in transmission line right
of way, such as limitations on structures, crops, or other uses.

The description of the proposed facility should include sufficient information to
allow for verification of the estimated cost of facility retirement and site
restoration. Pertinent information would include, but not be limited to, the
following: (1) types and sizes of transmission line support structures, including
height, width, and weight of steel; (2) amount of concrete above three feet below
grade included in transmission line support structure foundations; (3) spacing of
transmission line support structures; (4) number of conductors to be mounted on
the transmission line support structures; (5) length, width and surfacing of new
access roads in Oregon; (6) scope, size and types of related or supporting facilities
to be located in Oregon; (7) estimated area of temporary disturbance in Oregon
during construction of the proposed facility; and (8) estimated area of permanent
disturbance in Oregon during operation of the proposed facility. The information
regarding these factors can be placed in Exhibit B or in the exhibit demonstrating
compliance with the retirement standard, but it should be clear enough for ODOE
staff to review it.

The alternatives analysis described in section (D) of this exhibit must be
consistent with the analysis required by ORS 215.275, and it also includes factors
not listed in ORS 215.275. For example, OAR 354-021-0010(1)(b)(D) requires
the applicant to consider “least percentage of the total length that would be in land
zoned EFU”. This “least length requirement” is not found at ORS 215.275 but
nonetheless must be addressed in Exhibit B of the application. Other factors in
this section require least percentage on high category habitat lands, greatest
percentage using existing rights of way including road right of way, and other
factors. EFSC recognizes that some of these factors compete with one another
(for example, the apparent conflict between avoiding habitat land and avoiding
farm land) but expects the application to demonstrate that both factors were
considered.

ODOE received suggestions for route changes from counties and in public
comment. The proposed route changes suggested in public comment should be
addressed in this section. In particular, two counties in Oregon suggested major
route changes that would be almost completely new corridors. If those routes are
not used, the application must provide the basis for their rejection.

Malheur County, along with many of its residents, strongly advocated a corridor
in Idaho from Hemingway to Sand Hollow. Cities in Malheur County argue that
the EFU zone in that county is required to be preserved for farm use by strict land
use laws that exist in Oregon but not Idaho. ODOE expects IPC to strongly
consider changing the route to a direct one in Canyon County. Residents of
Malheur County also proposed routes that follow the existing PPL line to the south, turning north towards Durkee in one case, or proceeding farther west to produce a corridor largely on federal land. These alternatives must be seriously considered for use.

Umatilla County also proposed two alternatives. One option makes more use of the interstate highway. The other travels south of Pilot Rock toward Ukiah. ODOE understands that Idaho Power has met directly with the Umatilla County Planning Department to work on the southerly alternative. The Council encourages such direct consultation between the applicant and the county. The application for site certificate must describe the alternate route that emerges from this direct consultation. If Idaho Power does not eventually choose to use that route, the application should describe the basis for its rejection. If Idaho Power does choose this route, it must still meet all of the other applicable standards of EFSC and other state agencies.

ODOE recognizes that a route following the interstate highway would include land belonging to the Confederated Tribes of the Umatilla (CTUIR). However, the CTUIR has requested government to government consultation with both EFSC and BLM. In its initial meeting with EFSC, the CTUIR did not state that use of the interstate highway should be precluded.

Preferences of federal agencies cannot be the sole reason for avoiding federal land or highway right of way unless required by law. For example, a statement that “USDOT prefers not to have the power line on highway right of way” would not be considered sufficient unless that USDOT has cited a regulation precluding its use. The prohibition must be stated in writing. Similarly, a preference by a federal agency such as US Fish and Wildlife Service cannot be the sole reason for avoiding federal land, unless the Service has stated in writing that the use would violate an applicable federal regulation.

Other less extensive route alterations suggested in public comment should also be addressed in this section, but EFSC will apply the factors at OAR 354-021-0010(1)(b)(D) and ORS 215.275 in evaluating the application.

(c) Exhibit C – Location

All paragraphs apply. Maps included in Exhibit C should provide enough information for property owners potentially affected by the facility to determine whether their property is within or adjacent to the site. Major roads should be named. The application should include identification of lands enrolled in the Conservation Reserve Program and lands currently zoned EFU.

