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VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Filing Center
P.O. Box 1088
201 High Street S.E., Suite 100
Salem, OR 97308-1088

Re: Docket No. PCN 5 – In the Matter of Idaho Power Company’s Petition for Certificate of Public Convenience and Necessity.

Attention Filing Center:

Attached for filing in the above-referenced docket is Idaho Power Company’s Objections to Parties’ Testimony and Exhibits.

Please contact this office with any questions.

Thank you,

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 5

In the Matter of

IDAHO POWER COMPANY

PETITION FOR CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY.

**IDAHO POWER COMPANY'S
OBJECTIONS TO PARTIES' TESTIMONY
AND EXHIBITS**

I. INTRODUCTION

1 Pursuant to Administrative Law Judge (“ALJ”) John Mellgren’s March 22, 2023, Pre-
2 Hearing Memorandum, Idaho Power Company (“Idaho Power” or “Company”) objects to the
3 admission of certain testimony and exhibits referenced in the Motions to Admit Testimony and
4 Exhibits filed by parties on April 25 and April 28, 2023.¹ Idaho Power respectfully requests that
5 Judge Mellgren promptly issue a ruling clarifying that testimony and exhibits in the following
6 categories—and specifically, the testimony and exhibits identified in Idaho Power’s objections,
7 below—shall be excluded from the record in this proceeding, and that parties may not rely on
8 such testimony and exhibits in their briefing:

- 9 • Testimony and exhibits filed after the deadlines in this proceeding;
- 10 • Cross-examination exhibits offered without foundation;
- 11 • Cross-examination exhibits that are not relevant, such as data requests provided without
12 the responses;
- 13 • Questions or statements that were the subject of Idaho Power’s objections at the cross-
14 examination hearing that are renewed in these objections;
- 15 • Documents that were offered with motions to admit with a request for official notice, but
16 which are not properly the subject of official notice;

¹ Although ALJ Mellgren granted Idaho Power an extension to respond to Mr. Larkin’s April 28, 2023 Motion to Admit, Idaho Power has included any objections to the documents referenced in the April 28, 2023 filing in these Objections.

- 1 • Exhibits attached to testimony but without any discussion or analysis;
- 2 • Exhibits that consist of briefing offered in other proceedings; and
- 3 • Unsworn comments being offered as exhibits.

II. STATEMENT OF LAW

4 As defined by OAR 860-001-0450, “relevant evidence” is that which tends to make the
5 existence of any fact at issue in the proceedings more or less probable than it would be without
6 the evidence and is admissible if it is of a type commonly relied upon by reasonably prudent
7 persons in the conduct of their serious affairs. This rule also provides for the exclusion of evidence
8 if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of
9 the issues, or undue delay.

10 For evidence to be admissible, it must be properly authenticated.² Documents that have
11 not been authenticated lack foundation, and may appropriately be excluded from the record as
12 hearsay. While hearsay is not categorically excluded in administrative agency proceedings, it is
13 nevertheless well established that hearsay testimony cannot be given much weight and does not
14 provide sufficient indicia of reliability where cross-examination of the author of such testimony is
15 not permitted.³ Where a party fails to authenticate a document, it therefore lacks *any* indicia of
16 reliability, and the Public Utility Commission of Oregon (“Commission”) should exclude such
17 documents from the record.

² ORS 40.505(2).

³ *Central Lincoln People’s Util. Dist. v. Verizon Nw. Inc.*, Docket UM 1087, Order No. 04-379 at 5 (July 8, 2004) (citing *Schacher v. Dunne*, 109 Or App 607, 611 (1991) (finding that the purpose of cross-examination is to indicate to the fact finder what weight to give to witness’ testimony); *Sheedy v. Stall*, 255 Or 594, 596 (1970) (“Hearsay evidence is excluded because of its untrustworthiness. The declarant’s accuracy and veracity cannot be tested by cross-examination.”), *aff’d*, *State v. Mendez*, 308 Or 9, 18-19 (1989)).

III. OBJECTIONS

1 In this proceeding, several intervenors seek to admit evidence that is procedurally
2 improper, lacking foundation, or otherwise unreasonably burdensome to the record and prejudicial
3 to Idaho Power. Below, Idaho Power details the categories and legal bases for its objections and
4 the testimony and exhibits falling into each category. Idaho Power respectfully requests that these
5 exhibits and testimony be stricken from the record and that the ALJ clarify that parties may not
6 reference these documents in their post-hearing briefing.

