

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

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| IN THE MATTER OF IDAHO POWER COMPANY'S PETITION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY | Docket: PCN 5 Reply Brief Intervenor: John C. Williams |
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Date: May 30, 2023

John C. Williams, Intervenor

Response to Idaho Power’s Opening Brief

Idaho Power’s (IPC) Opening Brief states that, “Under EFSC’s Cultural Resource Standard, Idaho Power is required to evaluate and provide mitigation plans for three categories of resources: (a) historic, cultural and archaeological resources that have been listed on, or would be likely be listed on the National Register of Historic Places (“NRHP”).¹” This is not correct. In IPC application Exhibit S² it states that:

Site Certificate Application Requirements

OAR 345-021-0010(1)(s) provides Idaho Power Company (IPC) must include information in Exhibit S or confidential submissions of the following information regarding historic, cultural, and archaeological resources:

- (A) Historic and cultural resources within the analysis area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places.
- (B) For private lands, archaeological objects, as defined in ORS 358.905(1)(a), and archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area.
- (C) For public lands, archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area.
- (D) The significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in paragraphs (A), (B) and (C) and a plan for protection of those resources that includes at least the following:
 - i) A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer or the National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources listed in paragraphs (A), (B) and (C).

¹ Idaho Power’s Opening Brief page 81-82.

² OAR 345-021-0010(1)(s). <https://www.oregon.gov/energy/facilities-safety/facilities/Facilities%20library/2018-09-28-B2H-ASC-Exhibit-S.pdf>

(ii) The results of the discovery measures described in subparagraph (i), together with an explanation by the applicant of any variations from the survey, inventory, or testing recommended.

(iii) A list of measures to prevent destruction of the resources identified during surveys, inventories and subsurface testing referred to in subparagraph (i) or discovered during construction.

(E) The applicant's proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction and operation of the proposed facility.

In short IPC is responsible for “discovery measures,” such as archaeological inventory, archaeological testing and reporting are also parts of the cultural resource work IPC is responsible for conducting. A list of measures to prevent destruction of the resources identified during cultural resource work is also listed as a requirement. Perhaps this will be included in the HPMP that is in draft form? A document for the monitoring program is also a requirement for the site certificate.

IPC Opening Brief states that: “While Idaho Power has evaluated cultural resources where access permitted and made recommendations regarding NRHP eligibility for cultural resources along the transmission line route, the BLM is the entity ultimately responsible for making final NRHP eligibility determinations under the federal Section 106 process” (Idaho Power’s Opening Brief page 82).

The EFSC and 106 processes are very different and while IPC only needs to meet the ECSC standard to receive its site certificate, it also must meet the section 106 standard for compliance for this project. IPC States that the BLM is ultimately responsible, but IPC needs to provide

completed cultural resource work for the BLM to make these decisions. Additional cultural resource work is pending.

IPC Opening Brief goes on to state that: “As part of the federal Section 106 process, BLM, in consultation with the Idaho and Oregon SHPOs, the ACHP, as well as other parties to the Section 106 Programmatic Agreement (including ODOE), is currently in the process of finalizing the HPMP for B2H, which will take into account NRHP-eligibility recommendations/determinations made in the Class III Report and Visual Assessment of Historic Properties Intensive Level Survey Report (Idaho Power’s Opening Brief page 83).

It is my understanding that the Visual Assessment of Historic Properties Intensive Level Survey Report has been submitted, but that the draft needs additional work. The Class III report is pending too. There is additional archaeological field work scheduled for 2023 because IPC has contacted me for access to my property for this work. I assume it is related to the RFA1 or determination of eligibility work needed on my property, which it is I have not been told. I understand that the HPMP allows for a phased approach for the archaeology work for the EFSC process and the Section 106 process, but I don’t see how this has anything to do with the application for certificate of public convenience and necessity (CPCN), which seems like a separate process. I still feel that it is premature to allow the CPCN process to proceed when the above-mentioned work is not complete and the work for the RFA1 work has not been started on my property either.

IPC Opening Brief states that: “In fact Idaho Power has complete all required investigation and assessments of the resources in question.”

If this is true, why is there additional cultural resource work scheduled for the 2023 field season (Idaho Power’s Opening Brief page 85)? At the very least this statement is misleading.

Additionally, raptor and wetlands surveys have not been completed and are scheduled for this season also.

IPC Opening Brief states that: “As discussed above, though the federal Section 106 process, the BLM is responsible for determining appropriate mitigation to be detailed in the HPMP and as stipulated in a property-specific mitigation and monitoring plan prepared in consultation with parties to the Programmatic Agreement, including SHPO and Tribal governments.” While the BLM will determine appropriate mitigation measures, the work needed for the BLM to inform and make these determinations is pending and must be completed by IPC. The final HPMP will be further complicated given the RFA1 on my property which is resulting from the Morgan Lake Park mitigations (e.g.: from approximately 5 towers to 12 towers; plus, additional and/or different access roads). In other words, until: a) the cultural surveys are complete, b) tribal consultations occur, and c) SHPO, BLM, and others in the Programmatic Agreement, (and hopefully, myself and the city too), can resolve the route, the access roads and the mitigations, there is not the necessary information for the HPMP to be completed.

IPC is still working on cultural resource work and other environmental work on my property.

IPC’s RFA1 field work and reporting has yet to start on my property. I believe that the CPCN

request should be denied or delayed until all this work is completed and an Amendment to the Site Certificate is (or is not) approved.

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| DECLARATION |
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I hereby declare under penalty of perjury under the laws of the State of Oregon that I prepared the above Reply Brief for the PCN5 docket, and that to the best of my knowledge and belief, declare the statements, testimony and exhibits to be true and that they were made for use by the Commission as evidence in this proceeding.

Dated this thirtieth (30) day of May, 2023.

/s/ John C. Williams

John C. Williams, Intervenor PCN5