There is no map format prescribed in rule. The resource maps presented at the scoping hearings were useful for the resource agencies but the maps in the
Application for Site Certificate need to more helpful to the private property owners in helping them determine how the project affects them personally.

For fixed sites, ODOE has found USGS quads or maps of scale 1 inch = 2000 feet to be a reasonable format. However, for this project, that format may not work. One past applicant supplied a set of two-foot by two-foot aerial photos, with each photo covering roughly a mile and a half. For the B2H project, this would result in a set of about 200 photos. However, the aerial photograph approach, with all roads identified, worked well for members of the public. Maps should clearly show the boundaries of the proposed corridor within which the transmission line could be constructed, and should include familiar landmarks such as roads and existing power lines that reviewing agencies and affected landowners may use to identify the proposed route.

Some counties have GIS capability and IPC is encouraged to provide the GIS data that those counties can input to their own mapping capabilities.

All proposed access and temporary laydown sites, with their site boundaries, must be marked. IPC should be aware that access and temporary laydown areas are part of the site, just as the corridor itself is.

Maps should indicate the “site boundary” as defined in OAR 345-001-0010(53). For resources where the Analysis Area boundary is different from the site boundary, please include maps showing the analysis area boundaries in the exhibits devoted to those resources.

(d) Exhibit D – Organizational Expertise

All paragraphs apply. Regarding the ability to successfully construct the project “in accordance with site certificate conditions”, the Council’s review is not limited to IPC’s ability to construct a transmission line. The application must also demonstrate that IPC can honor all commitments and conditions regarding minimization and mitigation of impacts on the resources protected by Council standards and applicable regulations of other agencies. Citations resulting from other similar projects (for example, wetland permits) must be disclosed.

(e) Exhibit E – Permits

All paragraphs apply. Although the Council does not review for compliance with federal permits, the application should describe federal permits particularly as federal permitting requirements are often relied on as evidence of compliance with EFSC or local standards.

(f) Exhibit F – Property Owners
Much of the proposed transmission line corridor crosses farm and forest zones. Accordingly, the distance in paragraph (C) applies. In preparation for the NOI, the Oregon Department of Agriculture recommended notice of landowners within 750 feet of the proposed corridor to be consistent with local land use requirements. ODOE recommends the 750-foot distance.

Because of the importance of issuing proper notice, Exhibit F must document the steps Idaho Power takes to ensure that all property owners who meet the criteria at OAR 345-020-0010(1)(f) are included. The rule states that property owners are found by consulting the most recent property tax assessment roll. Exhibit F should demonstrate that Idaho Power worked with the assessor to ensure that all property owners meeting these criteria are listed in the Exhibit.

The property owner list must be checked and updated at each phase of the process. In past projects ODOE has seen cases where recent property purchasers who were not yet listed on the property tax rolls have claimed that notice of the proceeding was inadequate.

Some properties have multiple owners. The notification requirement is for notice to all persons who own property within the specified distance from the proposed corridor. If a property has multiple owners, all must be listed.

(g) Exhibit G – Materials Analysis

All paragraphs apply. See discussion above under “Department of Environmental Quality” regarding the importance of listing hazardous materials used and stored at the facility, or at temporary access and laydown areas. ODOE also uses the materials analysis to identify any hazardous materials whose storage could affect site restoration.

(h) Exhibit H – Geology

All paragraphs apply except (E). The application should include all results of field and laboratory investigations and any other geotechnical and geologic hazard evaluation work. A thorough ground shaking amplification, liquefaction, and lateral spread analysis with all of the calculations, methodologies, and recommendations based on this site-specific analysis will be required. See the discussion above under “Department of Geology” regarding the applicability of DOGAMI Open File Report 00-04 and the advisability of pre-application conferences with DOGAMI regarding the level of geotechnical investigation that must be done prior to the application.

(i) Exhibit I – Soils

All paragraphs apply. IPC must demonstrate that the proposed facility would have minimal impact on soil productivity in farm zones. The applicant may take credit
for any Erosion and Sediment Control Program (ESCP) and 1200-C and 1200-Z permit applications provided to DEQ.

(j) Exhibit J – Wetlands

All paragraphs apply. See above discussion under Department of State Lands.