7 **A. Objections to Testimony and Exhibits Filed after the Deadline for Testimony.**

8 In this proceeding, the Commission provided for five rounds of testimony. As the
9 Commission has explained, the use of five rounds in the schedule allows parties to supplement
10 their analysis in response to the Company's Reply Testimony, while still providing the Company
11 with the opportunity to respond to new evidence⁴—which is critical since the Company bears the
12 burden of persuasion to support its request for a Certificate of Public Convenience and Necessity
13 (“CPCN”) in this case. Allowing parties to introduce new evidence after all five rounds of
14 scheduled testimony are complete would be fundamentally inconsistent with the Commission's
15 process for developing a full and fair record—and indeed, the Commission has previously
16 excluded evidence offered outside the procedural schedule.⁵

⁴ *In re Avista Corp. Request for a Gen. Rate Revision*, Docket UG 288, Order No. 16-109 at 22 (Mar. 15, 2016) (noting that, in response to the utility's reply testimony, “the issues have been identified and the testimony is more sharply focused”); see also *In re PacifiCorp, dba Pac. Power, 2017 Transition Adjustment Mechanism*, Docket UE 307, ALJ Ruling at 1 (July 1, 2016) (citing Order No. 16-109 and setting five rounds of testimony “to allow Staff and intervenors the opportunity not only to identify disagreements with the utility's application, but also to address the utility's more detailed response to those matters identified as in dispute”).

⁵ *In re Portland Gen. Elec. Co.; Request for a Rate Increase in the Co.'s Or. Annual Revenues of \$13,000,000 for Biglow Canyon*, Docket UE 188, Order No. 07-573 (Dec. 21, 2007) (excluding testimony offered by Industrial Customers of Northwest Utilities after resolution of issue in Stipulation, and noting “[d]ue process therefore requires that all issues to be examined in a proceeding during a suspension period, be raised as early as possible, so that all parties may have a reasonable opportunity to respond via the submission of testimony, the cross-examination of witnesses of opposing parties in a public forum and the presentation of legal argument.”).

1 If new factual evidence is allowed into the record late in the proceeding—and after Idaho
2 Power’s opportunity to respond—Idaho Power is prejudiced, as the Company has no opportunity
3 to rebut such evidence. Importantly, allowing such evidence could also have a significant and
4 detrimental impact on future contested cases before the Commission, as it would signal to parties
5 that evidence may be submitted at any time in the proceeding, without regard to the procedural
6 schedule.

7 Judge Mellgren established a March 20, 2023 deadline for filing Rebuttal and Cross-
8 Answering Testimony⁶—which was Staff and Intervenors’ final round of testimony in this
9 proceeding. Additionally, on April 6, 2023, Judge Mellgren advised parties that “aside from Idaho
10 Power’s upcoming sur-rebuttal testimony deadlines, there is no additional opportunity to file
11 testimony in the current schedule” and “[w]hile our rules do contemplate the filing of new exhibits
12 presented at or before the hearing, such exhibits should not be treated as a means by which to
13 present new testimony or otherwise bring in evidence that could have been presented during the
14 opportunities for testimony established in the procedural schedule.”⁷ Despite this clear cut-off in
15 the procedural schedule and despite the ALJ’s clear guidance, certain intervenors nonetheless
16 continued to file testimony and exhibits after this date—styled as new testimony or errata to
17 previously filed testimony.

18 **1. New testimony and exhibits filed after deadline.**

19 Idaho Power objects to the following testimony and exhibits as they are improperly offered
20 after the ALJ’s deadline for filing written testimony:

Party	Date Filed	Document Title	Basis for Objection
Wendy King	4/25/2023	Wendy King’s Clarification Exhibit 1: Alternate Route to Wheat Ridge	Late-filed exhibit

⁶ Docket PCN 5, Ruling Granting Motion to Modify Procedural Schedule at 2 (Mar. 9, 2023)

⁷ Docket PCN 5, Memorandum at 1 (Apr. 6, 2023).

		Intraconnection Corridor	
Sam Myers	4/12/2023	Sam Myers Testimony	Late-filed direct testimony
John Williams	4/25/2023	John Williams 2022 Confidential Landowner Cultural Survey Reports from Idaho Power. Confidential Saved to Agency Folder.	Late-filed exhibit

1 **2. Late-filed testimony styled as errata.**

2 Parties may file errata to testimony to correct an error discovered after filing, but such
3 errata filings should be limited to corrections to clear errors in the original testimony—and should
4 not include entirely new or supplemental information. Idaho Power objects to the following
5 testimony and exhibits as they are improperly offered after the ALJ’s deadline for filing written
6 testimony:

Party	Date Filed	Document Title	Basis for Objection
Wendy King	4/24/2023	Wendy King’s Errata to Rebuttal Testimony filed on 3/20/2023	Not errata – instead new exhibits filed outside of procedural schedule.
Sam Myers	4/25/2023	Sam Myers’ Errata to Testimony filed on 3/30/2023 (referred to by Sam Myers in Motion to Admit as Clarification Testimony of Professional Wind Data Exhibits)	Not errata – instead entirely new testimony and argument filed outside of procedural schedule.

7 **B. Objection to Cross-Examination Exhibits Based on Lack of Foundation.**

8 Cross-examination is an opportunity to question an opposing party’s witness about that
9 witness’s own testimony, or matters affecting that witness’s credibility—but importantly, is *not* an
10 opportunity to supplement a party’s own affirmative case.⁸ For cross-examination exhibits to be

⁸ *Ah Doon v. Smith*, 25 Or 89, 93-94 (1893) (“It is true the party against whom a witness is called cannot, on cross-examination, go into an independent or affirmative case on his part, but must confine his examination to such facts connected with the direct examination[.]”).

