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March 16, 2010

## VIA ELECTRONIC FILING

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 2148  
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**Re: Docket LC 50**

Enclosed for filing in the above referenced docket are an original and one copy of Idaho Power Company's Response to Motion for Contested Case Hearing.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached Certificate of Service.

Very truly yours,

A handwritten signature in cursive script that reads "Wendy McIndoo".

Wendy McIndoo  
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Enclosures

cc: Service List

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing documents on  
3 in Docket LC 50 on the following named persons on the date indicated below by e-mail  
4 addressed to said persons at his or her last-known address indicated below.

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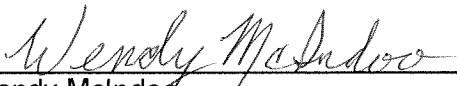
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DATED: March 16, 2010

  
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1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 **LC 50**

4 In the Matter of Idaho Power Company's  
5 2009 Integrated Resource Plan

**IDAHO POWER COMPANY'S RESPONSE  
TO MOTION FOR CONTESTED CASE  
HEARING**

6  
7 **I. INTRODUCTION**

8 Pursuant to OAR 860-013-0050(3)(d) and the March 9, 2010 ruling of  
9 Administrative Law Judge Sarah Wallace, Idaho Power Company ("Idaho Power" or  
10 "Company") provides this response to Move Idaho Power's and Nancy Peyron's  
11 (hereinafter referred to collectively as "MIP") Motion for a Contested Case Hearing on  
12 Acknowledgement of Boardman to Hemingway Transmission Line in IPC Least Cost Plan  
13 ("Motion"). For the reasons discussed below, Idaho Power urges the Public Utility  
14 Commission of Oregon ("Commission") to deny MIP's Motion because: (a) the Energy  
15 Facilities Siting Council ("EFSC" or "Council") process does not require that the  
16 Commission's Integrated Resource Planning ("IRP") proceeding be conducted as a  
17 contested case process; (b) the IRP proceeding does not lend itself to a contested case  
18 process; and (c) MIP nevertheless can avail itself of substantial process in the IRP and a  
19 contested case on the need for the Boardman to Hemingway transmission line at the  
20 Certificate of Public Convenience and Necessity ("CPCN") stage.

21 **II. BACKGROUND**

22 On December 30, 2009, Idaho Power filed its 2009 IRP, which includes a proposed  
23 500 kilovolt ("kV") transmission line from the Boardman substation to the proposed  
24 Hemingway substation ("B2H") as an integral component of its preferred portfolio. On  
25 February 12, 2010, MIP filed a petition to intervene.<sup>1</sup> In that petition, MIP stated that it is

26 <sup>1</sup> Petitions for Intervention of Move Idaho Power and Nancy Peyron (Feb. 12, 2010).

1 "dedicated to preventing the construction of new transmission lines through historically or  
2 environmentally sensitive areas in Baker County Oregon," and that if allowed to intervene,  
3 MIP intended "to pursue in particular issues pertaining to the need for and routing of  
4 proposed transmission lines."<sup>2</sup>

5 The IRP proceeding is the first of a three-step process that will be completed  
6 before B2H is constructed. This three-step process was described in detail in Idaho  
7 Power's answer to MIP's petition for intervention,<sup>3</sup> and so will be briefly summarized here:

8 *First*, in this docket the Commission will consider the Company's IRP, in which  
9 B2H is included in the Company's preferred portfolio. In particular, the Commission will  
10 determine whether the preferred portfolio—of which B2H is an integral component—  
11 constitutes a reasonable, cost effective, and necessary approach to ensuring that the  
12 Company's customers receive adequate service at reasonable rates.<sup>4</sup>

13 *Second*, the Company will apply for a site certificate from EFSC, which will  
14 authorize the construction of the proposed transmission line along a route specified by the  
15 Council. Under EFSC's own rules, the site certificate authorizing the construction of the  
16 transmission line will be issued only after showing of "need"<sup>5</sup> which can be met through  
17 a Commission acknowledgement of the resource in the Company's IRP.<sup>6</sup>

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20 <sup>2</sup> *Id.* at. 2.

21 <sup>3</sup> Idaho Power Company's Answer to Petitions for Intervention of Move Idaho Power and Nancy  
22 Peyron, February 19, 2010.