(k) Exhibit K – Land Use (Statewide Planning Goals)

The NOI states that IPC will seek a Council determination of compliance with the Council’s Land Use Standard under ORS 469.504(1)(b). IPC can change this election, but the election is final when the ASC is submitted. Accordingly, all paragraphs apply except (B).

(l) Exhibit L – Protected Areas

All paragraphs apply. Note that many specific properties in the five Oregon counties are listed on the Oregon National Heritage website. ODOE expects Idaho Power to research all of the protected areas listed at OAR 345-0022-0040 to determine if they are potentially affected by the transmission line.

(m) Exhibit M – Financial Capability

All paragraphs apply. The Council’s Financial Assurance Standard and Mandatory Conditions at OAR 345-027-0020 clearly spell out the requirement for a surety such as bond or letter of credit. Please note that devices such as escrow accounts and corporate guaranties have been proposed in the past and have been rejected. The Council has not accepted scrap value as part of the finding for retirement and site restoration. However, this policy is not codified in rule, and EFSC is mindful of recent bank failures and the changes in the financial markets. If IPC believes an approach other than the one prescribed in OAR 345-027-0020 is necessary, it should discuss options with ODOE before writing the application. A Council decision may be required, and rulemaking is a possibility.

(n) Exhibit N – Need for the Facility

The applicant must address need for the facility under OAR 345-023-005(1). IPC states in the NOI that the proposed transmission line can satisfy the Need standard based on OAR 345-023-0030 (System Reliability Rule) and in part on OAR 345-023-0020(1) (Least Cost Plan Rule).

It appears that IPC intends to rely on both rules to demonstrate Need. If IPC will rely on the System Reliability Rule, OAR 345-023-0030, then the application must include all of the information at Division 21 Exhibit N section Note that the System Reliability Rule was written in 1992 and has never been updated. If the transmission line, or a substantially equivalent project, is identified in the most
recent Integrated Resource Plan (IRP) acknowledged by the Oregon Public Utility Commission, the Council’s “Least Cost Plan” rule fits this project. If the “Least Cost Plan” rule is not the basis for a finding of Need then ODOE would recommend that EFSC consider rulemaking to update the standard. Note that Idaho Power or any interested person can petition EFSC for rulemaking under OAR 137-001-0070.

The current version of Idaho Power’s IRP was submitted to the PUC in 2006 and does not include a transmission line that matches the proposed Boardman to Hemingway line. IPC should notify ODOE when it submits the update to its IRP, and indicate the PUC’s expected timeline for IRP review. The application for site certificate will not be deemed complete until OPUC issues an order acknowledging the IRP update that includes the Boardman Hemingway line.

(o) Exhibit O – Water Use

All paragraphs apply, except (D). Please see the specific comments of Jerry Sauter of WRD.

(p) Exhibit P – Fish and Wildlife Habitat

All paragraphs apply. Please see the direct comments of ODFW and the discussion above regarding ODFW habitat mitigation goals and polices.

(q) Exhibit Q – Threatened and Endangered Species

All paragraphs apply.

(r) Exhibit R – Scenic Resources

All paragraphs apply. The application should include visual impact analysis on all scenic resources listed in land management plans, county inventories, or other designations. The Scenic and Aesthetic Standard only considers scenic resources listed in a land use or land management plan inventory. However, IPC should describe and minimize impact on scenic resources identified in local government comments, such as Malheur Butte.

(s) Exhibit S – Historic, Cultural and Archaeological Resources

All paragraphs apply. IPC should pay particular attention to the Oregon Trail. The application should include a map showing where the site is in relation to the Oregon Trail, and should document the source of information regarding the Oregon Trail’s location. Because the site will include some federal lands, the application must address statutes identified by the State Historic Preservation Office as applicable on public lands.
The State Historic Preservation Officer has advised that documenting the requirements of Section 106 of the National Historic Preservation Act will satisfy applicable SHPO rules.

(t) Exhibit T – Recreation

All paragraphs apply. Many public comments on the NOI raised concern over the potential impact on recreational activities ranging from tourism, cycle and motorcycle rallies, and in the case of Malheur County, golf. The application should carefully analyze the importance of recreational opportunities using the consideration factors listed in OAR Chapter 345, Divisions 21 and 22, and must present evidence that the project, net of mitigation, is unlikely to have a significant adverse impact on “important” recreational resources. IPC should address all of the recreational resources cited in the many public comments.