1 admissible, a party must lay the necessary foundation to authenticate the document and
2 demonstrate that it is within the proper scope of cross-examination.⁹

3 **1. Objections based on lack of foundation because the party performed no**
4 **cross-examination or the exhibit was not offered at hearing.**

5 Several intervenors identified exhibits in their cross-examination statements but did not
6 reference the exhibit at the evidentiary hearing; in some cases, these intervenors did not seek to
7 cross-examine any witnesses at all. In a letter to Judge Mellgren prior to the hearing, Idaho Power
8 previewed its concern about these issues, and noted its objection to cross-examination exhibits
9 not authenticated by a witness at hearing.¹⁰ Although they had notice as to Idaho Power's
10 concerns, these parties either cross-examined witnesses at hearing but did not refer to the cross-
11 examination exhibits, or they waived cross-examination altogether. In such cases, the offered
12 exhibits lack authentication and are therefore inadmissible. Idaho Power objects to the following
13 exhibits on this basis:

Party	Date Filed	Document Title	Basis for Objection
Susan Geer	4/19/2023	Susan Geer's Response to Idaho Power Data Request No. 1	Foundation – Not Offered at Cross-Examination Hearing
Wendy King	4/12/2023	Exhibit 7: Myers & Morter cropland under the proposed B2H route at MP 25.3 to 27.1 is considered Prime Farmland according to the NRCS (Natural Resources Conservation Service)	Foundation – Not Offered at Cross-Examination Hearing
Wendy King	4/12/2023	Exhibit 8: Myers Farm Soil Survey Map	Foundation – Not Offered at Cross-Examination Hearing
Wendy King	4/12/2023	Exhibit 9: Soil Data Access (SDA) Prime and	Foundation – Not Offered at Cross-Examination Hearing

⁹ ORS 40.505(2).

¹⁰ Docket PCN 5, Idaho Power Letter to Judge Mellgren (Apr. 3, 2023); Docket PCN 5, Idaho Power Letter to Judge Mellgren (Apr. 5, 2023).

Party	Date Filed	Document Title	Basis for Objection
		other Important Farmlands	
Wendy King	4/12/2023	Exhibit 10: Prime Farmland is characterized by erodibility or HEL determination. In the vicinity of B2H, Myers Farmland is over 90% Not Highly Erodible Land, indicating it should be used exclusively for farm use.	Foundation – Not Offered at Cross-Examination Hearing
Wendy King	4/12/2023	Exhibit 11: NRCS Prime and other Important Farmlands (usda.gov) Report Metadata: Soil Data Access Prime and other Important Farmlands	Foundation – Not Offered at Cross-Examination Hearing
Wendy King	4/12/2023	Exhibit 20 – Mr. Madison’s Testimony in Final Order, Attachment 6 at 8844 of 10603	Foundation – Not offered at Cross-Examination Hearing; content of exhibit appears to be testimony / argument
Greg Larkin	Not filed in PCN 5	NWS: Tornado-like damage, but no official tornado Saturday in Culver	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	Not filed in PCN 5	Do Negative Ions Affect People? If So, How? (healthline.com)	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	Not filed in PCN 5	Aeolian Vibration of Conductors: Theory, Laboratory Simulation & Field Measurement	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	GL/402: Expert Witness of Mark Darrach Issues FW-3 and FW-6	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	GL/403: Union County Weed Control B2H Noxious Weed Plan Comments	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	GL/404: Economic Impact From Selected Noxious Weeds in Oregon	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	GL/405: Union County Community Wildfire Protection Plan	Foundation – Not Offered at Cross-Examination Hearing

Party	Date Filed	Document Title	Basis for Objection
Greg Larkin	4/12/2023	GL/501: Nation Historic Oregon Trail Information Center (NHOTIC) Visitation Numbers; 1992-2015	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	GL/1003: Administrative Order Expanding water rules on small and medium salmon, steelhead and bull trout. Siskiyou Georegion Streams	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	Larkin 1102 – Private Forest Accord	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	Larkin 1103: Dept of Forestry order steelhead and bull trout	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	Larkin 1105: Congressional Research Service – Wildfire Statistics (Mar. 1, 2023)	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	Larkin 1106: Article – <i>Electric utility PacifiCorp sued, accused of causing deadly McKinney Fire in Siskiyou County</i>	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	Larkin 1109 – NWS 2020 Annual Fire Weather	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	Larkin 1110 – OPB PacifiCorp Liability for Labor Day Fires	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	Larkin 1112 – FERC Orders PAC to Respond to Allegations of Reliability Violations	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	Larkin 1117 – Statesman Journal – PAC Labor Day Fires article	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	Greg Larkin/104 or GL/1101: Greg Larkin Exhibit emails regarding IP initiation of legal action against property owners.	Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	Not filed in PCN 5	Irene Gilbert Comments to PUC Feb. 1, 2017 LD-68	Foundation – Not Offered at Cross-Examination Hearing

