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VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Filing Center
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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 Reply Brief (“Brief”).

Please note that, because the only confidential information contained in the Brief is confidential medical information, there are only two versions of the Brief—the public version, which contains redactions, and the confidential version. The confidential version is being sent via encrypted zip file only to the Filing Center and Mr. Greg Larkin pursuant to Administrative Law Judge Mellgren’s February 17, 2023 Ruling.

Please contact this office with any questions.

Thank you,

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
DOCKET PCN 5**

In the Matter of
IDAHO POWER COMPANY'S
PETITION FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY.

**IDAHO POWER COMPANY'S
REPLY BRIEF**

May 30, 2023

REDACTED

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I. INTRODUCTION

Idaho Power Company (“Idaho Power” or the “Company”) submits this Reply Brief in accordance with Administrative Law Judge (“ALJ”) Mellgren’s May 8, 2023 Ruling, and respectfully requests the Public Utility Commission of Oregon (“Commission”) approve the Company’s Petition for a Certificate of Public Convenience and Necessity (“CPCN”) for the Boardman to Hemingway transmission line project (“B2H” or the “Project”). Idaho Power has satisfied the Commission’s petition requirements and developed a robust record demonstrating the necessity, safety, practicability, and justification in the public interest for the proposed transmission line—and Commission Staff (“Staff”) has recommended the Commission approve the Petition.¹

In their Opening Briefs, intervenors have asserted that Idaho Power’s Petition is incomplete or fails to satisfy the statutory criteria. These arguments are not persuasive, and to the contrary, Idaho Power has provided information responsive to the CPCN petition requirements and has provided robust and compelling evidence demonstrating compliance with each criterion. Throughout each of the past seven Integrated Resource Planning (“IRP”) cycles, Idaho Power has demonstrated a need for the additional capacity that will be provided by B2H, and that B2H is needed to improve system reliability.² Idaho Power’s long history of safely operating transmission lines, along with the Company’s thorough analysis of potential risks relating to wildfire and noise, and commitment to complying with or exceeding applicable safety standards demonstrate the Company’s ability to safely construct, operate, and maintain B2H.³ Idaho Power

¹ ORS 758.015(2); Staff’s Opening Brief at 23 (May 12, 2023).

² *In re Idaho Power Co., 2021 Integrated Res. Plan*, Docket LC 78, Order No. 23-004 at 7-12 (Jan. 13, 2023); *In re Idaho Power Co., 2019 Integrated Res. Plan*, Docket LC 74, Order No. 21-184 at 11, 14-17 (June 4, 2021); *In re Idaho Power Co., 2017 Integrated Res. Plan*, Docket LC 68, Order No. 18-176 at 9-11 (May 23, 2018); *In re Idaho Power Co., 2015 Integrated Res. Plan*, Docket LC 63, Order No. 16-160, App. A at 6 of 13 (Apr. 28, 2016); *In re Idaho Power Co., 2013 Integrated Res. Plan*, Docket LC 58, Order No. 14-253 at 5 (July 8, 2014); *In re Idaho Power Co., 2011 Integrated Res. Plan*, Docket LC 53, Order No. 12-177 at 4 (May 21, 2012); *In re Idaho Power Co., 2009 Integrated Res. Plan*, Docket LC 50, Order No. 10-392 at 9 (Oct. 11, 2010).

³ Idaho Power’s Opening Brief at 24-49 (May 15, 2023).

has demonstrated that the selected route for the Project is practicable because the Company has already obtained the site certificate from the Energy Facility Siting Council (“EFSC”), including related land use approvals.⁴ The Project is justified because Idaho Power thoroughly considered both alternatives to construction of the Project and alternative routes for the Project, and B2H, as currently proposed, has consistently proven to be the most cost-effective and reasonable means of addressing the Company’s anticipated resource needs.⁵ Finally, EFSC also determined that the Project, subject to the conditions included in the Site Certificate, will comply with the Statewide Planning Goals and is compatible with all applicable acknowledged comprehensive plans and land use regulations,⁶ and the Commission’s regulations state that the Commission will adopt those findings from EFSC’s order for the purposes of the CPCN.⁷

Intervenors also seek to relitigate issues resolved through the EFSC proceeding, arguing that EFSC—and even the Oregon Supreme Court—decided the issues incorrectly. While the Commission must make its own independent inquiry of the statutory standards it is charged with applying, the Commission should not re-open and reverse the findings of its sister agency. Indeed, the Final Order in the EFSC proceeding has already been appealed to the Oregon Supreme Court, and was affirmed on all counts. Instead, the Commission should give significant consideration to the Final Order in the EFSC proceeding consistent with the Commission’s rules in OAR 860-025-0035(2).

Finally, intervenors raise several other arguments that do not directly bear on the Commission’s inquiry into the Company’s petition. For example, intervenors ask the Commission

⁴ See *generally* Idaho Power’s Supplement to Petition for a Certificate of Public Convenience and Necessity, Attachment 1 (Final Order) (Oct. 7, 2022) [hereinafter, “Final Order”].

⁵ Idaho Power’s Petition for a Certificate of Public Convenience and Necessity, [hereinafter, “Idaho Power’s Petition for CPCN”], Attachment 14 (Idaho Power’s 2021 IRP) at 191-193 of 214 (Sept. 30, 2022) (identifying B2H in the Preferred Portfolio and Action Plan of the Company’s 2021 IRP) [hereinafter “2021 IRP”].

⁶ Final Order at 151-294 of 10603.

⁷ OAR 860-025-0040(7) (“If a proposed transmission line is subject to the jurisdiction of the Energy Facility Siting Council (EFSC), the Commission will not take final action until EFSC has issued a site certificate for the transmission line. The Commission will adopt the findings made as a part of the EFSC-issued site certificate, and the requirements of OAR 860-025-0040(2) - (6) shall not apply.”).

to stall its review while a Request for Amendment (“RFA”) to the site certificate is pending, and ask the Commission to determine the compensation to be paid in connection with right-of-way acquisition. The Commission does not need to address the RFA, because it does not implicate any need for condemnation. Additionally, the Commission has no authority to determine the amount of compensation to be paid to landowners, and thus does not need to address these issues.

In sum, intervenors’ challenges to the Petition are unpersuasive, and should be rejected. The development and construction of high-voltage transmission lines, such as B2H, are critical to our region’s and nation’s clean energy future, and Idaho Power—as well as PacifiCorp and the Bonneville Power Administration (“BPA”)—have demonstrated that the Project is necessary to address transmission capacity and reliability needs in the region, and is in the public interest as the Project is the least-cost option for providing reliable energy to customers. Idaho Power respectfully requests that the Commission approve its Petition for CPCN for B2H.

II. ARGUMENT

A. *Legal Standard*

1. The Legal Standard for the Commission’s Review Is Provided in ORS 758.015(2), Not ORS 35.235.

In Susan Geer’s Opening Brief, she argues that the route must be located with the “greatest public good and least private injury,” referring to the standard in ORS Chapter 35.235(3).⁸ As Idaho Power explained in its Opening Brief, this standard is not applicable to the Commission’s consideration of a petition for a CPCN.⁹ In fact, the Commission considered similar

⁸ ORS 35.235(3) is a subsection of Chapter 35 of the Oregon Revised Statutes relating to condemnation proceedings which provides that the commencement of condemnation proceedings by a private condemner creates three disputable presumptions: that the proposed use is necessary, the property is necessary for that proposed use, and the proposed use is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

⁹ Idaho Power’s Opening Brief at 10-11.

arguments in Docket UM 1495 and rejected them.¹⁰ In that proceeding, the Commission instead affirmed that the four factors set out in ORS 758.015(2)—necessity, safety, practicability, and justification—are the applicable standards.¹¹ Thus, in the specific case of a transmission line, the CPCN functions as “conclusive evidence that the transmission line for which the land is required is a public use and necessary for public convenience.”¹²

2. The Commission May, and Should, Give Significant Weight to Related Regulatory Reviews and Permitting Approvals Relating to B2H.

Intervenor Greg Larkin suggests that because the Commission and EFSC have different roles and statutory standards of review, the Commission may not rely on EFSC findings and conclusions relating to B2H.¹³ Although the Commission must make its own investigation into the CPCN statutory criteria,¹⁴ under its own rules the Commission may—and should—give “due consideration” to other agencies’ regulatory reviews and permitting approvals relating to B2H, and especially where such agencies have subject matter expertise regarding the issue under consideration and the evidentiary record was thoroughly developed.¹⁵

In evaluating *how much* “consideration”—or weight—to give the findings, conclusions, and approvals of EFSC, Idaho Power urges the Commission to consider that the EFSC contested case was a two-year-long proceeding, where parties had the opportunity to develop the record

¹⁰ *In re PacifiCorp, dba Pac. Power, Petition for Certificate of Pub. Convenience and Necessity*, Docket UM 1495, Order No. 11-366 at 3-4 (Sept. 22, 2011); see also Docket UM 1495, Legal Comments of the Citizens’ Utility Board at 9-10 (July 1, 2011), available at <https://edocs.puc.state.or.us/efdocs/HAC/um1495hac131553.pdf>.

¹¹ Order No. 11-366 at 3-4.

¹² ORS 758.015(2).

¹³ Greg Larkin’s Opening Brief at 18-23 of 67 (May 15, 2023). To the extent that Mr. Larkin is arguing that ODOE functioned “as an advocate for the developer and an adversary against the public interest[.]” that argument is simply incorrect. *Id.* at 20-22 of 67. ODOE was participating in the EFSC contested case proceeding as a party independent of EFSC, and properly acted and argued in support of its findings and conclusions in the Proposed Order. See Final Order at 20 of 10603 (ODOE and EFSC were represented by separate counsel in the EFSC contested case). Mr. Larkin also argues that it is the Commission’s responsibility, rather than EFSC’s, to determine and require “reasonable payment to property owners due to private land impacts at the location of developments.” Greg Larkin’s Opening Brief at 23 of 67. For the reasons discussed *infra* in Section II(D)(3), Mr. Larkin’s argument is without merit.

¹⁴ ORS 758.015(2).

¹⁵ OAR 860-025-0035(2).

and litigate issues concerning the Project's compliance with EFSC's standards and applicable Oregon law. In many cases, the PCN 5 intervenors also participated in the EFSC proceeding and are seeking to raise precisely the same issues before the Commission as were raised before EFSC, and asking that the Commission reach a different result—and for several issues, even challenging EFSC's decisions that were appealed to, and affirmed by, the Oregon Supreme Court. For these reasons, Idaho Power urges the Commission to give very significant consideration to EFSC's Final Order.

Similarly, when assessing the necessity for B2H, as well as arguments about potential alternatives to B2H, the Commission should accord significant weight to its acknowledgments of B2H in Idaho Power's IRPs. This Commission's IRP policies have required Idaho Power to vet B2H through robust and comprehensive analyses, which have demonstrated B2H's strong and consistent performance for over a decade.¹⁶

The STOP B2H Coalition ("STOP B2H") argues that the Commission should not give "due consideration" to EFSC's reliance on the Commission's acknowledgment of Idaho Power's IRPs demonstrating a need for B2H.¹⁷ This argument misses the point. EFSC simply relied on the Commission's acknowledgement of Idaho Power's 2017 IRP demonstrating a need for B2H.¹⁸ Therefore, Idaho Power simply asks that the Commission give significant weight to *its own* repeated acknowledgements of the need for B2H.

STOP B2H also argues that the Commission should give "due consideration" to federal

¹⁶ Order No. 23-004 at 7-8 ("Portfolios containing the B2H project have remained robust over the range of market and industry contexts and modeling approaches across what now is seven IRPs. This consistent presence in least cost, least risk portfolios speaks to the optionality of transmission as a resource, and leads to a reasonable expectation of continued value for utility customers into the long-term future... We are satisfied that the rigorous scrutiny we have applied in prior IRPs was continued here through Staff's and other parties' review, as well as through our public meeting process.").

¹⁷ STOP B2H's Opening Brief at 33 (May 15, 2023).

¹⁸ Final Order at 636-40 of 10603 ("[B]ecause the [Commission's] order included acknowledgment of construction-related activities, the applicant has demonstrated the need for the facility under OAR 345-023-0020(2), ... and accordingly the applicant has demonstrated the need for the facility under OAR 345-023-0005(1), therefore the Council finds that the Need Standard has been met."). EFSC's reliance was explicitly required by OAR 345-023-0020(2).

land use approvals that determined the “environmentally preferred” right-of-way (referring to the Glass Hill Alternative in Union County), while noting that EFSC was limited in its review to the routes proposed by the applicant.¹⁹ However, Idaho Power largely followed the Bureau of Land Management’s (“BLM”) preferred alternative in siting B2H, except in Union County across private lands.²⁰ To the extent that STOP B2H is asserting that the Commission should give additional consideration to BLM’s selection of the Glass Hill Alternative as the agency-preferred alternative, this position is without merit. As Idaho Power explained in its Opening Brief, BLM’s recommendations are not binding on private lands, and both state and federal courts have affirmed that Idaho Power was not required to include the Glass Hill Alternative in the Company’s Application for Site Certificate (“ASC”).²¹ Thus, the Commission should give greater weight to EFSC’s approval of the Morgan Lake Alternative than to BLM’s preferred route in Union County.

B. Idaho Power’s Petition for a CPCN Is Complete.

Several intervenors, including STOP B2H, Sam Myers, and John Williams argue that Idaho Power’s Petition for a CPCN is incomplete and not otherwise in compliance with OAR 860-025-0030. However, for the reasons discussed in more detail below, intervenors’ arguments are without merit.

STOP B2H asserts that Idaho Power’s petition is incomplete, arguing that the Company’s plans to complete mitigation plans and finalize permits are optimistic, and that mitigation plans and consultation are missing or pending.²² However, the Company has explained that using the phased approach to construction, certain mitigation plans may be finalized immediately prior to construction, and the Company may begin work on a segment-by-segment basis as pre-construction conditions and commitments are satisfied.²³ For example, if the Blasting Plan were

¹⁹ STOP B2H’s Opening Brief at 33.