The ASC should particularly address potential impact on tourism. Tourism is a key recreational opportunity and component in the economy throughout Eastern Oregon. In particular, ODOE received comments stating that the transmission line would degrade the scenic views that tourists expect.

Many public comments expressed concern about the potential impact on the Oregon Trail, particularly on the Oregon Trail Interpretive Center in Baker County. Most comments were not specific about which standard would cover the Interpretive Center. However, ODOE expects the application to carefully analyze the potential impact of the transmission line on the interpretive center to determine whether or not it would have a significant adverse impact.

Scenic byways, while not listed in county inventories or land management plans, could be considered an important recreational opportunity under this rule. Some public comments stated that the annual motorcycle and Cycle Oregon rides would not choose the scenic byways if the transmission line is located there. Other areas that have been managed for hunting or wildlife viewing may not qualify as ODFW Category 1 or 2 habitat but might nonetheless be considered important or unique recreational facilities. The application must describe reasonable efforts to avoid such impacts by route adjustments or project design, or it must describe why alternate alignments were not available.

(u) Exhibit U – Public Services

All paragraphs apply. The ASC should include an analysis of estimated facility-related traffic during construction and operation and the potential impact on traffic safety. Discuss transportation of heavy equipment and shipments of facility

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4 See for example comments of Alice Trindle, Diane Naglee, Allison Valerio and Holly Gustafson.

5 See for example comments of Ross Seyfield, Elk Song Ranch.
components during construction. If the proposed transmission line would be located near hospitals or health care facilities, then the application must contain sufficient evidence that the line will not interfere with those facilities or with the welfare of the patients either through direct health effects or by affecting electronic instruments in use.\(^6\)

Other comments stated that the transmission line could increase the likelihood of fires in forested zones. The application must assess this likelihood relative to other initiating events for fires. To meet the standard, the application must demonstrate that the transmission line will not adversely affect the ability of local or volunteer fire fighting organizations to maintain fire safety.

One commenter noted that the effect on farming and loss of farm revenue would create a reduction in state and local tax revenues, which would increase the already existing revenue shortfall at the state and local level.\(^7\)

(v) Exhibit V – Solid Waste and Wastewater

All paragraphs apply.

(w) Exhibit W – Facility Retirement

All paragraphs apply. ODOE realizes that transmission lines do not generally have the 30-year life associated with fixed-site facilities. Nonetheless, the retirement standard requires a reasonable engineering estimate of the cost to retire an energy facility and restore the site to a useful condition consistent with the site zoning. The requirement is that the site be restored to the condition suitable for its zoned use. If the site is on EFU land, for example, then the site must be restored to a condition suitable for the agricultural use prevalent in the surrounding vicinity.

In 2003, EFSC adopted a policy rejecting retirement cost estimates that include scrap value to offset retirement cost. Any position by IPC that this practice should be modified should be presented well before the application is submitted.

ODOE has used a standard retirement cost estimating method, first developed for generation plants but since applied to other facilities. The method is available for download and is intended to provide guidance. However, if IPC uses a different cost estimate methodology it should demonstrate that the estimate is realistic, and the estimate should be discussed with ODOE before submitting the application.

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\(^6\) See public comment of Nancy Peyron.

\(^7\) Comment of Matt Ure, Jan 19, 2009
All paragraphs apply. See above discussion of DEQ noise standard.

Exhibit Y does not apply.

Exhibit Z does not apply.

Exhibit AA – Electric and Magnetic Fields

All paragraphs apply. The Council has previously addressed the impact of EMF, citing studies by the National Institute of Health and the California PUC.

ODOE recommends that IPC review the Final Order for the “COB” generating plant to see the most recent Council discussion of the issue. However, the B2H is a much larger project and crosses a wider variety of lands. IPC should not rely entirely on the findings in the COB order, but should provide a complete and up to date analysis

A thorough analysis will include studies done since mid-2004 both in the United States and in other countries, such as the Swiss study referenced in several of the scoping comments. The analysis must address the many comments on this topic.

Although the Council does not have an “EMF standard”, it does have a statutory mandate to adopt any conditions needed to ensure public health and safety. This mandate provides the regulatory basis for any findings or conditions, including setbacks, based on EMF considerations.