23 <sup>4</sup> *Re Least-cost Planning for Resource Acquisitions*, Docket UM 180, Order 89-507, 102 P.U.R.4th  
24 301, 1989 WL 418453 (April 20, 1989) ("Order No. 89-507"); and *In the Matter of Public Utility  
Commission Investigation Into Integrated Resource Planning*, Docket UM 1056, Order No. 07-002  
(Jan. 8, 2007) ("Order No. 07-002").

25 <sup>5</sup> OAR 345-023-0005(1).

26 <sup>6</sup> OAR 345-023-0020(2).

1 *Third*, if the route for B2H ultimately determined by EFSC crosses private lands,  
2 the Company intends to seek a CPCN from the Commission.<sup>7</sup> The Commission will give  
3 notice and hold a public meeting to determine “the necessity, safety, practicability and  
4 justification in the public interest for the proposed transmission line” and will enter an order  
5 accordingly.<sup>8</sup> The Commission’s CPCN order is subject to judicial review.<sup>9</sup>

6 On March 2, 2010, MIP filed its Motion in this docket requesting that the  
7 Commission conduct a contested case hearing regarding that portion of the IRP  
8 proceeding addressing the inclusion of B2H in Idaho Power’s IRP. In support of its  
9 motion, MIP argues that because EFSC rules allow EFSC to rely upon the Commission’s  
10 acknowledgement of the facility in an IRP, EFSC deprives opponents of a facility the  
11 contested case process required by law. For the reasons discussed below, MIP’s Motion  
12 should be denied.

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**II. ARGUMENT**

15 **A. The EFSC Process Does Not Require the IRP to Be Conducted as a**  
16 **Contested Case Proceeding.**

17 Before issuing a site certificate for a nongenerating facility, EFSC’s rules require a  
18 showing of “need” for the facility. EFSC’s rules clearly state that the existence of an  
19 acknowledged IRP that includes the facility constitutes conclusive evidence that the need  
20 standard has been met.<sup>10</sup> MIP argues that because EFSC’s proceedings must be  
21 conducted as a contested case, MIP is entitled to a contested case on the need standard  
22 in the IRP proceeding. MIP is incorrect.

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24 <sup>7</sup> ORS 758.015.

25 <sup>8</sup> ORS 758.015(2).

26 <sup>9</sup> *Id.*

<sup>10</sup> OAR 345-023-0005(2).

1 EFSC's enabling statute requires the Council to adopt standards for the "siting,  
2 construction and operation of facilities" under its consideration. These standards *may, but*  
3 *are not required to*, address "the need for proposed nongenerating facilities [such as  
4 transmission lines] consistent with the state energy policy . . . ."11 In so directing, the  
5 Legislature specifically stated that "the council may consider least-cost plans [now referred  
6 to as IRPs] when adopting a need standard or in determining whether an applicable need  
7 standard has been met."12 The Oregon Supreme Court noted that the enabling statutes  
8 here give EFSC "wide discretion over many facets of the construction of energy  
9 facilities."13 This discretion leaves "no doubt that the council is directed to exercise its own  
10 judgment in setting standards" consistent with the statutory policies.14

11 Given that the Legislature granted the Council the authority to decide whether or  
12 not it wished to establish a need standard for nongenerating facilities, it follows that  
13 EFSC's decision to adopt the Commission's IRP acknowledgement as a proxy for need is  
14 well within its discretion. There is no statutory or regulatory requirement that the IRP  
15 acknowledgement be the product of a contested case.

16 **B. The IRP Framework is Not Suited to a Contested Case Process.**

17 A "contested case" under the Oregon Administrative Procedures Act is defined as  
18 a proceeding "[i]n which the individual legal rights, duties or privileges of specific parties  
19 are required by statute or Constitution to be determined only after an agency hearing at  
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21 <sup>11</sup> ORS 469.501(1) (EFSC "shall adopt standards for the siting, construction, operation and retirement  
22 of facilities. These standards may address but need not be limited to the following subjects: . . . (L)  
23 The need for the proposed nongenerating facility."). In support of Move Idaho Power's motion, Stop  
24 Idaho Power incorrectly states that EFSC's statutes "required that the standards address" need. Stop  
25 Idaho Power's Memorandum in Support of Contested-Case Hearing at 3 (Mar. 16, 2010). This is  
26 simply incorrect.

24 <sup>12</sup> *Id.*

25 <sup>13</sup> *Application of Portland General Electric Co.*, 277 Or 447, 462 (1977).