²⁰ Idaho Power’s Petition for CPCN at 17.

²¹ Idaho Power’s Opening Brief at 73-76.

²² STOP B2H’s Opening Brief at 4-6.

²³ Idaho Power Company’s Reply Testimony and Exhibits of Lindsay Barretto (Idaho Power/400, Barretto/22-24) (Feb. 21, 2023).

not yet finalized, Idaho Power could still begin work that does not include blasting, provided all other pre-construction plans and commitments had been satisfied. Thus, the fact that a particular plan may not yet be finalized is not necessarily a barrier to commencing construction and does not represent any deficiency in the Company's petition.

STOP B2H also asserts that the Petition is not complete because there is an RFA pending with EFSC.²⁴ However, Idaho Power has explained that the RFA is limited to a discrete set of route modifications and additional access roads, which are intended to provide more flexibility for construction, and which **will not** require condemnation.²⁵ Additionally, if the RFA is delayed—or even denied—Idaho Power will have the ability to revert to the original routes and access roads approved in the Final Order.²⁶ Most importantly, in this CPCN proceeding, Idaho Power is not seeking condemnation authority over the routes in that RFA.²⁷ Thus, the fact that there is an RFA pending should not impede the Commission's review, and has no bearing on the completeness of Idaho Power's Petition.

STOP B2H also questions whether Idaho Power has provided information in compliance with OAR 860-025-0030(2)(f) (requiring a description of the parcels of land for which condemnation may be necessary and requiring notice), on the basis that landowners have not received the parcel-specific information required by the rule.²⁸ However, STOP B2H misreads the relevant rule. The rule requires that parcel-specific information be provided in the Petition, and that a notice of the Petition be provided to impacted landowners.²⁹ Idaho Power provided

²⁴ STOP B2H's Opening Brief at 12.

²⁵ Idaho Power/400, Barretto/19-21; Idaho Power Company's Surrebuttal Testimony and Exhibits of Lindsay Barretto (Idaho Power/1600, Barretto/28-29) (Apr. 7, 2023).

²⁶ Idaho Power/1600, Barretto/29.

²⁷ Idaho Power/1600, Barretto/28.

²⁸ STOP B2H's Opening Brief at 6; OAR 860-025-0030(2)(f) ("A description of the parcels of land that petitioner determines it should obtain an interest in and for which condemnation is assumed to be necessary at the time of the petition, a full explanation of the intended use, and the specific necessity and convenience of each. The description must be accompanied by the names and addresses of all persons who have interests, known or of record, in the land to be physically impacted or traversed by the proposed route from whom petitioner has not yet acquired the interest, rights of way or option therefor. Petitioner must include with the petition certification verifying that notice of the petition has been mailed to said persons[.]").

²⁹ OAR 860-025-0030(2)(f).

information to satisfy OAR 860-025-0030(2)(f) in its Petition,³⁰ and Attachment 10 to the Petition, which included a map set and landowner list. Additionally, to fulfill the landowner notice requirements, Idaho Power provided Notice of the Petition to all of the landowners, including a Certificate of Service confirming that notice had been accomplished consistent with the rule requirements.³¹ Indeed, STOP B2H separately challenged Idaho Power's Notice of the Petition, and the ALJ and Commission affirmed that Idaho Power's notice was proper.³²

Finally, STOP B2H observes that Idaho Power has delayed publication of the 2023 IRP, and suggests that the Commission should also delay its review of Idaho Power's Petition.³³ However, Idaho Power's 2023's IRP is not late because it is not required to be filed until January 13, 2025.³⁴ More importantly, this Commission has already expressed full confidence in its acknowledgement of B2H in its 2021 IRP, as a least cost, least risk resource to fulfill a need in 2026. Delay of this proceeding would prevent Idaho Power from meeting a 2026 in-service date, entirely undermining that acknowledgement.

In addition, Mr. Myers asserts that Idaho Power "has not provided any narrative to make any kind of determination on how they will acknowledge or mitigate for emergency conditions" as required by OAR 860-025-0030(2)(b).³⁵ This assertion ignores the extensive factual record in support of Idaho Power's petition. As outlined in the Opening Brief,³⁶ Idaho Power has provided substantial evidence to allow the Commission to make "a determination of [B2H's] safety . . . under normal and emergency conditions . . ." ³⁷ The testimonies of Lindsay Barretto, Joe Stippel, and Dr. Chris Lautenberger support this assertion. As such, it is inaccurate to state that Idaho

³⁰ Idaho Power's Petition for CPCN at 25-26.

³¹ See Idaho Power's Notice of Petition for Certificate of Public Convenience and Necessity (Sept. 30, 2022).

³² See ALJ Ruling, Disposition: Motion Denied (Jan. 13, 2023); Order No. 23-103 at 3-4 (Mar. 20, 2023).

³³ STOP B2H Opening Brief at 6.

³⁴ The 2021 IRP has an acknowledgement date of January 13, 2023. See Order No. 23-004. Under OAR 860-027-0400(3), the subsequent IRP is due two years after the previous IRP's acknowledgement date.

³⁵ Sam Myers' Opening Brief at 2 of 26 (May 13, 2023).

³⁶ See Idaho Power's Opening Brief at 24-49.

³⁷ OAR 860-025-0030(2)(b)

Power has not provided a narrative of its safety mitigation efforts.

Mr. Williams argues that Idaho Power's application is not in compliance with OAR 860-025-0030(2)(p) until the federal Section 106 process (including all federal permitting activity) is complete.³⁸ However, that rule requires only that Idaho Power provide "[a] narrative that identifies all land use approvals and permits required for construction of the transmission line[.]" including the status of all permit applications and anticipated timelines for issuance of any pending or outstanding approvals and permits.³⁹ Idaho Power fulfilled this requirement by providing the required narrative in its Petition,⁴⁰ as well as a chart identifying the federal, state, and local permits needed for construction and operation of B2H in Oregon, including the status and anticipated timelines for the permits.⁴¹ This chart was updated and included in Lindsay Barretto's testimony, and as of July 2022, all federal permits/approvals relevant to historic, cultural, and archaeological resources (hereinafter, referred to as "cultural resources") have been issued,⁴² except, as discussed in Idaho Power's Opening Brief and below,⁴³ BLM's final eligibility determinations for listing on the National Register of Historic Places ("NRHP") and mitigation plans in the federal Section 106 consultation process.⁴⁴

³⁸ John Williams' Opening Brief at 5 (May 15, 2023) ("As stated above, given the federal permitting activity that still needs to occur, this docket is premature and should be paused until more clarity on the lands to be condemned is known. The application is therefore not in compliance with OAR 860-025-0030(2)(p)[.]").

³⁹ During the AR 626 rulemaking proceeding, certain parties had proposed that the rules require a petitioner to obtain/complete all permitting before filing a petition or exercising eminent domain, while utilities expressed the need for flexibility in light of long permitting timelines. *In re Certificate of Pub. Convenience and Necessity Rule Update*, Docket AR 626, Order No. 22-351, App. A at 3-6 (Sept. 26, 2022). The Commission declined to make completing all permitting a pre-requisite to the CPCN, instead striking a balance by requiring the petitioner to disclose the status of all needed permits. Order No. 22-351 at 1, App. B at 4.

⁴⁰ Idaho Power's Petition for CPCN at 44-46.

⁴¹ Idaho Power's Petition for CPCN, Attachment 16 at 1 of 3. This list identified the following federal permits or approvals relevant to historic, cultural, and archaeological resources: (1) the BLM Right-of-Way ("ROW") Grant; (2) Cultural Resource Use Permit and Site-Specific Authorizations; (3) Permit for Archaeological Investigations; (4) Paleontological Resources Use Permit; and (5) Special Use Authorization for Archaeological Investigations. *See id.*

⁴² Idaho Power/1601, Barretto/1 (Updated Permit Status Chart); Idaho Power/402, Barretto/1 (Updated Attachment 16 Regarding Permit Status).

⁴³ *See* Idaho Power's Opening Brief at 81-87. Idaho Power addresses Mr. Williams' arguments in Section II(C)(4)(e) below.

⁴⁴ To the extent that Mr. Williams is also referring to state permits for Enhanced Archaeological Surveys

Mr. Williams also incorrectly argues that Idaho Power has not complied with OAR 860-025-0030(2)(c)(A)–(F) in general, and with OAR 860-025-0030(2)(c)(F) in particular with respect to the map depicting Mr. Williams’ property.⁴⁵ Idaho Power’s compliance with OAR 860-025-0030(2)(c)(A)–(F) is described in Idaho Power’s Petition for a CPCN,⁴⁶ and the map clearly marking Mr. Williams’ property is provided in Attachment 10 to the Petition in accordance with OAR 860-025-0030(2)(c)(F).⁴⁷

For the above reasons, Idaho Power has demonstrated, and Staff agrees,⁴⁸ that Idaho Power’s Petition for a CPCN is complete and meets the filing requirements in OAR 860-025-0030.

C. B2H Meets the Criteria in ORS 758.015.

Intervenors have challenged Idaho Power’s compliance with the CPCN criteria in ORS 758.015 and OAR 860-025-0035; however, as detailed below, these arguments are without

(i.e., Subsurface Investigations), John Williams’ Opening Brief at 4 (“Apply for state permits to conduct archaeological testing.”), Idaho Power does not anticipate the need for a State of Oregon Archaeological Excavation Permit for additional archaeological work scheduled on Mr. Williams’ property for identification purposes. Idaho Power Company’s Surrebuttal Testimony and Exhibits of Stephen Anderson (Idaho Power/2200, Anderson/6) (Apr. 7, 2023) (“Additional archaeological work on Mr. Williams’ property may be necessary; however, no additional **significant** archaeological surveys are currently scheduled.”) (emphasis added); OAR 736-051-0090(1)(a) (“Permits on private lands will not be required for exploratory excavation to determine the presence of an archaeological site.”). Idaho Power’s State of Oregon Archaeological Excavation Permits for archaeological identification purposes were issued in August 2022. Idaho Power/1601, Barretto/1 (Updated Permit Status Chart). However, as Idaho Power has identified one resource on Mr. Williams’ property at this time that may require data recovery as mitigation, 8B2H-DM-52 (potential open campsite), Idaho Power will need to apply for a State of Oregon Archaeological Excavation Permit to perform data recovery for the site if BLM agrees that this resource is eligible for listing on the NRHP. Idaho Power Company’s Reply Testimony and Exhibit of Stephen Anderson (Idaho Power/800, Anderson/7, 9) (Feb. 21, 2023); *see also* OAR 736-051-0090(1) (“A person may not knowingly and intentionally excavate, injure, destroy or alter an archeological site or object or remove an archeological object from private lands in Oregon unless that activity is authorized by a permit issued pursuant to this rule[.]”).

⁴⁵ John Williams’ Opening Brief at 4-5.

⁴⁶ Idaho Power’s Petition for CPCN at 14-21.

⁴⁷ Idaho Power’s Petition for CPCN, Attachment 10 at 31 of 69. In Mr. Stippel’s and Mr. Anderson’s testimony, Idaho Power described a minor adjustment to a new access road **within the approved site boundary** that will vary slightly from the map of Mr. Williams’ parcel as filed in Attachment 10 to the Petition to be made in order to avoid cultural resources identified on Mr. Williams’ property. Idaho Power/800, Anderson/8, 10; Idaho Power Company’s Reply Testimony and Exhibit of Joseph Stippel (Idaho Power/1500, Stippel/7-8) (Feb. 21, 2023); Idaho Power’s Petition for CPCN, Attachment 10 at 31 of 69. Such a minor variation is not inconsistent with OAR 860-025-0030(2)(c)(F).

⁴⁸ Staff has already found that “Idaho Power’s Petition may be considered adequate to meet the filing requirements under ORS 758.015 and OAR 860-025-0030.” Staff’s Opening Brief at 3.

merit. To the contrary, Idaho Power has provided robust evidence demonstrating the “necessity, safety, practicability and justification in the public interest for the proposed transmission line.”⁴⁹ In their Opening Brief, Staff agreed that Idaho Power had fulfilled these requirements and recommended that the Commission approve the Company’s Petition for a CPCN.⁵⁰

1. Idaho Power Has Provided Robust Evidence regarding the Need for B2H.
 - a. B2H Is a Critically Necessary Resource for Idaho Power and the Region.

STOP B2H acknowledges that “transmission may be needed in some areas of the U.S.,” but asks the Commission to revisit the question of whether transmission “[is] a one size fits all[]” solution, and suggests that alternatives to transmission or alternative technologies such as a direct current transmission line should be considered.⁵¹ Contrary to STOP B2H’s assertions, the evidence indicates that B2H is urgently needed to fill demonstrated needs for capacity in 2026 by three major regional utilities, and to provide critical transmission capacity required to allow Oregon to meet its clean energy goals. As discussed in Idaho Power’s Opening Brief, this Commission has comprehensively reviewed and acknowledged B2H as a key component of the Company’s least cost, least risk resource portfolio in every Idaho Power IRP since 2009⁵², as well as in PacifiCorp’s 2021 IRP.⁵³

As to STOP B2H’s suggestion that transmission may be needed elsewhere in the country but not in the Northwest, B2H has been identified as a regionally significant project in the Northern Tier Transmission Group’s (“NTTG”) 2007, 2009, 2011, 2013, 2015, 2017, and 2019 biennial regional transmission plans, and in the NorthernGrid—NTTG’s successor regional planning

⁴⁹ ORS 758.015(2).

⁵⁰ Staff’s Opening Brief at 2, 3-21 (“Staff recommends the Commission find issuing a CPCN is supported by the necessity, safety, practicability and justification in the public interest.”); *see also* Staff’s Rebuttal Testimony (Staff/400, Pal/4-5) (Mar. 20, 2023) (“Staff concludes that Idaho Power has demonstrated that the B2H project meets the criteria of necessity, safety, practicability, and justification and is in the public interest as described in OAR 860-025-0035(1)(a) – (e).”).