Party	Date Filed	Document Title	Basis for Objection
STOP B2H	4/12/2023	STOP B2H/303 – Cost Overruns in Transmission Grid Projects	Foundation – Not Offered at Cross-Examination Hearing
STOP B2H	4/12/2023	STOP B2H/305 – NPS 1999 – Guidelines for Evaluating and Documenting Rural Historic Landscapes, US Dept. of Interior	Foundation – Not Offered at Cross-Examination Hearing
STOP B2H	4/12/2023	STOP B2H/306 – Mock Idaho House Resolution No. 4 w/ B2H Amendment	Foundation – Not Offered at Cross-Examination Hearing
STOP B2H	4/12/2023	STOP B2H/307 – NorthWestern Enters an Agreement to Secure Reliable, Cost-Effective Energy Services for Montanans 8-K, 1/17/23	Foundation – Not Offered at Cross-Examination Hearing
John Williams	4/12/2023	Williams/301/Cross/Maps – Three Images of maps of the Flow Routing – Emergency Action Plan and Bypass Conceptual Layout	Foundation – Not Offered at Cross-Examination Hearing
John Williams	4/12/2023	Williams/302/Cross – NPS (National Park Service). 1983. Standards for Archaeology and Historic Preservation. U.S. Department of the Interior, NPS, Washington, D.C	Foundation – Not Offered at Cross-Examination Hearing
John Williams	4/12/2023	Williams/303/Cross – NPS. 1985. Guidelines for Local Surveys: A Basis for Preservation Planning. National Register Bulletin. U.S. Department of the Interior, National Park Service, Washington, D.C.	Foundation – Not Offered at Cross-Examination Hearing
John Williams	4/12/2023	Williams/304/Cross – NPS. 1997. How to Complete the National Register Registration Form. U.S. Department of	Foundation – Not Offered at Cross-Examination Hearing

Party	Date Filed	Document Title	Basis for Objection
		the Interior, National Park Service, Washington, D.C.	
John Williams	4/12/2023	Williams/305/Cross— NPS. 1999. Guidelines for Evaluating and Documenting Rural Historic Landscapes. U.S. Department of the Interior National Park Service, Washington, D.C.	Foundation – Not Offered at Cross-Examination Hearing
John Williams	4/12/2023	Williams/306/Cross/pages 1-3— ACHP Memorandum, Re: Recent court decision regarding the meaning of “direct” in Sections 106 and 110(f) of the National Historic Preservation Act	Foundation – Not Offered at Cross-Examination Hearing
John Williams	4/12/2023	Williams/307/Cross/pages 2-3— Settlement Agreement, IPC and John C. Williams, March 25, 2022	Foundation – Not Offered at Cross-Examination Hearing
John Williams	4/12/2023	Williams/308/Cross— DR#1 Response and two attachments (maps-same as Exhibit 104) plus, a Confidential map not included herein.	Foundation – Not Offered at Cross-Examination Hearing

1 **2. Objections based on lack of foundation to exhibits offered in hearing or**
2 **testimony but without proper foundation.**

3 Wendy King identified Exhibit 12 in her cross-examination statement and referenced
4 Exhibit 12 at the hearing but did not lay a proper foundation for the exhibit. Idaho Power
5 articulated its objections to the admission of these exhibits at the cross-examination hearing, and
6 renews those objections. Idaho Power objects to the following exhibits on this basis:

Party	Date Filed	Document Title	Basis for Objection
Wendy King	4/12/2023	Exhibit 12 - Fire Analysis in Dryland Crop Systems: Exhibit U - PublicServices (oregon.gov) Idaho Power September	Foundation – Document contains information provided by Idaho Power combined with Ms. King’s responses; Ms. King

		2018; June 2020 (Modified by Oregon Department of Energy during ASC – PO Phase)	did not establish foundation for the exhibit.
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1 **C. Objections to Cross-Examination Exhibits Based on Relevance – Larkin Data**
2 **Requests.**

3 Greg Larkin identified cross-examination exhibits that consisted of data requests posed to
4 Idaho Power, but provided only the questions, interspersed with legal references, testimony, and
5 argument, and did not provide Idaho Power’s responses to these data requests. Idaho Power
6 objects to the data requests, presented on their own, because they include testimony-like
7 statements and argument that were not filed in the record. That said, the Company would not
8 object to the admission of Idaho Power’s responses to the data requests which include only the
9 questions and responses provided. However, to Idaho Power’s knowledge, these responses
10 have not been filed in PCN 5. Additionally, these cross-examination exhibits were not offered at
11 the hearing, and thus also were not authenticated and are therefore inadmissible for lack of
12 foundation.