Exhibit BB – Other Information

Any information requested in this Project Order that is not addressed in any other exhibit, such as issues raised in public comment.

Exhibit CC applies.

Exhibit DD – Facilities for which the Council has Adopted Specific Standards

The Council applies specific standards for transmission lines under its jurisdiction in OAR 345-024-0090. Accordingly, paragraph (C) applies.
VIII. ANALYSIS AREAS FOR THE PROPOSED FACILITY

The analysis areas are the minimum areas that IPC must study for potential impacts from the construction and operation of the proposed facility. The analysis areas described in this Project Order do not limit the applicant’s responsibility to assess the potential impacts of the facility. They are the areas in which significant adverse impacts from the proposed facility are likely to occur. If significant impacts could occur beyond the analysis areas described here, then IPC must assess those impacts in the application and show how the facility would comply with the applicable standard with regard to the larger area where impacts could occur.

For all potential impacts, the analysis area includes all the area within the site boundary. “Site boundary” means “the perimeter of the site of the proposed energy facility, its related or supporting facilities, [and] all temporary laydown and staging areas” (OAR 345-001-0010(53). In its application, IPC must specifically describe the site boundary and provide a map showing the proposed site boundary. The minimum required analysis areas are as listed in Table 1.

<table>
<thead>
<tr>
<th>Affected Standard or Resource</th>
<th>Exhibit</th>
<th>Analysis Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structural Standard</td>
<td>Exh. H</td>
<td>The area within the site boundary.</td>
</tr>
<tr>
<td>Soils</td>
<td>Exh. I</td>
<td>The area within the site boundary.</td>
</tr>
<tr>
<td>Wetlands</td>
<td>Exh. J</td>
<td>The area within the site boundary.</td>
</tr>
<tr>
<td>Land Use</td>
<td>Exh. K</td>
<td>The area within the site boundary and one-half mile from the site boundary.</td>
</tr>
<tr>
<td>Protected Areas</td>
<td>Exh. L</td>
<td>The area within the site boundary and 20 miles from the site boundary, including areas outside the state.</td>
</tr>
<tr>
<td>Water Use</td>
<td>Exh. O</td>
<td>The area within the site boundary.</td>
</tr>
<tr>
<td>Fish and Wildlife Habitat</td>
<td>Exh. P</td>
<td>The area within the site boundary and within 1000 feet from all ground disturbing activities, unless otherwise described in an ODFW- and ODOE-approved protocol.</td>
</tr>
<tr>
<td>Threatened and Endangered Species</td>
<td>Exh. Q</td>
<td>The area within the site boundary and 5 miles from the site boundary.</td>
</tr>
<tr>
<td>Scenic and Aesthetic Values</td>
<td>Exh. R</td>
<td>The area within the site boundary and 10 miles from the site boundary.</td>
</tr>
<tr>
<td>Historic, Cultural and Archaeological Resources</td>
<td>Exh. S</td>
<td>The area within the site boundary.</td>
</tr>
<tr>
<td>Recreation</td>
<td>Exh. T</td>
<td>The area within the site boundary and five miles from the site boundary.</td>
</tr>
<tr>
<td>Public Services</td>
<td>Exh. U</td>
<td>The area within the site boundary and 30 miles from the site boundary.</td>
</tr>
<tr>
<td>Noise</td>
<td>Exh. X</td>
<td>The distance to the maximally affected noise-sensitive receptors.</td>
</tr>
<tr>
<td>Electric Transmission Lines</td>
<td>Exh. AA</td>
<td>The area within the site boundary.</td>
</tr>
</tbody>
</table>

IX. EXPIRATION DATE (OAR 345-015-0160(1)(j))
Pursuant to OAR 345-20-0060(1) this NOI shall expire 18 months following the date this Project Order is issued. The date of expiration is July 26, 2010. IPC may petition the Council to extend the duration of the NOI for the Boardman to Hemingway Transmission Line Project beyond that date as provided under OAR 345-020-0060(1).

If an application for a site certificate for the facility for which this Project Order is issued has not been submitted prior to July 26, 2010 or the date of any extension granted by the Council, a new NOI must be submitted for the facility in order to satisfy ORS 469.330.