⁵¹ STOP B2H’s Opening Brief at 18.

⁵² Idaho Power’s Opening Brief at 13.

⁵³ PacifiCorp’s Opening Testimony of Rick Link (PAC/100, Link/4) (Jan. 17, 2023).

organization—2021 biennial regional transmission plan.⁵⁴ These regional transmission plans provide further justification for the need for B2H.

Idaho Power has provided persuasive evidence demonstrating that B2H is the right project at the right time.

b. *Idaho Power Has Provided Updates to Its Cost Estimates throughout the 2021 IRP and PCN 5.*

STOP B2H continues to suggest that the Commission cannot be assured that B2H is a least cost, least risk resource because the cost estimates for B2H provided by Idaho Power are inadequate.⁵⁵ However, such assertions are unfounded.

While not entirely clear, STOP B2H appears to question the cost estimate for B2H that Idaho Power provided in a different proceeding—the 2021 IRP—and *not* the cost estimates the Company has relied on in this docket.⁵⁶ To the extent that STOP B2H is raising questions regarding the cost estimates informing the 2021 IRP, Idaho Power provided cost estimate updates in that proceeding as they became available and committed to providing further updates in the PCN 5 proceeding.⁵⁷ The updated cost estimate was reviewed and vetted near the conclusion of the Commission review of the 2021 IRP,⁵⁸ and has also since been updated in this proceeding.

⁵⁴ Idaho Power's Opening Brief at 12; Idaho Power Company's Testimony and Exhibits of Lindsay Barretto (Idaho Power/203, Barretto/479-899) (Sept. 30, 2022) (NTTG and NorthernGrid Regional Transmission Plans 2007-2021) (The NTTG and NorthernGrid biennial regional transmission plans were provided as attachments to the Company's Response to Standard Data Request No. 5).

⁵⁵ STOP B2H's Opening Brief at 8.

⁵⁶ STOP B2H's Opening Brief at 8 n.9.

⁵⁷ Order No. 23-004 at 8; see *also* Special Public Meeting LC 78 Idaho Power IRP Decision of Acknowledgment, Audio Recording at 41:10-42:07 (Dec. 6, 2022), *available at* https://oregonpuc.granicus.com/player/clip/1055?view_id=2&redirect=true&h=7df343aad9216ae843e4ce81b56499b5 (Idaho Power committing to providing further updates in PCN 5).

⁵⁸ Order No. 23-004 at 8 ("Regarding its project cost estimates, Idaho Power confirmed that it performed a comprehensive update of all material cost inputs for B2H in late 2020, and ownership changes in 2021. In particular, steel prices were included in the update; though they had increased in late 2020, the increase had a relatively small impact on the total project cost. We explored this point in more detail at the public meeting, and Idaho Power represented that steel costs are a relatively small proportion of the overall project costs due to the method by which the transmission towers are engineered and optimized. While circumstances may continue to change throughout the course of the IRP, inputs need to be locked at some point in order to perform full IRP modeling. The time frame Idaho Power used was reasonable for the 2021 IRP. In addition, we inquired at a high level as to how cost numbers had changed at the time of our review,

Specifically, Idaho Power provided an updated estimate of Project costs with its Petition,⁵⁹ and in Ms. Barretto's Direct Testimony,⁶⁰ at the Company-led workshop on December 5, 2022, in Ms. Barretto's Supplemental Direct Testimony,⁶¹ and in Ms. Barretto's Reply Testimony.⁶² The record is clear that Idaho Power has updated the Project cost estimates, both in the 2021 IRP proceeding and in this docket.

STOP B2H also argues that "[t]his CPCN should not be granted until a verified estimate is in place that can be used for the rate making prudence review."⁶³ While it is not altogether clear, STOP B2H seems to be suggesting that a prudence review is based on a project estimate, and that a "verified" estimate is prepared for a prudence review. Both are incorrect. A prudence review for B2H will determine whether the actual costs to construct B2H were prudently incurred⁶⁴—not whether or not the estimate was correct. To be sure, in a prudence review the Commission typically will compare budgeted vs. actual costs as an approach to testing whether a project was constructed in a cost-effective manner.⁶⁵ However, ultimately, the decision as to whether to allow or disallow costs will concern the actual costs of the Project, which will be impacted by actual conditions and circumstances encountered during construction and cannot be determined until after construction is complete.

with the cost inputs filed more recently in docket PCN 5 providing a counterpoint. After clarifying the use of contingencies across these two simultaneously pending dockets, as well as between portfolios containing B2H and the best performing non-B2H portfolios, which also contain significant high-voltage transmission segments such as Gateway West, we are comfortable that the 2021 IRP modeling results remain reasonable. Specifically, the cost delta between the B2H and non-B2H portfolios remains significant, even as the cost of B2H is both, firmer and higher in the later-filed PCN 5 proceeding.").

⁵⁹ Idaho Power's Petition for CPCN at 32.

⁶⁰ Idaho Power/200, Barretto/25-27).

⁶¹ Idaho Power Company's Supplemental Direct Testimony of Lindsay Barretto (Idaho Power/300, Barretto/1-5) (Dec. 30, 2022).

⁶² Idaho Power/400, Barretto/1-11.

⁶³ STOP B2H's Opening Brief at 9.

⁶⁴ *In re PacifiCorp, dba Pac. Power, Request for a Gen. Rate Revision*, Docket UE 246, Order No. 12-493 at 2-3 (Dec. 20, 2012).

⁶⁵ See, e.g., *In re PacifiCorp, dba Pac. Power, Request for a Gen. Rate Revision*, Docket UE 374, Order No. 20-473 (Dec. 18, 2020) (considering cost overruns compared to the original budget for the Vantage-to-Pomona Heights 230-kV transmission line when determining whether the utility's costs were prudently incurred).

c. Idaho Power Has Appropriately Reflected Contingency in Its Cost Estimates.

Both STOP B2H and Mr. Larkin raise questions regarding the cost contingency included in Idaho Power's cost estimates. STOP B2H questions the fact that the contingencies in Idaho Power's cost estimates have been decreasing.⁶⁶ Mr. Larkin raises similar arguments, asserting that between 2016 and 2022, costs of materials and labor associated with the Project have gone up and costs of solar, batteries, and wind have gone down, and accusing Idaho Power of "creative budgeting" by removing the 20 percent contingency.⁶⁷ Idaho Power fully addressed these arguments in its Opening Brief, in which it explained that the contingency percentage has decreased in more recent budget updates, because (1) Idaho Power's Project estimates have become more accurate as the Company finalizes the design of the Project; and (2) the overall budget includes incurred costs to which it would not be appropriate to apply a contingency.⁶⁸

STOP B2H also suggests that Idaho Power's contingency is not sufficient because there is "an industry cost overrun average of about 25%[.]"⁶⁹ However, STOP B2H has not provided persuasive authority to support this point,⁷⁰ and in light of the circumstances in which the exhibit STOP B2H referenced was offered into the record,⁷¹ the Commission should give this exhibit and related assertions no weight. More importantly, the next-best performing non-B2H portfolio in

⁶⁶ STOP B2H's Opening Brief at 10-11.

⁶⁷ Greg Larkin's Opening Brief at 61 of 67.

⁶⁸ Idaho Power's Opening Brief at 23-24; see also Transcript of April 19-20, 2023 Evidentiary Hearing at 20, lines 1-12, at 28, lines 7-19 [hereinafter, "Transcript"].

⁶⁹ STOP B2H's Opening Brief at 11.

⁷⁰ As support for this statement, STOP B2H refers to its cross-examination exhibit STOP B2H/303 which stated "One study found that the average cost overrun for transmission grid projects is 25%." STOP B2H/303, Kreider/1. Exhibit STOP B2H/303 appears to be an abstract describing another study, however, STOP B2H never provided a copy of the study for review and there is no author or source for the document.

⁷¹ Exhibit STOP B2H/303 was provided only as a cross-examination exhibit but was not ever used to cross-examine Idaho Power's witnesses or offered into the record at the cross-examination hearing. Idaho Power objected to the admission of STOP B2H/303 on the basis that it had been identified as a cross-examination exhibit but was never raised at the cross-examination hearing. Idaho Power's Objections to Parties' Testimony and Exhibits at 9 (May 2, 2023). Because STOP B2H never established a foundation for this document—including identifying the source or providing a copy of the study—Idaho Power believes that this exhibit should be given no weight.

Idaho Power’s 2021 IRP included Gateway West—another transmission line.⁷² Therefore, any assumed 25 percent overrun for transmission lines generally would apply equally to that portfolio. Thus, even if the Commission should expect that the actual costs for B2H would be 25 percent above estimates, the Preferred Portfolio would be less expensive than the best-performing non-B2H portfolio.

STOP B2H also erroneously claims that the Commission recommended that Idaho Power include a 20 percent contingency.⁷³ STOP B2H’s argument misrepresents the Commission’s recommendations.⁷⁴ In fact, in the 2021 IRP, the Commission *expressly* “decline[d] to determine that 20 percent is the appropriate cost contingency” and instead stated that it “expect[ed] Idaho Power to explain and support the cost contingency assigned to this project in the 2021 IRP.”⁷⁵ Nowhere in the Commission’s order was there a recommendation to continue applying a 20 percent contingency in the 2021 IRP, much less in a future CPCN proceeding.

d. *Idaho Power’s Plans to Use B2H to Access the Mid-Columbia (“Mid-C”) Market Are Appropriate Based on the Timing of Idaho Power’s Resource Needs.*

STOP B2H argues that the Mid-Columbia market hub, which the Project would connect to Idaho Power’s system,⁷⁶ is in a “resource inadequacy.”⁷⁷ However, as Mr. Ellsworth explained in his Surrebuttal Testimony, the Pacific Northwest’s primary resource adequacy concerns occur in the winter and Idaho Power is a summer-peaking utility. As a result, the Company’s need for

⁷² Order No. 23-004 at 8.

⁷³ STOP B2H’s Opening Brief at 9.

⁷⁴ STOP B2H claims to quote an excerpt from the Commission’s order acknowledging the Company’s 2019 IRP, which includes an additional recommendation to “[c]ontinue to include 20 percent cost contingency for B2H in the 2021 IRP.” STOP B2H’s Opening Brief at 9. However, STOP B2H actually quotes Staff’s report, which was included in an appendix to the Commission’s order. Order No. 21-184, App. A at 2.

⁷⁵ Order No. 21-184 at 16.

⁷⁶ Idaho Power Company’s Reply Testimony and Exhibits of Jared L. Ellsworth (Idaho Power/500, Ellsworth/6) (Feb. 21, 2023).

⁷⁷ STOP B2H’s Opening Brief at 15. As an initial matter, STOP B2H asserts that this fact has been “[j]udicially noted.” STOP B2H’s Opening Brief at 15 n.32. However, neither the Commission nor ALJ Mellgren have taken official notice of this fact—and in fact, STOP B2H offers no document that is susceptible to official notice. See ALJ Ruling, Disposition: Testimony and Exhibits Admitted at 5 (May 10, 2023).

purchased power will be primarily during the summer peak—a time when the Mid-C market has surplus energy.⁷⁸

e. *PacifiCorp Has Provided Evidence regarding Its Need for B2H and the Benefits to PacifiCorp's Oregon Customers.*

Greg Larkin argues that the Commission cannot approve Idaho Power's Petition because the "Petition is limited to Idaho Power" and asserts that PacifiCorp has not provided evidence regarding PacifiCorp's need for the transmission line.⁷⁹ This assertion is entirely incorrect. As Idaho Power explained in its Opening Brief, PacifiCorp's 2021 IRP, along with the testimony of Rick Link in this proceeding, show that B2H was a key component of the least cost, least risk portfolio and thus the IRP demonstrates that utility's need for B2H in 2026.⁸⁰ Staff concluded that PacifiCorp had provided evidence of its need for B2H as part of the 2021 IRP.⁸¹ Therefore, the record shows that PacifiCorp has provided sufficient evidence of its need for B2H and benefits to its Oregon customers.

2. *Idaho Power Will Construct, Operate, and Maintain B2H in a Safe Manner That Protects the Public from Danger.*

a. *Idaho Power Has Satisfied the Commission's Requirements That B2H Be Constructed in Accordance with the Commission's Rules and Industry Standards.*

Sam Myers and Wendy King make several assertions that Idaho Power did not comply with existing engineering standards or should have performed additional analyses to assess the safety of B2H. As discussed in Idaho Power's Opening Brief, Idaho Power has designed B2H to meet or exceed the requirements of the Commission's rules and industry standards.⁸² Further, the additional analyses suggested by Mr. Myers are either not required by Commission rules or

⁷⁸ Idaho Power Company's Surrebuttal Testimony and Exhibits of Jared Ellsworth (Idaho Power/1700, Ellsworth/20) (Apr. 7, 2023).

⁷⁹ Greg Larkin's Opening Brief at 27-28 of 67.

⁸⁰ Idaho Power's Opening Brief at 21.

⁸¹ Idaho Power's Opening Brief at 21; see also Staff/400, Pal/11-12.

⁸² Idaho Power's Opening Brief at 26-29.

are inapplicable to the Project.⁸³

i. Idaho Power Has Properly Engineered B2H to Withstand Wind Loads and Weather Events in the Project Area.

Mr. Myers and Ms. King assert that Idaho Power is “under engineering” B2H so that it will not be designed to handle the wind loads in the Project area.⁸⁴ However, their arguments are unsupported by the evidence.

First, Mr. Myers argues that Idaho Power incorrectly selected a design wind speed of 85 miles-per-hour (“mph”) with a 100-year mean recurrence interval (“MRI”) for Morrow County, which Mr. Myers asserts experiences elevated wind speeds not addressed by the American Society of Civil Engineers (“ASCE”) Manual 74 Guidelines for Electrical Transmission Line Structural Loading’s (“ASCE Manual 74”) wind charts.⁸⁵ While Idaho Power addressed this general argument in its Opening Brief,⁸⁶ Mr. Myers now specifically argues that Idaho Power should use a design wind speed of 98.8 mph with a 100-year MRI, which he argues is a more accurate basis for wind loading design because the design wind speed is based on local wind data from Carpenter Butte in Morrow County.⁸⁷ This argument is without merit. As an initial matter, the Commission’s rules require Idaho Power to “construct, operate, and maintain electrical supply and communication lines in compliance with the standards prescribed by the 2017 Edition

⁸³ Idaho Power’s Opening Brief at 26-29.