13 Idaho Power objects to the following exhibits on this basis:

Party	Date Filed	Document Title	Basis for Objection
Greg Larkin	Not filed in PCN 5	Greg Larkin Data Request 100 and Attachments	Relevance - Data requests are not relevant and therefore inadmissible. Mr. Larkin is offering only the questions posed to Idaho Power, interspersed with legal references and argument, but is not providing Idaho Power’s responses to these Data Requests. Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	Not filed in PCN 5	GL/200 Greg Larkin Data Requests and	Relevance - Data requests are not

		exhibits Request 200 to Idaho Power	relevant and therefore inadmissible. Mr. Larkin is offering only the questions posed to Idaho Power, interspersed with legal references and argument, but is not providing Idaho Power's responses to these Data Requests. Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	GL/300: Data Request for Mr. Bastach Questions 26-61 including references provided.	Relevance - Data requests are not relevant and therefore inadmissible. Mr. Larkin is offering only the questions posed to Idaho Power, interspersed with legal references and argument, but is not providing Idaho Power's responses to these Data Requests. Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	4/12/2023	Greg Larkin/400, Request Nos. 62-84 to Idaho Power	Relevance - Data requests are not relevant and therefore inadmissible. Mr. Larkin is offering only the questions posed to Idaho Power, interspersed with legal references and argument, but is not providing Idaho Power's responses to these Data Requests. Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	Not filed in PCN 5	GL/500 Lindsey Barretto Data Requests and Exhibits	Relevance - Data requests are not relevant and therefore inadmissible. Mr.

			Larkin is offering only the questions posed to Idaho Power, interspersed with legal references and argument, but is not providing Idaho Power's responses to these Data Requests. Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	Not filed in PCN 5	GL/800 Greg Larkin data requests to Mr. Bastasch	Relevance - Data requests are not relevant and therefore inadmissible. Mr. Larkin is offering only the questions posed to Idaho Power, interspersed with legal references and argument, but is not providing Idaho Power's responses to these Data Requests. Foundation – Not Offered at Cross-Examination Hearing
Greg Larkin	Not filed in PCN 5	Data Requests from Greg Larkin to Idaho Power and PacifiCorp including Attachments	Relevance - Data requests are not relevant and therefore inadmissible. Mr. Larkin is offering only the questions posed to Idaho Power, interspersed with legal references and argument, but is not providing Idaho Power's responses to these Data Requests. Foundation – Not Offered at Cross-Examination Hearing

1 **D. Idaho Power Renews Its Oral Objections from the Hearing.**

2 During the evidentiary hearing in this proceeding on April 19, 2023, ALJ Mellgren noted
3 that he did not intend on ruling on most evidentiary objections during the hearing, instead directing

1 counsel to make the objection during the hearing and restate the objection in writing along with
2 its objections to motions to admit testimony and exhibits.¹¹ In accordance with this ruling, Idaho
3 Power renews all of its objections that were not denied by the ALJ at the time of the hearing,¹²
4 and asks the ALJ to rule on those objections.

5 **E. Objections to Improper Requests for Official Notice under OAR 860-001-0460.**

6 Several parties have sought admission of evidence under OAR 860-001-0460. This rule
7 limits admission of evidence by official notice to:

8 (a) All matters of which the courts of the State of Oregon take
9 judicial notice;

10 (b) Rules, regulations, administrative rulings, and reports of the
11 Commission and other governmental agencies;

12 (c) Permits, certificates, and licenses issued by the Commission;

13 (d) Documents and records in the files of the Commission that have
14 been made a part of the files in the regular course of performing the
15 Commission's duties;

16 (e) General, technical, or scientific facts within the specialized
17 knowledge of the agency;

18 (f) The results of the Commission's or ALJ's inspection of property
19 at issue in the proceedings if advance notice of the inspection was
20 provided to the parties.¹³

21 It is permissible under this rule to ask the Commission to take official notice of final rulings of the
22 Commission or of another governmental agency such as the Energy Facility Siting Council
23 ("EFSC"), Oregon statutes or administrative rules, or general facts within the Commission's
24 specialized knowledge. It is not permissible to ask the Commission to take official notice of filings
25 in other proceedings or other types of evidence outside of this rule, and thus these documents
26 are not admissible using OAR 860-001-0460(1).

¹¹ Evidentiary Hearing Transcript at 14 lines 4-11 (Apr. 19, 2023) ("Transcript").

¹² Transcript at 35, line 13 to 36, line 21; Transcript at 76, line 9 to 77, line 10; Transcript at 77, line 19 to 78, line 24; Transcript at 79, line 18 to 80, line 2; Transcript at 102, line 14 to 103, line 16.

¹³ OAR 860-001-0460(1).