X. AMENDMENT AND COMPLETENESS

The Council or the ODOE may amend this Project Order at any time (ORS 469.330(4)). Amendment may include changes to the analysis areas. To issue a site certificate, the Council must determine that the proposed facility complies with Oregon statutes and administrative rules identified in the Project Order, as amended, as applicable to the issuance of a site certificate for the proposed facility (ORS 469.503(3)).

Under OAR 345-015-0190(4), when the ODOE determines the application contains adequate information for the Council to make findings on all applicable Council standards, the ODOE may determine the application complete, regardless of whether the application contains all information required under OAR 345-021-0010. Notwithstanding a determination that an application is complete, the ODOE may require additional information from the applicant if the ODOE identifies a need for that information during its review of the application. OAR 345-015-0190(7).

XI. PUBLIC COMMENTS THAT THE APPLICANT SHOULD ADDRESS

In addition to the applicable statutes, rules, and local land use requirements listed in Section II of this Project Order, the application must address issues arising from public comments following an Informational Meeting on a Notice of Intent (OAR 345-015-0130). Pursuant to OAR 345-015-0160(1)(g), the issues raised in public comments are summarized in this Project Order.

ODOE and BLM heard public comments and concerns at the joint scoping meetings held on October 22, 23, 28, 29, and 30 in Ontario, Baker City, La Grande, Pendleton, and Boardman, respectively. The public comment period on the NOI extended from the date the NOI was received until November 14, 2008. ODOE received over 300 comments electronically and via US Mail. All comments were forwarded to the applicant and to BLM in their entirety and in their original form.

Because there was considerable duplication among comments, ODOE has identified in the summary below the issues raised that IPC should address in its Application for Site Certificate. Not all issues and questions raised in the public comments are matters within EFSC jurisdiction; however, ODOE expects IPC to work directly with the public and with local governments to address comments to the extent practical. The enclosed summary below is not a substitute for the original comments, nor do they represent the opinions of ODOE or EFSC.
1. Comments Specific to Impacts on Farmland

(a) The lines will prevent the aerial application of insecticides and herbicides on nearby farmland.
(b) The lines will pose a danger to aerial applicators.
(c) Sprinkler lines are the required irrigation method, but pivot and wheel line sprinkler systems cannot be used close to the towers.
(d) Transmission towers will be a hazard to tractors, and some farm equipment is taller than the transmission line minimum clearance.
(e) Transmission towers will disrupt gravity irrigation paths.
(f) Transmission towers will disrupt gravity irrigation paths.
(g) The constant hum of high power voltage lines will disturb noise-sensitive dairy cattle.
(h) There is concern about gopher management along lines.
(i) There is concern about soil erosion from Right of Way construction and maintenance.
(j) Herbicides for noxious weeds will need to be compatible with adjacent crops.
(k) Induced currents from the powerline will cause a hazard on irrigation piping.
(l) Effect of transmission line on organic certification is unknown.

2. Comments Related to Environmental/Cultural Impacts

(a) The project will negatively impact the Oregon Trail and other historical area markings and observation points.\(^8\)
(b) Invasive plant species will grow along transmission lines.\(^9\)
(c) Wildlife habitat concerns regarding the elimination, destruction or inhibition of areas where animals live, hunt, or otherwise reside.\(^5\)
(d) The corridor route is upon the territory of endangered, near endangered or sensitive species of plants and/or animals.\(^10\)
(e) The soils found in the Malheur and Snake River drainage are highly vulnerable to erosion.\(^11\)
(f) The tower pads can impact water levels near artesian wells.\(^7\)
(g) The possibility of groundwater contamination is of concern.\(^7\)
(h) The removal of trees would impact soil and water temperatures, encourage erosion, and negatively impact the soil’s ability to absorb moisture.\(^7\)

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\(^8\) This issue needs to be addressed under the historic, cultural and archaeological resource standards of OAR 345-022-0090 in Exhibit S of the Application for Site Certificate.

\(^9\) This issue needs to be addressed under the fish and wildlife habitat standard of OAR 345-022-0060 in Exhibit P of the Application for Site Certificate.

\(^10\) This issue needs to be addressed under the threatened and endangered species standards of OAR 345-022-0070 in Exhibit Q of the Application for Site Certificate.

\(^11\) This issue needs to be addressed under the soil protection standards of OAR 345-022-0022 in Exhibit I of the Application for Site Certificate.
(i) The transmission line would reverse efforts by property owners to manage their property for habitat value.