⁸⁴ Sam Myers’ Opening Brief at 8-9 of 26; Wendy King’s Opening Brief at 2-3 (May 15, 2023).

⁸⁵ Sam Myers’ Opening Brief at 10-11 of 26. Relatedly, Ms. King seems to argue that the B2H tower design should be engineered to 130 mph based on the Oregon Building Code’s Combined Oregon Wind Speed Map. Wendy King’s Opening Brief at 2-3. As Mr. Stippel explained in his testimony, the Oregon Building Codes do not apply to B2H and are not a requirement for constructing transmission towers in Oregon. Idaho Power Company’s Surrebuttal Testimony and Exhibits of Joseph Stippel (Idaho Power/1900, Stippel/4) Apr. 7, 2023). In fact, the code specifically excludes public utility towers and poles from the code’s authority and generally applies only to buildings. *Id.*; Idaho Power/1902, Stippel/3 (Updated Oregon Building Code with October 2022 Amendments) (Oregon Structural Specialty Code § 101.2.2.1(5)). Transmission lines are not “buildings” and are required to meet NESC standards. Idaho Power/1900, Stippel/4. Accordingly, the Commission should reject Ms. King’s recommendation as it is based on irrelevant standards.

⁸⁶ Idaho Power’s Opening Brief at 27-28.

⁸⁷ Sam Myers’ Opening Brief at 11-12 of 26. Relatedly, Mr. Myers argues that Idaho Power should have vetted local meteorological data to inform the B2H tower designs. *Id.* at 17 of 26. However, such analyses are neither required by the Commission’s rules, the ASCE 7-22 Minimum Design Loads for Buildings (“ASCE 7”), or the ASCE Manual 74—i.e., the criteria that establish the loads that most transmission lines in the country are designed to withstand and provide guidance and standards for engineers to design their structures for all expected loading scenarios.

of the National Electrical Safety Code [(“NESC 2017”)].⁸⁸ NESC 2017 references both the ASCE 7-22 Minimum Design Loads for Buildings (“ASCE 7”) and ASCE Manual 74 to determine loads on buildings and other structures.⁸⁹ ASCE 7 specifies design wind speeds and general calculation procedures; the ASCE Manual 74 specifies procedures for transmission structures; and NESC 2017 adopts ASCE Manual 74’s approach.⁹⁰ Per NESC 2017, the MRI is to be a minimum of 50 years.⁹¹ For Morrow County, the design wind speed with a 50-year MRI is 80 mph, and with a 100-year MRI is 85 mph.⁹² Importantly, B2H is designed for a wind loading of 120 mph on lattice towers and 100 mph loading on wire resulting in an MRI of between a 700- to 10,000-year recurrence period for Morrow County.⁹³ Accordingly, B2H’s design exceeds all required code minimums.⁹⁴ Even if Idaho Power accepts Mr. Myers’ design wind speed of 98.8 mph with a 100-year MRI, which the Company does not concede is reasonable or accurate, B2H’s tower and wire design would exceed that standard as well.⁹⁵

In addition, Mr. Myers lists several weather events and local wind recordings in Morrow County from 1990 to 2014, with recorded instantaneous wind speeds ranging from 67.8 mph to 88.9 mph (and unrecorded and unverifiable estimates of wind speeds up to 100 mph), to argue

⁸⁸ OAR 860-024-0010.

⁸⁹ Idaho Power/1500, Stippel/10.

⁹⁰ Idaho Power/1500, Stippel/10.

⁹¹ Idaho Power/1500, Stippel/11.

⁹² Idaho Power/1500, Stippel/11.

⁹³ Idaho Power/1500, Stippel/13.

⁹⁴ Idaho Power/1500, Stippel/13-14. Relatedly, Mr. Myers argues that Idaho Power did not use the most recent updates to the MRIs in the ASCE Manual 74. Sam Myers’ Opening Brief at 15 of 26. However, as Mr. Stippel testified, the wind maps published by ASCE show no recent changes to design speeds for the B2H regions and that the Project site does not contain a “special wind region” that would warrant further analysis. Idaho Power/1900, Stippel/3-4.

⁹⁵ In apparent conflict with his recommendation above that Idaho Power should use a design wind speed of 98.8 mph with a 100-year MRI, Mr. Myers also argues that Idaho Power’s selection of the 100-year MRI (or ASCE Manual 74’s “recommended” MRI) is insufficient, and the Company should have rather designed B2H to a higher MRI that is associated with “enhanced reliability” as detailed in the ASCE Manual 74. Sam Myers’ Opening Brief at 13-15 of 26. To be clear, Idaho Power designed the lattice tower and wires above code requirements, with wind loading of 120 mph on lattice towers and 100 mph loading in wire resulting in **an MRI of between a 700- to 10,000-year recurrence period for Morrow County**. Idaho Power/1500, Stippel/13. Accordingly, per Table 1-1 (Exceedance Probability for Various MRIs) in ASCE Manual 74, B2H is designed to a higher MRI associated with “enhanced reliability”.

that B2H is “under-engineered.”⁹⁶ The Commission should reject this argument.

While Idaho Power does not concede the accuracy or validity of the wind speeds and weather events described by Mr. Myers in his Opening Brief, even if they were assumed to be reliable, Idaho Power’s engineering of B2H will meet or exceed all relevant engineering standards such that the facility should withstand the wind and weather events described by Mr. Myers.⁹⁷ First, as Idaho Power’s witness, Joe Stippel, testified, design wind speeds in transmission engineering are not the same as instantaneous wind speeds, and therefore the instantaneous wind speeds provided by Mr. Myers are not indicative of the design wind speeds for B2H.⁹⁸ Second, the **recorded** instantaneous winds speeds Mr. Myers references from these events are well below the designed wind loading for B2H’s lattice towers (120 mph) and wire (100 mph).⁹⁹ Indeed, B2H will be able to withstand the maximum recorded wind event of 88.9 mph that Mr. Myers references even if that event were to occur every year. For these reasons, Mr. Myers has not presented any persuasive evidence that B2H will not be able to withstand local wind and weather events.

Finally, Mr. Myers discusses an article by Joseph Mitchell¹⁰⁰ which, according to Mr. Myers’ characterization, concludes that certain towers and transmission lines in southern California “were not suitable for the standards they were placed in.”¹⁰¹ However, Mr. Myers has neither provided a copy of the article in the evidentiary record or any detail regarding the

⁹⁶ Sam Myers’ Opening Brief at 18-22 of 26. It is important to note that in providing support for recorded local wind speeds, Mr. Myers refers to a graph apparently representing a local wind event from December 26, 2022 measured from a “local weather metering device.” *Id.* at 21-22 of 26. The graph was offered for the first time in Mr. Myers’ Opening Brief and has not been admitted into the record, Idaho Power’s witnesses have not had the opportunity to review and opine on the exhibit, and the Company’s counsel did not have the opportunity to cross-examine Mr. Myers on the relevance and validity of the exhibit during the evidentiary hearing. For these reasons, the Commission should not give any weight to the graph and related narrative presented in Mr. Myers’ Opening Brief.

⁹⁷ Idaho Power/1500, Stippel/13-14.

⁹⁸ Idaho Power/1900, Stippel/3.

⁹⁹ Idaho Power/1500, Stippel/13.

¹⁰⁰ The article Mr. Myers cites to is entitled “Power Lines and Catastrophic Wildland Fire in Southern California.”

¹⁰¹ Sam Myers’ Opening Brief at 8 of 26.

transmission lines at issue, the standards to which they may have been designed, or the basis for their alleged inadequacies.¹⁰² Further, as detailed in Dr. Lautenberger’s testimony, the specific extreme wind conditions in California which led to recent high profile transmission tower failures and wildfire—namely, sustained heavy winds—are not present in the Project area.¹⁰³ EFSC also recognized this difference, noting that “occurrences of severe fire weather near the project site are less frequent than in places like Northern California, where the largest wildfires occurred. Offshore winds that drove many of the large-loss fires in California are not a concern in Eastern Oregon or Idaho.”¹⁰⁴ Thus, the Commission should give little, if any, weight to Mr. Myers’ assertions, and instead should give significant consideration to EFSC’s findings on this issue.

For the above reasons, Idaho Power has established that B2H will be designed to meet or exceed required code standards and best industry practices, as required to protect the safety of the public.

ii. B2H Structures Are Designed to Meet or Exceed Required Code Minimums and Therefore Structural Failure Is Not Anticipated.

Mr. Myers argues that Idaho Power failed to develop a “design failure rate” for B2H,¹⁰⁵ referring to a calculation of the frequency of anticipated failures of the line.¹⁰⁶ However, as made clear by Mr. Stippel at hearing, the calculation of such a rate to B2H would make little sense, given that B2H has been designed to **avoid failures**. Specifically, Mr. Stippel explained that the B2H tower and wire designs meet or exceed required code minimums and are a “robust” and “very conservative design” for a “variety of scenarios.”¹⁰⁷ Accordingly, based on these protections, the

¹⁰² Idaho Power’s witnesses have not been granted the opportunity to review and respond to this article and Mr. Myers’ assertions and any response is based solely on Mr. Myers’ characterization of the article.

¹⁰³ Idaho Power Company’s Surrebuttal Testimony and Exhibits of Christopher Lautenberger (Idaho Power/2300, Lautenberger/17-18) (Apr. 7, 2023).

¹⁰⁴ Final Order, Attachment 6, Contested Case Order (CCO), as Amended and Adopted by Council at 8843 of 10603 [hereinafter “Final Order, Attachment 6”].

¹⁰⁵ Sam Myers’ Opening Brief at 12-13 of 26.

¹⁰⁶ Transcript at 169, lines 2-6 (“Does the IPC have a design failure rate determined for the B2H equipment towers or conductors? This design failure rate could be expressed as a fault rate per year per mile. Is there such a thing in your calculations as a design failure rate?”).

¹⁰⁷ Transcript at 169, lines 7-15.

possibility of structural failure of B2H is “never anticipated.”¹⁰⁸

Mr. Myers also argues that because Mr. Stippel could not provide a definitive wind speed at which conductors on the transmission line would fail, Idaho Power has failed to adequately demonstrate that the towers are designed to industry standards.¹⁰⁹ However, there is no support in the record for this claim. On this point, Mr. Stippel clarified that there are “a lot of factors that go into connection design” and it would be inaccurate to point to a specific wind speed at or above which the towers would fail.¹¹⁰ In addition, as discussed above, B2H’s maximum wind loading design of 120 mph on the lattice towers and 100 mph loading on the wires go above and beyond the 100-year MRI wind design speed for Morrow County (i.e., 85 mph) that is recommended by ASCE Manual 74, and the minimum 50-year MRI mandated by the Commission’s rules and NESC 2017.¹¹¹ Mr. Myers has not provided any persuasive evidence that would suggest that Idaho Power’s wind loading design for B2H is contrary to the Commission’s rules, best industry standards, or otherwise inadequate.

Mr. Myers also argues that Idaho Power should have, but did not, conduct additional tests for the standard tower design from BPA, specifically as related to tower failure from wind loading.¹¹² This critique is without substance. Mr. Stippel testified at the evidentiary hearing that

¹⁰⁸ Transcript at 169, lines 10-12; *see also id.* at lines 17-18 (“We don’t design our lines to have a failure.”).

¹⁰⁹ Sam Myers’ Opening Brief at 17-18 of 26.

¹¹⁰ Transcript at 172, line 22 – 173, line 2 (“Again, Mr. Myers, there’s a lot of factors that go into connection design, and I can’t say there’s a specific point where the wind speed gets to a certain level and then will have a failure. It’s -- it’s -- it’s more complicated than just a specific wind speed.”).

¹¹¹ Idaho Power/1500, Stippel/10-13.

¹¹² Sam Myers’ Opening Brief at 15-16 of 26. Relatedly, Mr. Myers argues that B2H, which will use the BPA tower design, does not meet best industry standards because Idaho Power is unaware how many improvements to the BPA tower design have occurred over the years and because the Company did not verify the wind attack angle coefficient for the BPA tower design. *Id.* at 16-17 of 26. Mr. Myers’ arguments are without merit. B2H, which uses the BPA tower design, is engineered to meet or exceed code required minimums, *see* Idaho Power/1500, Stippel/13-14, and the Company reasonably relied on BPA’s extensive and robust experience in designing, testing, and constructing transmission lines in the Pacific Northwest when selecting the BPA tower design, which is consistent with best industry practices in the region. Idaho Power/1500, Stippel/12 (“BPA has extensive experience with tower loading specifically in the Pacific Northwest area for more than 100 years.”); Transcript at 174, lines 18-24 (“I know BPA has a rigorous testing process. They are generally very conservative with their design analysis... I know Idaho Power and our entire project -- and our project partners are comfortable with the design.”). Mr. Myers has failed to provide any persuasive evidence that would support a contrary conclusion.

the BPA tower design “has gone through extensive manufacturer testing not only from a fit up and fabrication process, but also a mechanical failure” process where BPA erects the tower and applies loading beyond the design loads.¹¹³ BPA “has a rigorous testing process,” is “generally very conservative with their design analysis,” and Idaho Power is unaware of—and Mr. Myers has not specifically named any—additional tests to further enhance the design of B2H which are appropriate or applicable to the Project area.¹¹⁴

In support of his claim that more testing of the BPA tower design is required, Mr. Myers points to an incidence of a BPA tower failing under “much lower wind loading than originally specified.”¹¹⁵ However, the collapse of one BPA tower due to an inaccurate structural calculation of strength capacity **for that particular tower**¹¹⁶ does not undermine BPA’s extensive and robust experience in designing, testing, and constructing transmission lines in the Pacific Northwest.¹¹⁷ For these reasons, Idaho Power has demonstrated that the Company properly relies on the BPA tower design, that structural failure is not anticipated, and no additional tests are necessary.

iii. Idaho Power Has Properly Designed B2H to Account for Maximum Probable Seismic Events.