1 Idaho Power objects to the following exhibits as they are not within the scope of OAR 860-
 2 001-0460:

Party	Date Filed	Document Title	Basis for Objection
Wendy King	Not filed in PCN 5	Wheatridge Wind Energy Facility, Complete Application 7-1-2015 Exhibit A - G Exhibit H - J Exhibit K – Q Exhibit R – DD	Application for Site Certificate for Wheatridge Wind Energy Facility at EFSC – not subject to official notice
Sam Myers	Not filed in PCN 5	Oregon Department of Energy OAH Case No. 2019-ABC-0288, Sam Myers Closing Brief on Issue LU-9 February 28, 2022	Brief filed with EFSC – not subject to official notice
Sam Myers	Not filed in PCN 5	Oregon Department of Energy, Energy Facility Siting Council Meeting August 29-30-31, 2022, Agenda Item B: Council Review of the Proposed Order, Proposed Contested Case Order/Exceptions Hearing Council Materials https://www.oregon.gov/energy/facilities-safety/facilities/Council%20Meetings/29-30-31-2022-Agenda-Item-B-Day-3-Materials.pdf	Exceptions arguments filed with EFSC – not subject to official notice
Sam Myers	Not filed in PCN 5 –and does not appear to exist outside the record either, since document is described as pending FOIA request	Freedom of Information Act, FOIA, from BPA, requesting wind data, tower failures and fire related incidents, pending	Pending FOIA request – not subject to official notice
John Williams	Not filed in PCN 5	John Williams Direct Testimony in EFSC Contested Case (2019-ABC-02833). Filed on 9/16/2021	EFSC testimony not subject to official notice
John Williams	Not filed in PCN 5	John C. Williams 1st Amended Surrebuttal Testimony in EFSC Contested Case (2019-ABC-02833). Filed on 12/2/2021	EFSC testimony not subject to official notice
John Williams	Not filed in PCN 5	Surrebuttal John C. Williams HCA-7, 1st Amended 12/2/2021 (EFSC case 2019-ABC-02833, no bate stamp; 4. In One Drive)	EFSC testimony not subject to official notice
John Williams	Not filed in PCN 5	John C. Williams Response Testimony to IPC’s Objections to Sur-rebuttal Testimony and Exhibits in EFSC	EFSC argument not subject to official notice

		Contested Case (2019-ABC-02833). Filed on 12/31/2021	
John Williams	Not filed in PCN 5	John C. Williams Closing Argument in EFSC Contested Case (2019-ABC- 02833). Filed on 12/28/2022	EFSC briefing not subject to official notice
John Williams	Not filed in PCN 5	John C. Williams Response Brief in EFSC Contested Case (2019-ABC- 02833). Filed on 3/30/2022	EFSC briefing not subject to official notice

1 **F. Objections to Exhibits Provided with Testimony without Any Analysis or Discussion**
2 **of Exhibits.**

3 As detailed in the table below, several intervenors included exhibits with their pre-filed
4 testimony, but made no reference to those exhibits in their testimony. In absence of any reference
5 to these exhibits, it is not clear how they are relevant or what point the intervenor intended to
6 make—which made it impossible for Idaho Power to respond. It is uneconomic and prejudicial to
7 require Idaho Power to infer which specific data the Company must address in its briefing.

8 Additionally, several intervenors noted in their Motions to Admit that they are seeking to
9 admit the entire record from EFSC’s consideration of Idaho Power’s Application for Site
10 Certificate, which spans over 12 years and approximately 15.2 GB of data. Similarly, other parties
11 propose that the numerous comments offered in prior dockets—or the entire record from prior
12 dockets—should be admitted. These proposals are overly broad and burdensome to the
13 Commission’s record, and should be rejected. Moreover, these documents were not filed in the
14 record in PCN 5 at all. For these reasons, Idaho Power objects to the following exhibits on this
15 basis:

Party	Date Filed	Document Title	Basis for Objection
Greg Larkin	Not filed in PCN 5	EFSC Contested Case Administrative Record	Not filed in record, not referenced with specificity in testimony, unduly burdensome to record.
Sam Myers	Not filed in PCN 5	Proposed Order July 2, 2020	Not filed in record, not referenced with specificity in testimony, unduly burdensome to record and potentially confusing as it has been

Party	Date Filed	Document Title	Basis for Objection
			superseded by Final Order.
STOP B2H	Not filed in PCN 5	<p><i>IPC's 2015-2021 IRP Filings:</i></p> <p><i>LC 63 including:</i></p> <ul style="list-style-type: none"> • Comments from STOP members before incorporating. <p><i>LC 68 including:</i></p> <ul style="list-style-type: none"> • Stop B2H Coalition Opening Comment for the Docket 68 • Stop B2H Coalition's Closing Comment (Redacted version) for Docket 68 and the verbal testimony at the Public Hearing <p><i>LC 74 including:</i></p> <ul style="list-style-type: none"> • Application for Reconsideration of Order No. 21-184, in LC 74 (Aug 3, 2021) • STOP B2H Coalition Closing Comments LC 74 (submitted January 8, 2021) • STOP B2H Coalition Amended and Revised Opening Comments LC 74 (submitted April 7, 2020) <p><i>LC 78 including:</i></p> <ul style="list-style-type: none"> • Stop B2H Coalition Opening Comments for 2021 IRP LC#78 (July 7, 2022) • Stop B2H Coalition Closing Comments for 2021 IRP LC#78 (September 8, 2022) • Stop B2H Coalition Comments on Staff Report for 2021 IRP LC#78 (November 18, 2022) 	Not filed in record, not referenced with specificity in testimony, unduly burdensome to record.
STOP B2H	Not filed in PCN 5	EFSC Contested Case Administrative Record	Not filed in record, not referenced with specificity in testimony,