26 <sup>14</sup> *Id.* at 459.

1 which such specific parties are entitled to appear and be heard.”<sup>15</sup> In developing its  
2 policies for the IRP process, the Commission has been careful to note that the IRP does  
3 *not* determine individual legal rights, duties or privileges, and is therefore not conducted as  
4 a contested case.

5 One of the primary purposes of the IRP is to allow for public participation in the  
6 utility planning process.<sup>16</sup> After considering the utility’s plan and public comments and  
7 recommendations, the Commission will decide whether to acknowledge the plan.  
8 Acknowledgment means that the plan “as a whole appears reasonable, based on the  
9 information and analysis available now.”<sup>17</sup> However, the acknowledgement does not  
10 finally determine any party’s rights. Most significantly, acknowledgement does not  
11 constitute preapproval of a utility action or constitute a ratemaking determination.<sup>18</sup> And  
12 although consistency with the IRP “may be evidence in support of favorable rate-making  
13 treatment of the action, it is not a guarantee of favorable treatment.”<sup>19</sup> For this reason, the  
14 Commission has been clear that IRP acknowledgment should be limited to generic, rather  
15 than specific, resources.<sup>20</sup>

16 Despite the fact the IRP is not conducted as a contested case, it does allow “a  
17 significant opportunity for public participation.”<sup>21</sup> The Commission’s IRP guidelines allow  
18 parties to contribute information and ideas, to receive information, and to make relevant  
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20 <sup>15</sup> ORS 183.310(2)(a)(A).

21 <sup>16</sup> Order No. 07-002 at 1 (“The key procedural elements [of the IRP process] were identified as: 1. Significant public . . . involvement in plan preparation.”).

22 <sup>17</sup> Order No. 04-375 at 12.

23 <sup>18</sup> Order No. 07-002 at 24-25.

24 <sup>19</sup> *Id.* at 24.

25 <sup>20</sup> *Id.* at 25.

26 <sup>21</sup> Order No. 89-507; 102 PUR4th 301 at \*304.



1 inquiries of the utility.<sup>22</sup> MIP may seek information from Idaho Power through data  
2 requests, file written comments for the Commission's consideration, and participate at  
3 public meetings. In short, while the IRP is not a contested case, MIP will have very  
4 significant opportunities to provide input in the process, and to have its views on the need  
5 for B2H heard by the Commission. Idaho Power encourages MIP to participate fully.

6 **C. The Commission May Conduct a Contested Case on the Need for B2H in the**  
7 **CPCN Process.**

8 Finally, the Commission may ultimately hold a contested case hearing on the need  
9 for B2H through a CPCN process, and if so, MIP will have the opportunity to participate  
10 fully in those proceedings. As discussed above, if the route selected by EFSC for B2H  
11 crosses private lands, Idaho Power intends to seek a CPCN from the Commission. At that  
12 point the precise route for B2H will be determined, which will allow the Commission to  
13 consider the necessity of this specific resource. As a part of the CPCN proceeding, the  
14 Commission will conduct a public hearing to determine "the necessity, safety, practicability  
15 and justification in the public interest for the proposed transmission line" and will enter an  
16 order accordingly.<sup>23</sup> MIP will have an opportunity to participate in and raise the issue of  
17 need in that contested case.

18 **III. CONCLUSION**

19 Although Idaho Power objects to MIP's argument that the IRP must be a contested  
20 case proceeding, Idaho Power agrees that MIP will be afforded significant input on the  
21 issue of need in this proceeding. MIP is free to file comments, serve data requests  
22 relevant to the issue of need, and make recommendations to the Commission. The  
23 Commission will consider MIP's arguments related to need in determining whether to

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<sup>22</sup> Order No. 07-002 at 8; IRP Guideline 2.

25 <sup>23</sup> ORS 758.015(2).

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1 acknowledge Idaho Power's IRP. Moreover, if a CPCN is sought, MIP will have the  
2 opportunity to participate in a full contested case proceeding on the issue of the need for  
3 B2H.

4 On the other hand, there is no reason why the Commission should alter its  
5 longstanding process for conducting IRP proceedings, which have been specifically  
6 developed to afford an opportunity for public participation in the resource planning process  
7 and that does not finally determine the rights of any party. For these reasons, the  
8 Commission should deny MIP's Motion.

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10 Respectfully submitted this 16<sup>th</sup> day of March, 2010.

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