In addition, Mr. Myers argues that Idaho Power has not prepared for the Cascadia Subduction Zone (“CSZ”) earthquake in Oregon and has not provided any scientific data on the choice not to include any additional loading for this event.¹¹⁸ Idaho Power addressed this

¹¹³ Transcript at 174, lines 6-14.

¹¹⁴ Transcript at 174, lines 18-24. Mr. Myers suggests that Idaho Power should perform a fragility analysis of the impacts of wind attack angle on the transmission towers, see Sam Myers’ Opening Brief at 8 of 26, as well as a “vibration” test of the BPA standard tower design, see *id.* at 10 of 26, and a failure to perform these additional tests renders the Company’s engineering and safety analyses insufficient. *Id.* at 8 of 26. As Idaho Power established in the Company’s Opening Brief, these tests are neither required by code nor warranted in the Project area; Instead, Idaho Power has performed due diligence in its construction design, which meets or exceeds the NESC and ASCE standard requirements. Idaho Power’s Opening Brief at 28. Mr. Myers’ arguments, which are without evidentiary support and rely on an out-of-context reading of the ASCE standards, are without merit and should be rejected.

¹¹⁵ Sam Myers’ Opening Brief at 16 of 26.

¹¹⁶ Sam Myers’ Opening Brief at 15-16 of 26; see *also* Rebuttal Testimony of Sam Myers at 8-9 of 20 (Mar. 20, 2023).

¹¹⁷ Idaho Power/1500, Stippel/12 (“BPA has extensive experience with tower loading specifically in the Pacific Northwest area for more than 100 years.”); Transcript at 174, lines 18-24.

¹¹⁸ Sam Myers’ Opening Brief at 9 of 26.

assertion in its Opening Brief and summarized the evidence which shows that B2H is engineered to withstand typical seismic events in the Project area **and a CSZ event**.¹¹⁹ Thus, contrary to Mr. Myers' assertion, Idaho Power **did** consider the risk of a CSZ event and other seismic events in its engineering of B2H, as recognized in the EFSC Final Order.¹²⁰

b. *Idaho Power has Fully Addressed Intervenors' Concerns Regarding Project-Related Fires.*

i. *The Record Demonstrates That the Probability of a Project-Related Ignition Is Low.*

Ms. King and Mr. Myers raise several arguments challenging Idaho Power's analysis of the probability of Project-related fires. Idaho Power addressed similar arguments in its Opening Brief, explaining that 500-kilovolt ("kV") transmission lines like the Project are less likely to result in ignitions than lower voltage transmission and distribution lines because of stricter engineering requirements and indeed, historically, very few fires have occurred as a result of 500-kV transmission lines.¹²¹ Idaho Power further addresses the intervenors' specific assertions below, demonstrating that the evidence supports the Company's conclusions that the probability of a Project-related ignition is low.

Ms. King compares the wind conditions near Mr. Myers' farm to the high-wind conditions that occurred during the Holiday Farm Fire; Ms. King argues that the comparison is apt because the Holiday Farm Fire "was caused by a 115kV transmission line."¹²² However, as explained in Idaho Power's Opening Brief, a 500-kV transmission line such as B2H is significantly less likely to ignite a fire than a 115-kV line, due to stricter requirements on minimum tower height, right-of-

¹¹⁹ Idaho Power's Opening Brief at 28-29.

¹²⁰ Final Order at 118-20 of 20603. EFSC concluded that Idaho Power "adequately characterized the seismic and non-seismic risks of the site." Final Order at 124 of 10603.

¹²¹ Idaho Power's Opening Brief at 30-36; see *also* Idaho Power Company's Reply Testimony and Exhibits of Christopher W. Lautenberger (Idaho Power/1300, Lautenberger/48-56) (Feb. 21, 2023).

¹²² Wendy King's Opening Brief at 3. Ms. King also comments regarding the fuels present in Morrow County; issues concerning fuels in Morrow County are discussed in connection with the LANDFIRE tool, below.

way width, and vegetation encroachment.¹²³ Therefore, the comparison is not helpful.

Ms. King also questions whether Idaho Power's fault detection will "remove the point of ignition from an arc."¹²⁴ Ms. King is referring to the Project's protection and control systems, which are designed to detect faults (such as arcing from vegetation contacting the line), and rapidly shut off power flow—in 1/60th to 3/60th of a second—if arcing is detected.¹²⁵ Ms. King appears to argue that these features are not sufficient, because an ignition could possibly occur in the extremely brief period that the vegetation contacts the line before the fault detection shuts off power flow.¹²⁶ Mr. Myers raised a related topic in his testimony, where he asserted that dust or a chaff cloud resulting from farming activities could contact the transmission line, causing an arc that could result in an ignition.¹²⁷ In response to that testimony, Idaho Power's witness, Dr. Lautenberger, explained that his analysis of the Project design, including the type of soil in the Project area and the distance between the towers, indicates that the probability of arcing or flashover on the transmission line as a result of dust clouds or heavy smoke is low.¹²⁸ And importantly, EFSC adopted the Hearing Officer's conclusion on this point, which found that "[t]he risk of fire in the area in proximity to Mr. Myers' agricultural operations in Morrow County is also low" and "the probability that a whirlwind or dust devil would ignite a fire along the transmission line is very small."¹²⁹

Mr. Myers asserts that Idaho Power's witness, Dr. Lautenberger, "admits" that "the mere presence of the transmission line towers can bring about an increase in [the] number of ignitions during severe weather lightning storms."¹³⁰ However, Mr. Myers omits the context in which Dr. Lautenberger made that statement, which is necessary to understand the point he was

¹²³ Idaho Power's Opening Brief at 30-34; see also Idaho Power/1300, Lautenberger/15-16.

¹²⁴ Wendy King's Opening Brief at 4.

¹²⁵ Idaho Power/1300, Lautenberger/32-33.

¹²⁶ Wendy King's Opening Brief at 4.

¹²⁷ Amended Opening Testimony of Sam Myers at 2-3 of 4 (Feb. 3, 2023) (Statement of Steven C. Rhea).

¹²⁸ Idaho Power/1300, Lautenberger/50.

¹²⁹ Final Order, Attachment 6 at 8754 of 10603.

¹³⁰ Sam Myers' Opening Brief at 7 of 26.

making. Specially, in response to questioning from Mr. Myers, Dr. Lautenberger stated that “nobody can say with 100 percent certainty that there is absolutely zero percent chance of a tower” resulting in a consequence, which, in Mr. Myers’ example, was “starting a fire.”¹³¹ However, as Dr. Lautenberger explained further, the Project-related “increase in ignition probability is insignificant relative to all other fire causes.”¹³² Moreover, Dr. Lautenberger explained that “Idaho Power has a number of mitigations in place to minimize ignition probability from severe weather, including lightning, and that will serve to prevent ignitions under those types of scenarios.”¹³³ This includes selection of a tower designed to dissipate lightning strikes.¹³⁴ For these reasons, although the Company cannot state there is “absolutely zero percent chance” of a Project-related ignition,¹³⁵ Idaho Power has demonstrated by a preponderance of the evidence that the Project will be constructed, operated, and maintained in a manner that protects the public from danger.

Mr. Myers makes a general assertion that “fire ignitions will increase with wind speed.”¹³⁶ In support of this assertion, Mr. Myers cites to the same article by Joseph Mitchell, the text of which, as noted above, is not in the record.¹³⁷ While it may be true that in some circumstances the probability of fire ignition increases as wind speed increases, the Commission can evaluate the risk posed by B2H only in relationship with the applicable data. On this point, Dr. Lautenberger’s testimony has established that wind conditions in the Project area are less conducive to fire ignition than the sustained offshore winds in California¹³⁸ and that the overall probability of fire ignition from B2H is low.¹³⁹ Moreover, Mr. Stippel’s testimony has established that the designed wind speed for B2H’s towers and lines exceeds the typical wind speeds in the

¹³¹ Transcript at 201, lines 9-12.

¹³² Transcript at 202, lines 23-24.

¹³³ Transcript at 201, lines 6-9.

¹³⁴ Idaho Power/1300, Lautenberger/24-25.

¹³⁵ Transcript at 201, lines 9-12.

¹³⁶ Sam Myers’ Opening Brief at 7 of 26.

¹³⁷ Sam Myers’ Opening Brief at 7-8 of 26; *see also supra* note 102.

¹³⁸ Idaho Power/2300, Lautenberger/17-18.

¹³⁹ Idaho Power/2300, Lautenberger/6-7.

Project area.¹⁴⁰ This evidence fully addresses the concerns raised by Mr. Myers.

Mr. Larkin claims that Idaho Power has not provided “a final wildfire management plan.”¹⁴¹ Mr. Larkin’s concern is not entirely clear, because there is no “wildfire management plan” for the Project. However, as explained in the Company’s Opening Brief, as part of the EFSC process, Idaho Power developed draft versions of certain plans intended to reduce the probability of a fire igniting during construction or operation of the Project, including the Fire Prevention and Suppression Plan, Right of Way Clearing Assessment, and Vegetation Management Plan.¹⁴² To the extent Mr. Larkin’s concern is that these plans have not been finalized, as explained in the Company’s Opening Brief, those plans will be finalized prior to the start of construction. EFSC delegated finalization of the plans governed by the Site Certificate to the Oregon Department of Energy (“ODOE”), and the Oregon Supreme Court affirmed that EFSC had authority to do so.¹⁴³ Additionally, Idaho Power filed its 2023 Wildfire Mitigation Plan in docket UM 2209 and attached it as an exhibit in this proceeding.¹⁴⁴

ii. The Fire History along the Project Route in Morrow County Supports the Low Probability of Ignition Associated with B2H.

Mr. Myers claims that Dr. Lautenberger misrepresented the causes of historic fire ignitions in Morrow County¹⁴⁵ when he stated at the evidentiary hearing that the “majority of fire history in Morrow County is in the southern part of the county in the Blue Mountains” and that there is “very little fire history along the B2H line and, in particular, near Mr. Myers’ property.”¹⁴⁶ To challenge this statement, Mr. Myers offers a new document in his Opening Brief, namely an image of an excerpt from the “Morrow County wildfire summary.”¹⁴⁷ While Mr. Myers interprets this excerpt to

¹⁴⁰ Idaho Power/1900, Stippel/3.

¹⁴¹ Greg Larkin’s Opening Brief at 46 of 67.

¹⁴² Idaho Power’s Opening Brief at 34-36; see also Idaho Power/1300, Lautenberger/3.

¹⁴³ Idaho Power’s Opening Brief at 94; *STOP B2H Coal. v. Or. Dep’t of Energy (In re Site Certificate)*, 370 Or 792, 817-18 (2023).

¹⁴⁴ Idaho Power/1310 (Docket UM 2209, Idaho Power Company’s 2023 Wildfire Mitigation Plan (Dec. 29, 2022)).

¹⁴⁵ Sam Myers’ Opening Brief at 3-4, 5 of 26.

¹⁴⁶ Transcript at 242, lines 5-9.

¹⁴⁷ Sam Myers’ Opening Brief at 4 of 26.

conclude that “the middle region of Morrow County encounters MORE ignitions than the forested southern region[,]”¹⁴⁸ the excerpt in fact concludes that the “fire protection districts respond to fires in the this area more than in the forested southern region.”¹⁴⁹ However, the southern portion of Morrow County is not covered by rural fire protection districts, but instead by federal fire protection agencies¹⁵⁰ and thus the fire response in this region is not captured in Mr. Myers’ excerpt. Therefore, it is inaccurate to rely on the Morrow County document to compare the number of fires between the southern and northern portions of the County.

Moreover, the above referenced exhibit has not been timely offered in this docket. The evidentiary record has now closed, and Mr. Myers has not previously referenced this document or moved for its admission into the record. While Mr. Myers seems to assert that this document is an official publication of Morrow County, the document has not been authenticated or subject to cross-examination. For these reasons, this document should be given no weight.

Similarly, Ms. King refers to Idaho Power’s mapping of historic fire perimeters in Oregon and alleges that the map shows there is a history of fire near the Project area.¹⁵¹ Ms. King’s interpretation of this map is contrary to the data shown. Dr. Lautenberger included the referenced map—which shows the location of agricultural areas and historic fire ignitions in Oregon—in his Surrebuttal Testimony to support the assertion that “most of Oregon’s historical fires burned outside of agricultural area.”¹⁵² The map shows the entirety of Oregon and does not identify the location of the Project area and is thus too general to specifically assess the risk of fire near B2H. In fact, Dr. Lautenberger provided a different map which shows the location of historic ignitions within one mile of B2H.¹⁵³ The latter map is more appropriate for assessing historic fire data near B2H and shows there have been no recorded ignitions within one mile of B2H in Morrow

¹⁴⁸ Sam Myers’ Opening Brief at 5 of 26.

¹⁴⁹ Sam Myers’ Opening Brief at 4 of 26.

¹⁵⁰ See Final Order at 614 at 10603.

¹⁵¹ Wendy King’s Opening Brief at 17-18.

¹⁵² Idaho Power/2300, Lautenberger/13-14.

¹⁵³ Idaho Power/1300, Lautenberger/55.

County.¹⁵⁴ As such, Dr. Lautenberger’s statement that “there is very little fire history along the B2H line, and in particular, near Mr. Myers’ property”¹⁵⁵ is supported by the evidence, contrary to Ms. Kings’ assertion.

iii. Idaho Power’s Analysis of Fire Consequence Is Consistent with Industry Standards.