Party	Date Filed	Document Title	Basis for Objection
		Also included as screenshot of file structure in STOP B2H/107	unduly burdensome to record.
STOP B2H	Not filed in PCN 5	Proposed Order in EFSC Process - ODOE - B2HAPDoc2-1 Proposed Order on ASC w Hyperlink Attachments 2019-07-02	Not filed in record, not referenced with specificity in testimony, unduly burdensome to record and potentially confusing as it has been superseded by Final Order.
STOP B2H	Not filed in PCN 5	Cover Letter and pRFA1 pRFA1 Attachments pRFA1 Figures PUBLIC NOTICE - Boardman to Hemingway Transmission Line Receipt of Preliminary Request for Amendment 1 of Site Certificate (12/15/22)	
STOP B2H	Not filed in PCN 5	AR 638 - Risk Based Wildfire Protection Plans	Not filed in record, not referenced with specificity in testimony, unduly burdensome to record.
STOP B2H	Not filed in PCN 5	AR 626 - CPCN Rule Update, entire docket	Not filed in record, not referenced with specificity in testimony, unduly burdensome to record.
STOP B2H	Not filed in PCN 5	Oregon Explorer Renewable Energy and Wildfire Maps - https://oregonexplorer.info	Not filed in record, not referenced with specificity in testimony, unduly burdensome to record.
STOP B2H	Not filed in PCN 5	UM 2209 - All Comments filed by STOP B2H -Union County Community Wildfire Protection Plan (8/10/05) -Communities at Risk and WUI Zone Priority Setting (Chapter 7, June 2016) -Full Index to Union County Wildfire Protection Plan (June, 2016) -Greater Morgan Lake	Not filed in record, not referenced with specificity in testimony, unduly burdensome to record.

Party	Date Filed	Document Title	Basis for Objection
		Area Fire Risk Report, Wildfire Report 2/18/22 UM 2209 - IPC 2022 Wildfire Mitigation Plan	
STOP B2H	Not filed in PCN 5	Section 368 - Energy Corridors - West-Wide Energy Corridors	Not filed in record, not referenced with specificity in testimony, STOP B2H only provided a hyperlink. Note that Idaho Power provided a PDF copy of the map of the West Wide Energy Corridors in Idaho Power/610.

1 **G. Objections to Briefing Offered as Exhibits.**

2 As detailed in the table below, several intervenors included legal briefing from the appeal
3 of the EFSC Final Order before the Oregon Supreme Court. Legal argument is not properly
4 admissible as evidence, and thus should not be admitted into the record in this proceeding.

Party	Date Filed	Document Title	Basis for Objection
Greg Larkin	2/1/2023	Greg Larkin/124: Supreme Court Amended Appellant's Brief of Irene Gilbert (Dec. 21, 2022)	Late-filed brief rejected by Oregon Supreme Court – not evidence
Greg Larkin	3/20/2023	Larkin/704 - Gilbert's Amended Supreme Court Brief (that was rejected by the Supreme Court)	Late-filed brief rejected by Oregon Supreme Court – not evidence
Greg Larkin	4/12/2023	Larkin 1101: Anne Morrison Amicus Curiae Oregon Supreme Court Case No. 2019-A BC-02833.	Amicus brief filed with Oregon Supreme Court – not evidence
John Williams	2/1/2023	John C. Williams/102 - Links to Briefs in Supreme Court Case	Briefs filed with Oregon Supreme Court – not evidence

5 **H. Objections to Unsworn Comments Being Offered as Testimony or Exhibits.**

6 Throughout this proceeding, numerous parties and individuals have filed unsworn
7 comments in the record in PCN 5. Additionally, several intervenors included unsworn comments

1 as exhibits to their testimony.¹⁴ Such comments are not evidence,¹⁵ as they are not the type of
2 information commonly relied upon by reasonably prudent persons in the conduct of their serious
3 affairs.¹⁶ Moreover, because they were not offered by a witness in the proceeding, they were not
4 susceptible to cross-examination. While Idaho Power is not asking that these comments be
5 stricken from the record, Idaho Power instead asks that the ALJ clarify that such comments are
6 not properly admissible as evidence, and thus should not be referenced in the briefing in this
7 proceeding. Additionally, to the extent that individuals seek the admission of other documents
8 (such as motion or pleadings),¹⁷ those documents are not admissible as evidence.

IV. STIPULATED ADMISSION

9 Several intervenors identified Idaho Power's testimony and exhibits in their Motion to
10 Admit. While this was procedurally improper and unnecessary, Idaho Power has no objection to
11 the admission of its testimony and exhibits—and indeed, identified its own testimony and exhibits
12 in its Motion to Admit, filed on April 25, 2023.

13 Additionally, several intervenors identified Idaho Power's responses to data requests in
14 their Motions to Admit, but did not offer these exhibits into the record through testimony or through
15 cross-examination.¹⁸ When dealing with certain types of cross-examination exhibits, such as a
16 witness's prior testimony or Idaho Power's responses to parties' data requests, it is common
17 practice for parties to stipulate to admissibility, which obviates the need for a party to establish an

¹⁴ See, e.g., Larkin/702 (Gilbert comments); Myers Rebuttal Testimony, Exhibits 5 and 6 (Morter Comments and Luciani comments).