3. Comments Related to Public Safety and Wellbeing

(a) The power lines are dangerous to airplane traffic from local airports.
(b) The proposed alternate route along Highway 203 will conflict with an existing approach/departure corridor to an existing private use airport.
(c) The power lines will cause health problems for inhabitants.
(d) Transmission lines may interrupt telephone reception, creating a hazard for residences in need of emergency assistance.
(e) There will be offensive noise that will never quit.
(f) Loss of property value will reduce local property taxes, causing a shortfall in county tax revenue that cannot be made up from other sources.

4. Comments Specific to Proposed Corridor Selection

(a) Corridors already established for this type of utility should be used.
(b) Exclusive Farm Use land should not be used.
(c) Most commenters prefer a corridor other than those proposed (some commenters prefer the proposed corridor; some commenters prefer the alternate route).
(d) Alternate proposed route would create excess waste/emissions during construction (does not meet Waste Minimization Standard).

5. Comments Suggesting Specific Alternate Routes or Adjustments

(a) IPC should consider bringing the transmission line across the Snake River near other power facilities and take it down the Idaho side through the Midvale, Idaho area.
(b) IPC should move the line one mile west from a point north of the town of Adrian to a point a few miles north of the proposed Hemingway substation.
(c) Transmission lines would be less disruptive if they were placed west of Highway 201 on BLM land.
(d) The transmission lines should be placed underground.

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12 See for example comments of Kitchen Creek Ranch, Elk Song Ranch and others. This issue would be addressed under the Habitat Standard and the Recreational Standard.

13 This issue needs to be addressed in Exhibit AA (electric transmission line) of the Application for Site Certificate.

14 This issue needs to be addressed under the noise standards of OAR 340-35-0035 in Exhibit X of the Application for Site Certificate.

15 This issue needs to be addressed under the Council’s Public Services Standard.

16 These issues need to be addressed as required in OAR 345-021-0010(1)(b)(D) in Exhibit B (corridor selection assessment) of the Application for Site Certificate.

17 Please refer to the map attached to the November 14, 2008 letter from Jeffery and Linda Hess.
(e) The lines should go through the rangeland east of Magpie Peak along the Salt Creek
drainage and then through the uninhabited range land up toward the Keating cutoff. The
line can then travel toward Pleasant Valley.
(f) The lines should be sited along the railroad tracks or on the north side of I-84, where old
Idaho Power lines exist in Baker County.
(g) The lines should be buried in between the north and southbound lanes of I-84 or along
either shoulder of the freeway from Hemingway to Boardman.
(h) The transmission lines should be placed near Hwy 203 between Baker Valley and Salt
Creek with the existing generators near Telocaset.
(i) The lines should take a more direct route from Durkee to the Hemingway substation or
move the route across the Snake River and take it down the Idaho side to the Hemingway
substation.18
(j) A more direct route from Umatilla County to the Sandhallow Substation is proposed.19
(k) Three alternative routes are proposed from Union County, Durkee or near Huntington to
the Hemingway substation.20

6. Comments Related to Recreational Uses
(a) Cycling paths will be no longer available or appealing.21
(b) Private use of land will decrease as public (utility) use of land increases.
(c) Transmission lines may inhibit the use of land for recreational 4-wheel driving.

7. Comments Related to Aesthetics
(a) Transmission lines and towers will obstruct views and impact historical or otherwise
aesthetically valuable land, such as Malheur Butte, Mitchell Butte, Chalk Butte, the
Oregon Trail, the Starvation Camp site and others.4, 11

8. Other Comments
a. The need for a new power line should be reassessed in light of the recession.
b. If an advisory council is created, the council must have representatives from each
affected area that do not hold a personal stake in the project’s success.

9. Other Comments22

18 Please refer to the maps attached to the November 9, 2008 letter from Rod and Patti Price.
19 Please refer to the map attached to the November 7, 2009 comment form from Joanne Voile.
20 Please refer to the map attached to the letter from Roger and Jean Findley.
21 This issue needs to be addressed under the recreation standards of OAR 345-022-0100 in Exhibit T of the
Application for Site Certificate.
22 Although there comments are not tied directly to an EFSC standard, the applicant should address these comments
to minimize public uncertainty about the proposed project. Include these issues in Exhibit BB of the Application for
Site Certificate.
(a) Transmission towers (and associated access roads) placed on private property will facilitate trespassing.