Ms. King argues Idaho Power’s analysis of fire consequences was deficient because it did not consider impacts to cropland.¹⁵⁶ However, Idaho Power’s analysis of the potential consequences of fire in its Wildfire Mitigation Plan (“WMP”) is consistent with industry standards, which focus on the potential for loss of life and structure impacts, rather than agricultural lands.¹⁵⁷ Specifically, as Dr. Lautenberger explained at the evidentiary hearing, Idaho Power, consistent with industry standards, prioritized life, safety, and loss of structures, meaning homes and businesses, . . . as the metric used to identify areas of elevated consequence or elevated risk.¹⁵⁸ Because the evidence in the record demonstrates that Idaho Power’s calculation of fire risk is consistent with industry practices, Idaho Power has demonstrated compliance with the safety criterion as it relates to fire risk.¹⁵⁹

Ms. King, Mr. Larkin, and STOP B2H raise various challenges to the WMP, many of which have already been addressed in the Company’s Opening Brief.¹⁶⁰ For the reasons discussed in Idaho Power’s Opening Brief, and as discussed below, the intervenors’ arguments are not persuasive.

Ms. King argues that the WMP does “not thoroughly address[] Oregon properties beneath B2H.”¹⁶¹ However, Idaho Power analyzed the B2H route in its assessment of fire risk in the 2023

¹⁵⁴ Idaho Power/1300, Lautenberger/54.

¹⁵⁵ Transcript at 242, lines 7-9.

¹⁵⁶ Wendy King’s Opening Brief at 5.

¹⁵⁷ Idaho Power/1300, Lautenberger/48; Transcript at 205, lines 3-10.

¹⁵⁸ Transcript at 205, lines 16-19.

¹⁵⁹ See OAR 860-025-0035(1)(b) (requiring a petitioner to demonstrate that the proposed transmission line will be “constructed, operated, and maintained in a manner that . . . conforms with . . . best industry practices”).

¹⁶⁰ See Idaho Power’s Opening Brief at 34-36.

¹⁶¹ Wendy King’s Opening Brief at 5.

WMP.¹⁶² Moreover, as Dr. Lautenberger explained in his testimony, while the wildfire mitigation measures currently apply only to the Company’s existing facilities, they will apply to B2H once the Project has been constructed and is operational.¹⁶³

Both Mr. Larkin and STOP B2H argue that Idaho Power failed to appropriately identify high fire risk areas along the transmission line.¹⁶⁴ To support its argument that there are additional areas of increased wildfire risk along the Project route, STOP B2H cites testimony filed in the EFSC proceedings, STOP B2H’s own comments filed in UM 2209, and an image that STOP B2H describes as an excerpt from Oregon Trail Electric Cooperative’s (“OTEC”) WMP.¹⁶⁵ These contentions are without merit, as Idaho Power’s risk assessment methodology detailed in the 2023 WMP was consistent with industry standards and accurately identified areas of high risk (“Red Risk Zones”) and elevated (“Yellow Risk Zones”).¹⁶⁶ As shown in the 2023 WMP, the Company analyzed fire risk for B2H as part of its WMP, taking into account both ignition probability and consequence, and properly concluded that there were no Red Risk Zones along the B2H route, though Idaho Power did identify Yellow Risk Zones.¹⁶⁷

Additionally, EFSC considered these same issues—including the evidence STOP B2H cites in their Opening Brief and Idaho Power’s response to that evidence—and adopted the Hearing Officer’s conclusion that Idaho Power “adequately analyzed the risk of wildfire arising out of operation of the” Project.¹⁶⁸ Because EFSC considered the evidence that STOP B2H cites and

¹⁶² Idaho Power/1310, Lautenberger/34-43 (Docket UM 2209, Idaho Power Company’s 2023 Wildfire Mitigation Plan (Dec. 29, 2022)).

¹⁶³ Idaho Power/2300, Lautenberger/10.

¹⁶⁴ Greg Larkin’s Opening Brief at 46-47 of 67; STOP B2H’s Opening Brief at 25-28.

¹⁶⁵ STOP B2H’s Opening Brief at 25-28.

¹⁶⁶ Idaho Power/1310, Lautenberger/34-43 (Docket UM 2209, Idaho Power Company’s 2023 Wildfire Mitigation Plan (Dec. 29, 2022)).

¹⁶⁷ Idaho Power/1310, Lautenberger/34-43 (Docket UM 2209, Idaho Power Company’s 2023 Wildfire Mitigation Plan (Dec. 29, 2022)).

¹⁶⁸ Final Order at 39-40 of 10603. Notably, EFSC specifically considered the intervenors’ concerns regarding the probability of fire ignition in Morrow and Union counties. Final Order, Attachment 6 at 8843 of 10603 (“Therefore, even if Mr. Myers is correct that large dust devils occur in Morrow County, there is little risk they would interact with a transmission line to cause a fire.”); *id.* at 8885 of 10603 (“Putting aside the very low probability of the proposed facility igniting a fire in Union County or elsewhere along the route . . .”).

determined that Idaho Power had adequately assessed Project-related fire risk, STOP B2H's repeated arguments relying on that same evidence should be given little, if any, weight. Similarly, in UM 2209 the Commission approved Idaho Power's 2022 WMP after considering STOP B2H's comments,¹⁶⁹ and the Commission should not give greater weight to those comments in this proceeding than the Commission gave them in the docket for which they were originally filed.

As to STOP B2H's reference to the map of the OTEC Public Safety Power Shutoff ("PSPS") Zone,¹⁷⁰ because STOP B2H presents this issue for the first time in their Opening Brief, Idaho Power has not had an opportunity to provide evidence in response. In any event, the image of the OTEC PSPS Zone does not provide a full understanding of potential fire risk in the area—for example, it is not clear what criteria OTEC may have assessed to identify their PSPS zones or what equipment OTEC has in the area that may need to be de-energized in the event of a PSPS¹⁷¹—nor does it undermine Idaho Power's assessment of fire risk specific to B2H.

iv. The Project Can Be Remotely De-Energized to Assist Fire Response Organizations Addressing a Fire near the Project.

Ms. King argues that, regardless of whether a fire in the area results from the Project, a "variety of ignitions not caused by B2H in operations can be exacerbated by the line because while the line is energized, fire suppression is dangerous and must be delayed in order for authorities to request a De-Energization."¹⁷² Ms. King cites Idaho Power's Fire Prevention and Suppression Plan, which provides that, when an agency informs Idaho Power of a fire, the Company "immediately dispatches appropriate personnel to monitor the fire and/or coordinate with onsite emergency agencies" and, if requested, "[o]nce onsite" those personnel will contact Idaho Power dispatch to de-energize the line.¹⁷³ Ms. King argues that the plan fails to "consider[]

¹⁶⁹ See *In re Idaho Power Company Wildfire Protection Plan*, Docket UM 2209, Order No. 22-312 (Aug. 26, 2022).

¹⁷⁰ STOP B2H's Opening Brief at 27.

¹⁷¹ See *Idaho Power/1300, Lautenberger/18-19* (summarizing analysis that distribution lines cause the majority of powerline fires).

¹⁷² Wendy King's Opening Brief at 14.

¹⁷³ Wendy King's Opening Brief at 15.

the amount of time the ‘appropriate [Idaho Power] personnel’ will take to arrive on the scene of a fire, monitor the fire, and coordinate with onsite emergency agencies.”¹⁷⁴

However, this same issue was raised in the EFSC proceedings, where Idaho Power explained that Company personnel will not first be required to report to the site of the fire, and instead “the Company will be able to de-energize the line remotely in a matter of seconds.”¹⁷⁵ Based on testimony from Dr. Lautenberger, the Hearing Officer concluded that “any delay [in fire response while waiting for the line to be de-energized] would be minimal.”¹⁷⁶ EFSC adopted this conclusion,¹⁷⁷ and Idaho Power requests that the Commission give due consideration to this conclusion as well.

Ms. King also asserts that “Oregon landowners who live and work under the line are not allowed to possess the 24/7 dispatch phone number[.]”¹⁷⁸ Ms. King is correct that the Fire Prevention and Suppression Plan refers only to Idaho Power working with fire response organizations and agencies to de-energize the Project for fire response.¹⁷⁹ If a fire on a landowner’s property requires de-energization, the landowner may contact their local fire response organization, who can in turn contact Idaho Power to request de-energization—thereby ensuring that communications occur through the proper channels and local fire response organizations are aware of the fire.

v. Ms. King’s Concerns regarding Use of Access Roads Are Unfounded.

Ms. King questions whether Idaho Power will retain access roads or return access roads to their prior use, and expresses concern that maintenance workers may drive through a mature

¹⁷⁴ Wendy King’s Opening Brief at 15.

¹⁷⁵ Final Order, Attachment 6 at 8891 of 10603.

¹⁷⁶ Final Order, Attachment 6 at 8891 of 10603.

¹⁷⁷ Final Order at 41 of 10603 (adopting the Hearing Officer’s findings and conclusions relating to Issue PS-10).

¹⁷⁸ Wendy King’s Opening Brief at 15.

¹⁷⁹ Final Order, Attachment U-3, Draft Fire Prevention and Suppression Plan at 10531 of 10603 [hereinafter, “Final Order, Attachment U-3”] (“A contact number directly to Idaho Power’s 24/7 dispatch center will be provided to all necessary agencies for notification purposes.”).

wheat crop, potentially creating a point of ignition.¹⁸⁰ As explained in the Agricultural Lands Assessment, after construction, any road that was previously proposed as a temporary road “may be left intact through mutual agreement of the landowner and” Idaho Power.¹⁸¹ In other words, it is up to the landowner to determine whether they would like to retain a temporary access road, or to have Idaho Power restore the access road location to its prior condition. Importantly, if the landowner does not wish to leave the temporary road intact, “the agricultural land upon which it is constructed will be returned to its previous use and restored as nearly as possible to the condition that existed prior to construction.”¹⁸²

As to Ms. King’s concern regarding maintenance workers driving through crops, this concern is entirely unfounded. Idaho Power will use permanent access roads for maintenance activities.¹⁸³

Ms. King raises a concern regarding discussion from Idaho Power’s Fire Prevention and Suppression Plan, in which the Company states: “The primary causes of fire on the [right-of-way] result from unauthorized entry by individuals for recreational purposes During transmission line operation, access to the [right-of-way] will be restricted in accordance with jurisdictional agency or landowner requirements to minimize recreational use of the [right-of-way].”¹⁸⁴ Ms. King asserts that this approach will not help in Mr. Myers’ case because Mr. Myers’ fields are not fenced, and therefore “access to a right of way can be accomplished at any point from the roads that border their fields.”¹⁸⁵ Ms. King appears to be asserting that she is concerned individuals will trespass on Mr. Myers’ farm. However, it is not clear from the record why the construction of the Project would increase the prevalence of trespassers on the Myers farm—particularly if access already can be accomplished from neighboring roads.

¹⁸⁰ Wendy King’s Opening Brief at 5.

¹⁸¹ Final Order, Attachment K-1 at 9645 of 10603.

¹⁸² Final Order, Attachment K-1 at 9645 of 10603.

¹⁸³ Final Order at 603 of 10603.

¹⁸⁴ Final Order, Attachment U-3 at 10531 of 10603.

¹⁸⁵ Wendy King’s Opening Brief at 5.

vi. *A Soil Remediation Plan Is Unnecessary Because the Probability of a Project-Related Ignition Is Low.*

Ms. King and Mr. Myers argue that Idaho Power must prepare a plan to remediate impacts to soils in the event of a Project-related fire, asserting that fire can cause crop and soil loss and damages to soil.¹⁸⁶ However, the evidence in the record does not support these intervenors' concerns. As Idaho Power explained in the Company's Opening Brief, Mr. Myers raised this same concern regarding post-fire soil remediation at EFSC.¹⁸⁷ Based on the testimony of both Dr. Lautenberger and Idaho Power's soils expert, Mark Madison, EFSC adopted the Hearing Officer's conclusion that given the low probability of a fire ignition associated with the Project, and the likelihood that any fire would likely move quickly through the fields and not cause significant damage to soils, no soil remediation plan would be warranted.¹⁸⁸ Based on the evidence in the record supporting EFSC's conclusion, Idaho Power requests that the Commission give due consideration to EFSC's Final Order and give little weight to the intervenors' repeated arguments.

Mr. Myers argues that Idaho Power failed to support its position on this issue with relevant expert testimony.¹⁸⁹ However, Dr. Lautenberger provided analysis of the fire history in Morrow County and the soil type in the Project area to specifically respond to Mr. Myers' concerns of dust or chaff contacting a transmission line and causing a fire.¹⁹⁰ Moreover, during the EFSC contested case proceeding, Idaho Power offered expert witness testimony responding to Mr. Myers' descriptions of potential impacts to soil, and EFSC adopted the Hearing Officer's conclusions that "the likelihood of a catastrophic project-related wildfire during operation is very low[,] "wildfires in the area near Mr. Myers' agricultural operations have been relatively small and quickly contained[,] and "a preponderance of the evidence also demonstrates that, if a fire were to occur at or near Mr. Myers' agricultural operations, the fire would most likely result in minimal

¹⁸⁶ Wendy King's Opening Brief at 5-6; Sam Myers' Opening Brief at 2-3 of 26.

¹⁸⁷ Idaho Power's Opening Brief at 36-37

¹⁸⁸ Final Order, Attachment 6 at 8725, 8843-44 of 10603.

¹⁸⁹ Sam Myers' Opening Brief at 2-3 of 26.

¹⁹⁰ Idaho Power/1300, Lautenberger/48-50.

damage to soils.”¹⁹¹

Ms. King challenges testimony provided by Mr. Madison at EFSC by identifying one paragraph in the EFSC Hearing Officer’s Contested Case Order in which she quotes Mr. Madison as saying that a fire on Mr. Myers’ farm would likely be “low-intensity” and another paragraph where the Hearing Officer summarized his testimony as referring to a “high-intensity” fire.¹⁹² Idaho Power has reviewed the testimony filed at EFSC and it appears that the discrepancy Ms. King identified resulted from a scrivener’s error in the Contested Case Order; in fact, Mr. Madison testified that a potential fire would be high-intensity, but the Hearing Officer misquoted Mr. Madison’s testimony in one section of the Contested Case Order.¹⁹³ Notwithstanding this scrivener’s error, the Hearing Officer agreed that Mr. Madison’s testimony demonstrated that a fire in Mr. Myers’ farm would not likely damage the soils.¹⁹⁴

vii. The LANDFIRE Tool Accurately Classifies the Risk of Fire on Agricultural Lands, and Idaho Power’s Use of LANDFIRE is Consistent with Industry Standards.