¹⁵ *In re Pub. Util. Comm'n of Or. Investigation into Qualifying Facility Contract and Pricing*, Docket UM 1610, Order No. 16-337 at 1 n.1 (Sept. 8, 2016) (“The City of Portland, which is not a party to this proceeding, filed comments on the joint application for reconsideration of PacifiCorp and PGE. The administrative law judge denied PGE's motion to strike the comments, but noted that the comments did not constitute formal evidence or argument in the docket.”).

¹⁶ OAR 860-001-0450(1)(b).

¹⁷ For example, Sam Myers requests that “all Sam Myers filings for PCN 5” be admitted as evidence.

¹⁸ STOP B2H also seeks the admission of PacifiCorp's responses to certain data requests. Because these are not Idaho Power's responses, Idaho Power does not include those documents in the list below.

1 exhibit's foundation through cross-examination. While the following exhibits were not formally filed
 2 as an exhibit to testimony or offered into the record through cross-examination, Idaho Power
 3 nonetheless stipulates to the admission of these exhibits:

Party	Date Filed	Document Title
Susan Geer	4/19/2023	IPC Response to Staff Data Request No. 90
Susan Geer	4/19/2023	IPC Response to Staff Data Request No. 90, Attachments 1-4
Susan Geer	4/19/2023	IPC Response to Staff Data Request No. 60
Susan Geer	4/19/2023	IPC Response to Staff Data Request No. 60, Attachments 1-11
Susan Geer	4/19/2023	IPC Response to Staff Data Request No. 56
Susan Geer	4/19/2023	IPC Response to Staff Data Request No. 22
Susan Geer	4/19/2023	IPC Supplemental Response to Staff Data Request No. 22
Susan Geer	4/19/2023	IPC Response to Staff Data Request No. 26
Susan Geer	4/19/2023	IPC Response to Staff Data Request No. 27
Susan Geer	4/19/2023	IPC Response to Staff Data Request No. 28
Susan Geer	Not filed in PCN 5	IPC Response to Staff Data Request No. 56, Attachments 1-2
Susan Geer	Not filed in PCN 5	IPC Response to Staff Data Request No. 83
Susan Geer	Not filed in PCN 5	IPC Response to Staff Data Request No. 84 Redacted
Susan Geer	Not filed in PCN 5	IPC Response to Staff Data Request No. 109
Susan Geer	Not filed in PCN 5	IPC Response to Staff Data Request No. 110
Susan Geer	Not filed in PCN 5	IPC Supplemental Response to Staff Data Request No. 110
Susan Geer	Not filed in PCN 5	IPC Response to Staff Data Request No. 110, Attachment 1
Susan Geer	Not filed in PCN 5	IPC Response to Staff Data Request No. 111
Greg Larkin	Not filed in PCN 5	Idaho Power Response to Greg Larkin Question 7
Greg Larkin	Not filed in PCN 5	Response to Data Request 77
Greg Larkin	Not filed in PCN 5	Idaho Power Response Staff Data Request No. 102
STOP B2H	4/12/2023	STOP B2H/304 - Idaho Power to Staff DRs No. 8, 9, 15
STOP B2H	Not filed in PCN 5	Staff DR No. 64 - Attachment 1 - B2H Cost Estimate Breakdown 2018 - 2022 (2/7/23)
STOP B2H	Not filed in PCN 5	CONF IPC Response to Staff DR No. 88
STOP B2H	Not filed in PCN 5	CONF IPC Response to Staff DR No. 89
STOP B2H	Not filed in PCN 5	IPC Response to Staff DR No. 64 (12/23/22)
STOP B2H	Not filed in PCN 5	IPC Response to Staff DR No. 87
STOP B2H	Not filed in PCN 5	IPC Response to Staff DR No. 88 - REDACTED
STOP B2H	Not filed in PCN 5	IPC Response to Staff DR No. 89 - REDACTED
STOP B2H	Not filed in PCN 5	IPC Response to Staff DR No. 115

Party	Date Filed	Document Title
STOP B2H	3/20/2023 (filed in Staff/401)	IPC Response to Staff DR No. 116
STOP B2H	Not filed in PCN 5	IPC Response to Staff DR No. 117

1

V. CONCLUSION

2 Except for the exhibits specifically noted above for which Idaho Power stipulates to
3 admission, Idaho Power respectfully requests the Commission decline to admit the
4 aforementioned exhibits for the reasons outlined above.

DATED: May 2, 2023

McDOWELL RACKNER GIBSON PC



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DOCKET PCN 5 - CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2023 Idaho Power Company's Objections to Parties' Testimony and Exhibits was served by USPS First Class Mail and Copy Center to said person(s) at his or her last-known address(es) as indicated below:

By: USPS First Class Mail and Copy Center:

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DATED: May 2, 2023

/s/ Alisha Till

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Paralegal