(b) Light pollution caused by future wind projects resulting from transmission lines

(c) The transmission lines may be targeted by terrorists.

(d) Transmission lines and the general project may have adverse effects on the inhabitants’ psychological state.

(e) There are concerns that property values will decline due to transmission lines.

(f) Grants may no longer be awarded by organizations such as Cycle Oregon which funds areas that it utilizes for rides/events.

(g) Tourist revenue will drop due to lack of aesthetic appeal.

(h) Power lines may interfere with 2-way radio, AM/FM radio, and television signals.

XII. USE OF INFORMATION IN THE ENVIRONMENTAL IMPACT STATEMENT

Pursuant to ORS 469.370(13), EFSC will review the application for site certificate, to the extent feasible, in a manner that is consistent with and does not duplicate BLM’s review under NEPA. This includes elimination of duplicative study and reporting requirements and EFSC use of information prepared for the federal review.

Many EFSC standards and rules of other state agencies in Oregon require field work to gather the information needed to demonstrate compliance. ODOE is working with DOGAMI, ODFW, SHPO, CTUIR and county planners to ensure that the field work required for the site certificate application and for the NEPA review can be done concurrently and by the same teams of field scientists. A single technical report describing the results of site investigations for each subject should be able to cover the requirements of both NEPA and EFSC.

However, the NEPA requirements and EFSC standards are different, and compliance with NEPA does not necessarily ensure compliance with an EFSC standard. For example, the ODFW Habitat Mitigation Policies implement a “no net loss” standard for high quality habitats. ODOE is not aware that NEPA requires no net loss. The level of geotechnical investigation required by the EFSC Structural Standard appears to also exceed NEPA requirements. Farm land protection is a third example where Oregon requirements in the Soil Standard and Land Use standard appear to exceed NEPA requirements. On the other hand, the SHPO has advised that the Section 106 process required by the National Historic Preservation Act could well be adequate to meet Oregon SHPO requirements.

Some apparent differences between NEPA and EFSC requirements include:

(a) Habitat assessment – In addition to characterizing habitat, endangered species, wetland areas, and other information required for the EIS, the Application for Site Certificate must address ODFW habitat protection and mitigation standards (as described in OAR 635-415-0025) and meet the Council's no-net-loss standards.
(b) It is not clear to what extent farm land and soils are protected in the NEPA review. We assume the EIS will address erosion issues, but it is not clear that soil productivity and compatibility with existing farm practices are addressed in NEPA adequately to meet the Council’s Soil standard.

(c) Recreation may be addressed in the EIS but it is unclear as to whether the information that will be provided in the EIS will be enough to meet the Council “no significant adverse impact” standard.

(d) We understand that private land easements may not be acquired until late in the EIS process, and biological/cultural resource studies may therefore lag behind the NEPA process. However, the application must provide evidence of compliance with EFSC standards for all lands, public and private.

For this reason, work plans for drafting the EIS should be written to ensure that one set of ground studies collects all the information needed for both the EIS and the Application for Site Certificate. Where mitigation is proposed, the scientists drafting the mitigation plans should be made aware that it will be more efficient if they propose a single mitigation plan that meets both BLM and EFSC requirements. This may increase the scope of the EIS, but it will avoid having to write completely separate sets of studies and mitigation plans for the federal and state reviews.

To the extent that IPC will rely on the draft EIS for evidence of compliance with EFSC standards, ODOE suggests that IPC develop a document that cross references the information you will collect for the EIS with the information that you understand to be needed for the EFSC application. This document could be prepared before the application for site certificate is submitted. This would help identify areas where the EIS alone will not have enough information for a complete EFSC application, so that IPC can supply the needed additional information in the application for site certificate.

XIII. APPLICABILITY

Failure to include an applicable statute, rule, ordinance, permit or other requirement in this Project Order does not render that statute, rule, ordinance, permit or other requirement inapplicable, nor in any way relieve applicant from the duty to comply with the same.

OREGON DEPARTMENT OF ENERGY

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Thomas M. Stoops, Siting Manager
Oregon Department of Energy

Date of Issuance: ______________, 2009