Ms. King raises concerns regarding the Company’s use of the LANDFIRE tool.¹⁹⁵ As context for Ms. King’s claims, the LANDFIRE tool is a federal program that provides high-resolution (approximately 100 feet) fuel rasters for use in fire spread modeling.¹⁹⁶ LANDFIRE assigns a single surface fuel model and its associated fire risk to each of the rasters.¹⁹⁷ Using this data, Idaho Power developed a fine-grained wildfire risk map for use in creation of the WMP.¹⁹⁸ Dr. Lautenberger utilized the LANDFIRE tool to analyze the spatial correlation between

¹⁹¹ Final Order, Attachment 6 at 8843-44 of 10603.

¹⁹² Wendy King’s Opening Brief at 11-12.

¹⁹³ The error in the Hearing Officer’s order can be found at Final Order, Attachment 6 at 8844 of 10603. The statement should read (deletions in ~~strike through~~, additions in **bold underline**): “As Idaho Power’s soil expert Mark Madison explained, the fuel source would be mostly herbaceous, grass and grain vegetation. The ~~low~~**high**-intensity fire would likely move quickly through the fields due to winds in that area, and ~~low~~**high** intensity, fast moving fires do not cause significant damage to soils.”

¹⁹⁴ Final Order, Attachment 6 at 8725, 8843-44 of 10603.

¹⁹⁵ Wendy King’s Opening Brief at 16-18; see also Idaho Power/2300, Lautenberger/14-15 (describing the LANDFIRE tool).

¹⁹⁶ Idaho Power/1310, Lautenberger/35 (Idaho Power’s 2023 Wildfire Mitigation Plan).

¹⁹⁷ Idaho Power/2300, Lautenberger/15.

¹⁹⁸ Idaho Power/1310, Lautenberger/35 (Idaho Power’s 2023 Wildfire Mitigation Plan).

historical wildfire perimeters with agricultural areas in Oregon as part of an analysis of wildfire risk in Morrow County.¹⁹⁹

Ms. King criticizes the LANDFIRE tool's assessment of wildfire risk, claiming that the tool incorrectly considers both irrigated and non-irrigated agricultural lands as non-burnable.²⁰⁰ Ms. King specifically claims that because the LANDFIRE tool ignores the difference between non-irrigated and irrigated agriculture, it has mischaracterized the risk of fire to Mr. Myers' land.²⁰¹ This criticism is in error. In fact, LANDFIRE treats *irrigated* lands as non-burnable and *non-irrigated* lands as burnable.²⁰² That said, as the overall risk of fire on agricultural lands is minimal,²⁰³ this difference is not material to an evaluation of the fire risk for B2H. As Dr. Lautenberger's testimony explains, a variety of factors inform this characterization of the risk of fire on agricultural lands.²⁰⁴ In particular, agricultural areas are not conducive to large damaging fires due to factors including irrigation, fallow fields, discontinuous fuels, and low suppression difficulty.²⁰⁵ Idaho Power's analysis of fire risk using the LANDFIRE tool is consistent with industry standards,²⁰⁶ and as such there is no justification to apply a different classification to the risk of wildfire on agricultural lands.²⁰⁷

viii. Idaho Power Corresponded with Local Fire Response Organizations and Demonstrated That They Are Capable of Responding to Fires near the Project.

Mr. Larkin raises several concerns about Idaho Power relying on local fire response

¹⁹⁹ Idaho Power/2300, Lautenberger/13-14.

²⁰⁰ Wendy King's Opening Brief at 16-17.

²⁰¹ Wendy King's Opening Brief at 16-17

²⁰² Idaho Power/2300, Lautenberger/15.

²⁰³ Idaho Power/2300, Lautenberger/15-16.

²⁰⁴ Idaho Power/2300, Lautenberger/15.

²⁰⁵ Idaho Power/2300, Lautenberger/15.

²⁰⁶ Idaho Power/2300, Lautenberger/15.

²⁰⁷ Ms. King further asserts that the LANDFIRE tool has misclassified Mr. Myers' property because it does not account for the fact that most farms near Mr. Myers' property use a "chem fallow" approach, which leaves dry stubble on the land. Wendy King's Opening Brief at 16. Ms. King has not provided sufficient evidence of a material difference between the risk of fire on land using traditional fallow practices and land using chemical fallow practices or how this purported difference affects the overall assessment of wildfire risk on agricultural lands. As such, this contention lacks merit.

organizations, claiming that: (1) such reliance will “take[] the resources away from the local people paying for equipment and supporting the departments”; (2) “[m]ost of these firefighters are volunteers which take significant time to organize and leave for the fire location”; and (3) Idaho Power, which is relying on “mutual aid agreements” between fire response organizations and local governments, has “provide[d] no documentation that there are mutual aid agreements in place.”²⁰⁸ For the reasons discussed below, Mr. Larkin’s arguments should be rejected.

As an initial matter, the issue of local fire response organizations’ ability to respond to potential Project-related fires was thoroughly litigated at EFSC. Ultimately, EFSC adopted the Hearing Officer’s conclusion that Idaho Power “adequately analyzed . . . the ability of local firefighting service providers to respond to fires in the project area.”²⁰⁹ In particular, EFSC noted that Idaho Power had corresponded with each fire response organization and “the majority of fire protection providers discussed that the facility would not adversely impact their ability to provide fire prevention services.”²¹⁰ While some organizations raised concerns that it may take considerable time to mobilize their volunteer crews,²¹¹ Idaho Power conferred with each organization to assess their ability to respond and demonstrated that, in most circumstances, the local organizations will be able to respond quickly.²¹² Of the organizations that provided an estimated response time, most could reach a fire near the Project site within 30 minutes and all would be on-site within an hour.²¹³ Five of the organizations indicated they could be on-site within fifteen minutes.²¹⁴

Moreover, contrary to Mr. Larkin’s assertion, the record contains evidence of mutual aid agreements among fire response organizations near La Grande (the area where Mr. Larkin lives).

²⁰⁸ Greg Larkin’s Opening Brief at 54 of 67.

²⁰⁹ Final Order at 40 of 10603.

²¹⁰ Final Order at 616-17 of 10603.

²¹¹ Final Order at 617 of 10603.

²¹² Final Order at 611-13 of 10603.

²¹³ Final Order at 611-13 of 10603.

²¹⁴ Final Order at 611-13 of 10603 (responses of Hermiston Fire and Emergency Services, North Powder Fire Department, La Grande Rural Fire Protection District, Baker Rural Fire Protection District, and Huntington Fire Department).

Although the volunteer La Grande Rural Fire Protection District (“LGRFPD”) has jurisdiction to respond to fires in the Morgan Lake area,²¹⁵ LGRFPD has mutual aid agreements with two fully staffed professional fire response agencies—the City of La Grande and the Oregon Department of Forestry.²¹⁶ Even if LGRFPD needed time to muster its volunteers, the Hearing Officer concluded that the other organizations with whom the LGRFPD had mutual aid agreements “are located closer to Morgan Lake than the LGRFPD and would likely respond more quickly to the area than the LGRFPD.”²¹⁷

Finally, Mr. Larkin appears to assert that a combination of rural fire protection districts, city fire departments, and wildland firefighters cannot all respond to a potential Project-related fire because those firefighting organizations are qualified only to fight certain fires.²¹⁸ Particularly, citing ORS 478.010 and ORS 478.120, Mr. Larkin asserts that wildland fire fighters “lack training in areas such as ladder escape and methods that are available to structural firefighters,” while others may only fight “structural fires.”²¹⁹ However, these statutes do not support Mr. Larkin’s position. ORS 478.010 and ORS 478.120 govern the formation of rural fire protection districts and speak to forestlands that may be included within such districts. Neither statute restricts the **types** of fires that organizations may respond to, but rather specifies how to establish the jurisdictional territory for rural fire protection districts.

ix. Mr. Larkin’s Assertions regarding PacifiCorp’s Wildfire Management History Are Unsupported.

Mr. Larkin asserts that PacifiCorp has a “questionable history” of managing wildfires along their transmission lines and that this alleged mismanagement creates a risk of bankruptcy for PacifiCorp.²²⁰ In support of this proposition, Mr. Larkin refers to several articles regarding fires

²¹⁵ Idaho Power/1311, Lautenberger/16 (EFSC Contested Case, Deposition of Craig Kretschmer).

²¹⁶ Idaho Power/1311, Lautenberger/8 (EFSC Contested Case, Deposition of Craig Kretschmer).

²¹⁷ Final Order, Attachment 6 at 8886 of 10603.

²¹⁸ Greg Larkin’s Opening Brief at 54-55 of 67.

²¹⁹ Greg Larkin’s Opening Brief at 54-55 of 67.

²²⁰ Greg Larkin’s Opening Brief at 47 of 67.

allegedly caused by PacifiCorp-owned transmission infrastructure.²²¹ However, these articles do not establish causation for any of the fires mentioned, including whether they were caused by a transmission line.²²² On the contrary, the articles simply cite settlements and the allegations made in pending litigation, neither of which are evidence of mismanagement.²²³ Further, pending litigation regarding PacifiCorp's wildfire management does not indicate that PacifiCorp is "at risk of insolvency" as Mr. Larkin alleges.²²⁴

c. Corona Noise from B2H Does Not Pose a Public Health Risk.

As Idaho Power explained in detail in its Opening Brief, the evidence in the record demonstrates that predicted corona noise levels generated by B2H will not pose a health risk to the public. Intervenors STOP B2H and Mr. Larkin make several arguments regarding the safety impacts of corona noise and whether the mitigation measures ensured by the Site Certificate are sufficiently protective, among other discrete challenges to Idaho Power's noise analysis. For the reasons detailed below, STOP B2H's and Mr. Larkin's arguments are without merit and should be rejected by the Commission.

²²¹ As an initial matter, while several of the articles cited by Mr. Larkin were identified as cross-examination exhibits, they were not used in the cross-examination hearing and thus there was no opportunity to develop a record regarding their accuracy or applicability to Idaho Power's Petition. Mr. Larkin is relying on their cross-examination exhibits 1105, 1106, 1110, 1112, and 1117. Idaho Power objected to these exhibits on the basis that Mr. Larkin had not established proper foundation by not offering them at the evidentiary hearing. Idaho Power's Objections to Parties' Testimony and Exhibits at 5, 8 (May 2, 2023). PacifiCorp also objected to these exhibits on the bases of foundation and relevance. PacifiCorp's Objections to Motions to Admit at 6 of 11 (May 2, 2023). The judge overruled the objections but noted that the "[e]vidence will be given appropriate weight in the proceeding, in consideration content, context, and the time and manner in which the evidence was offered in the proceeding." ALJ Ruling, Disposition: Evidentiary Objections Sustained in Part and Overruled in Part; Motion to Extend Granted in Part and Denied in Part at 14-17 (May 8, 2023). As such, Idaho Power asks that the Commission give the intervenor's arguments little, if any, weight based on this evidence in light of this ruling and Idaho Power's objection.

²²² Greg Larkin's Cross-Examination Exhibits at 158-62, 558-62, 667-68, 729-30 of 730 (Apr. 12, 2023).

²²³ See, e.g., Greg Larkin's Cross-Examination Exhibits at 558 of 730 (Apr. 12, 2023). This article, titled "PacifiCorp liability for Labor Day fires revealed through newly found texts, plaintiffs' attorneys allege," details allegations made by plaintiffs in a class action lawsuit against PacifiCorp but does not include any evidence of misconduct by PacifiCorp.

²²⁴ Greg Larkin's Opening Brief at 47-48 of 67.

i. Corona Noise Will Not Endanger Public Health and Safety.

Relying on the 1999 World Health Organization (“WHO”) Guidelines for Community Noise report²²⁵ and a 2013 Oregon Health Authority (“OHA”) report entitled “Strategic Health Impact Assessment on Wind Energy Development in Oregon,”²²⁶ Mr. Larkin argues that corona noise from B2H is a safety hazard that may provoke or exacerbate medical conditions, such as hypertension and ischaemic heart disease, in individuals with underlying conditions.²²⁷ Mr. Larkin also argues that corona noise will further lead to sleep disturbance if the noise exceeds 45 A-weighted decibels (“dBA”), with primary effects of increased blood pressure, increased heart rate and finger pulse amplitude, vasoconstriction, changes in respiration, and cardiac arrhythmia.²²⁸ As stated in the Company’s Opening Brief, corona noise from B2H does not pose a health risk,²²⁹ and Mr. Larkin’s arguments are without merit.

As an initial matter, Idaho Power’s expert witness, Dr. Jeffrey Ellenbogen, reviewed both the WHO and OHA reports and points out that they are very general in character and outdated.²³⁰ In the case of the WHO’s sound level limit recommendations, Dr. Ellenbogen pointed out that in some significant respects the WHO relies on different metrics than those used to measure expected noise levels for B2H—resulting in an apples to oranges comparison.²³¹

²²⁵ Idaho Power Company’s Reply Testimony of Dr. Jeffrey M. Ellenbogen (Idaho Power/1220) (Feb. 22, 2023) (WHO, Guidelines for Community Noise (1999)).

²²⁶ Greg Larkin’s Amended Opening Testimony and Exhibits (Greg Larkin/119) (Feb. 1, 2023) (Public Health Division of the Oregon Health Authority, Strategic Health Impact Assessment of Wind Energy Development in Oregon (Mar. 2013)).

²²⁷ Greg Larkin’s Opening Brief at 34 of 67; Idaho Power/1220, Ellenbogen/10-11, 48 (WHO, Guidelines for Community Noise (1999)); Greg Larkin/119 at 12 of 139 (Public Health Division of the Oregon Health Authority, Strategic Health Impact Assessment of Wind Energy Development in Oregon (Mar. 2013)).

²²⁸ Greg Larkin’s Opening Brief at 34 of 67; Idaho Power/1220, Ellenbogen/10-11, 48 (WHO, Guidelines for Community Noise (1999)); Greg Larkin/119 at 12 of 139 (Public Health Division of the Oregon Health Authority, Strategic Health Impact Assessment of Wind Energy Development in Oregon (Mar. 2013)). Mr. Larkin even argues—without any support or evidence—that corona noise will put citizens’ “lives in danger due to the direct and indirect impacts of noise created stress, insomnia, [and] exacerbation of existing disabilities[.]” Greg Larkin’s Opening Brief at 42 of 67.

²²⁹ Idaho Power’s Opening Brief at 39-42.

²³⁰ Idaho Power Company’s Reply Testimony of Dr. Jeffrey M. Ellenbogen (Idaho Power/1200, Ellenbogen/42-45) (Feb. 22, 2023).

²³¹ Idaho Power/1200, Ellenbogen/43-45 (“In addition, it is essential to understand that the WHO’s recommended levels are yearly averages. Corona noise levels are well below WHO-recommended levels

With respect to the OHA report in particular, Dr. Ellenbogen explained that “[s]ince the publication of this review and recommendation . . . there have been significant developments with respect to the science of wind energy, noise, and its potential for impacting health.”²³² Specifically, Dr. Ellenbogen referred to the 2016 Health Canada Study, which analyzed impacts from exposure to noise from wind turbines, ranging from less than 25 A-weighted decibels (“dBA”) up to 46 dBA.²³³ This study measured impacts on subjects based on the results of both subjective and objective measures—including subjective questions about a wide range of conditions, such as migraines, tinnitus, dizziness, sleep disturbance, sleep disorders, quality of life, and perceived stress, as well as objective measurements of stress via hair cortisol levels, cardiovascular outcomes via heart rate and blood pressure, and sleep. ***The study found no relationship between noise from wind turbines and any adverse health impacts.***²³⁴

Moreover, Mr. Larkin relies on the 1999 WHO report primarily for its recommendation that, to avoid sleep disturbance, sound levels should be limited to 45 dBA.²³⁵ However, Mr. Larkin fails to explain that the WHO’s recommended sound level limit of 45 dBA refers to the sound level ***inside*** of the home. Specifically, the WHO explains that “[f]or a good sleep, it is believed that ***indoor*** sound pressure levels should not exceed approximately 45 [decibel (“dB”)] LAmax²³⁶ more than 10-15 times per night[.]”²³⁷ Importantly, any expected noise from B2H would be expected to fall well within this limit. To be clear, Idaho Power’s predicted corona noise levels are modeled ***outdoors***,²³⁸ and as Dr. Ellenbogen noted in his testimony, “the differences between indoor and

most of the time. Therefore, the yearly average for corona noise from B2H will be below the thresholds of concern raised by WHO for other noise sources—notably air, rail, road, wind or leisure noise. This applies to health concerns raised by the WHO as possible outcomes of noise, including ischemic heart disease, hypertension, sleep loss, etc.”).

²³² Idaho Power/1200, Ellenbogen/43.

²³³ Idaho Power/1200, Ellenbogen/6-9, 43.

²³⁴ Idaho Power/1200, Ellenbogen/8-9, 43.

²³⁵ Greg Larkin’s Opening Brief at 34 of 67.

²³⁶ LAmax is the maximum A-weighted sound pressure level in a stated interval, in this case eight hours for the night. Idaho Power/1220, Ellenbogen/17, 154 (WHO, Guidelines for Community Noise (1999)).

²³⁷ Idaho Power/1220, Ellenbogen/48 (WHO, Guidelines for Community Noise (1999)) (emphasis added).

²³⁸ Idaho Power Company’s Reply Testimony and Exhibits of Mark Bastasch (Idaho Power/1100,

outdoor levels are usually estimated at around 10 dB for open, 15 dB for tilted or half-open and about 25 dB for closed windows.”²³⁹ With the highest predicted corona noise level out of all noise sensitive receptors (“NSR”) being 46 dBA in a worse-case scenario (e.g., foul weather, maximum operating voltage, etc.), corona noise indoors under such circumstances—while dependent on the characteristics of the dwelling and windows, as well as the acoustical spectrum of the source (i.e., frequency)—would be attenuated to approximately 36 dBA with windows open and 21 dBA with windows closed, ranging from slightly louder than a whisper to barely audible, if at all.²⁴⁰ Thus, regardless of the relevance of the recommendations in the 1999 WHO Guidelines for Community Noise report, the indoor corona noise levels in the worse-case scenario described above would be below the WHO’s recommended indoor sound level limit of 45 dBA to avoid sleep disturbance.

In addition, the WHO’s recommended 45 dBA indoor sound level limit to avoid sleep disturbance is not mandated by the Oregon Department of Environmental Quality’s (“ODEQ”) Noise Rules. Under ODEQ’s Noise Rules, the most restrictive maximum sound level standard for nighttime (10:00 p.m. – 7:00 a.m.) is 50 dBA (L₅₀)²⁴¹—predicted levels of corona noise for the Project will never exceed this standard,²⁴² which Dr. Ellenbogen concluded was [Begin

Confidential] [REDACTED]

[End Confidential]

Bastasch/31) (Feb. 21, 2023) (“On this point, it is important to keep in mind that Idaho Power’s noise study modeled the level of corona sound **outside the home.**”) (emphasis in original).

²³⁹ Idaho Power/1200, Ellenbogen/25; Idaho Power/1214, Ellenbogen/29 (WHO, Environmental Noise Guidelines for the European Region (2018)).

²⁴⁰ Idaho Power/1200, Ellenbogen /23, 25.

²⁴¹ OAR 340-035-0035(1)(b)(B)(i); Idaho Power/1104 (OAR 340-035-0035 – Table 8). The L₅₀ metric indicates the median sound level (which means that 50 percent of the hour is above this statistical noise level and 50 percent is below). Idaho Power/1100, Bastasch/6, 6 n.16; see also OAR 340-035-0015(59) (defining statistical noise level as the sound level that is equaled or exceeded a stated percentage of the time).

²⁴² Idaho Power/1100, Bastasch/13-14 (“The Company’s acoustic modeling analysis projected that the transmission line sound levels at the relevant NSRs result in an L₅₀ no greater than 46 dBA. This sound level will be in compliance with the most restrictive Table 8 sound level standard of 50 dBA (L₅₀).”).

²⁴³ Transcript of April 20, 2023 Evidentiary Hearing (Highly Confidential) at 6, lines 13-16.

Mr. Larkin also claims that Idaho Power's argument that corona noise from B2H does not constitute a safety hazard is without merit as the statutes authorizing ODEQ to enact its Noise Rules identify noise "as a hazard and the amount of noise and changes in noise level that are unacceptable if they are exceeded."²⁴⁴ Mr. Larkin seems to be suggesting that any noise exposure above the maximum sound level standards or ambient antidegradation standard is *per se* hazardous. That argument is incorrect as OAR 340-035-0010(2) specifically allows for an exception to the thresholds in ODEQ's Noise Rules after consideration of "the protection of health, safety, and welfare of Oregon citizens." In this case, EFSC concluded that—with the protective conditions and mitigation included in the Site Certificate—granting the exception for predicted corona noise exceedances of the ambient antidegradation standard "would not preclude the protection of health, safety, and welfare of Oregon citizens otherwise afforded through compliance with" ODEQ's Noise Rules.²⁴⁵

In addition, Mr. Larkin argues that Idaho Power has failed to provide information concerning the pre-existing conditions of individuals residing along the transmission line route, which may be exacerbated by corona noise.²⁴⁶ To the extent Mr. Larkin is suggesting that Idaho Power must obtain and distribute for review in this proceeding the confidential medical information of individuals residing along the transmission line route, this suggestion is without merit, and the Company is not required to do so. Rather, consistent with Noise Control Condition 1, when Idaho Power is working with each NSR property owner to develop a site-specific mitigation plan, Idaho Power will specifically ask the NSR property owner whether they have a health condition that is exacerbated by elevated sound levels.²⁴⁷ If the NSR property owner provides a letter from a health care provider indicating the health care provider's belief that the NSR property owner has

²⁴⁴ Greg Larkin's Opening Brief at 38 of 67.

²⁴⁵ Final Order at 696 of 10603.

²⁴⁶ Greg Larkin's Opening Brief at 38 of 67.

²⁴⁷ Final Order, Attachment 1, Site Certificate at 785-86 of 10603 (Noise Control Condition 1) [hereinafter, "Final Order, Attachment 1"].

a health condition that is exacerbated by increased sound levels, upon request, Idaho Power will purchase and install sound attenuating windows with a Sound Transmission Class (“STC”) rating of over 40 (regardless of the level of exceedance expected at the residence) and will work with the NSR property owner to consider other mitigation options as appropriate.²⁴⁸ Moreover, with respect to anticipated health impacts from corona noise to individuals with pre-existing conditions, Idaho Power’s expert witness, Dr. Ellenbogen, has testified that:

Given the predicted corona noise levels from B2H, the overly conservative ambient background sound levels, the assumption that people close their windows during foul weather (i.e., when corona noise is predicted to be at its worst), and that Idaho Power will mitigate noise impacts at NSRs with predicted exceedances, I expect that corona noise from the transmission line will have no impact on human health, even among those with underlying conditions.²⁴⁹

Mr. Larkin has not provided any persuasive evidence that would suggest a contrary conclusion.

Finally, Mr. Larkin argues that the testimony of Dr. Ellenbogen attacked the legitimacy of his pre-existing conditions.²⁵⁰ Mr. Larkin misstates the record. At the evidentiary hearing, Dr.

Ellenbogen testified that **[Begin Confidential]** [REDACTED]
[REDACTED]
[REDACTED] **[End**

Confidential]—i.e., Dr. Ellenbogen did not at any time dispute the legitimacy of Mr. Larkin’s pre-existing medical conditions.²⁵¹ Moreover, in his testimony, Dr. Ellenbogen noted that “Mr. Larkin’s concerns deserve compassion.”²⁵² However, Dr. Ellenbogen clarified that while “[p]art of that compassion includes empathy, . . . another includes providing him accurate information—that the corona noise is not a risk to his health.”²⁵³

²⁴⁸ Final Order, Attachment 1 at 786 (Noise Control Condition 1).
²⁴⁹ Idaho Power/1200, Ellenbogen/25-26.
²⁵⁰ Greg Larkin’s Opening Brief at 37 of 67.
²⁵¹ Transcript of April 20, 2023 Evidentiary Hearing (Highly Confidential) at 17, lines 6-22.
²⁵² Idaho Power/1200, Ellenbogen/36.
²⁵³ Idaho Power/1200, Ellenbogen/36.

ii. *Idaho Power Is Not Required to Monitor Ambient Sound Levels at Individual NSRs to Evaluate Safety Risks from Corona Noise.*

Mr. Larkin argues that the Commission must require Idaho Power to monitor ambient background sound levels at residences predicted to experience exceedances of the ambient antidegradation standard in order to properly evaluate the safety risk from corona noise at these properties.²⁵⁴ This argument, which is similar to one that was rejected in the EFSC proceeding,²⁵⁵ is without merit for several reasons. First, to the extent Mr. Larkin is arguing that Idaho Power's use of representative monitoring positions ("MP") to determine ambient background sound levels for NSRs was inappropriate and not in accordance with ODEQ's Noise Rules, EFSC concluded that Idaho Power's multi-step sound monitoring protocol, including the use of MPs to represent an NSR or group of NSRs, was "a reasonable and appropriate approach to evaluating the facility's compliance with" the ODEQ Noise Rules.²⁵⁶

Furthermore, whether there is an exceedance of the ambient antidegradation standard (i.e., the incremental difference between the ambient background sound level and the predicted corona noise level during foul weather exceeds 10 dBA) is not the critical factor for determining health impacts. As Dr. Ellenbogen testified, the relevant metric to assessing safety in this case is ***the magnitude of the predicted corona noise level*** at the NSRs. On that point, Dr. Ellenbogen's testimony was clear:

During foul-weather conditions, the noise might be audible, and might exceed the ambient antidegradation standard, but even in these circumstances, corona noise for the Project is not at a level posing a health risk, even among the 41 NSRs that exceed the ambient antidegradation standard.²⁵⁷

²⁵⁴ Greg Larkin's Opening Brief at 39 of 67 ("IN ORDER TO EVALUATE THE SAFETY RISK, [the Commission] MUST REQUIRE THE DEVELOPER TO PROVIDE...Current Ambient Noise level at residences where citizens are predicted to be exposed to noise from the transmission line using the procedures required by Oregon Noise Statutes and rules.").

²⁵⁵ Final Order, Attachment 6 at 8858-61 of 10603 ("In summary, a preponderance of the evidence establishes that Idaho Power's methodologies for evaluating compliance with OAR 340-035-0035 were appropriate and [ODOE] did not err in approving Idaho Power's methodology.").

²⁵⁶ Final Order at 669 of 10603.

²⁵⁷ Idaho Power/1200, Ellenbogen/25. Dr. Ellenbogen also noted that his opinion was not linked to any specific amount of time of the year that the predicted exceedances take place. See *id.*

Because EFSC found Idaho Power’s noise monitoring protocol to be reasonable, and exceedances of the ambient antidegradation standard are not relevant to assessing health risks, Idaho Power should not be required to perform site-specific monitoring at NSRs as such monitoring would not inform whether predicted corona noise levels pose a health risk.

iii. Idaho Power Properly Estimated the Frequency of Exceedances of the Ambient Antidegradation Standard.

Mr. Larkin also argues that Idaho Power failed to properly evaluate the frequency of exceedances of the ambient antidegradation standard.²⁵⁸ In particular, Mr. Larkin argues that the frequency of exceedances should be represented by the number of days with one hour or more of foul weather, not the percentage of total hours of foul weather in a year.²⁵⁹ As Idaho Power noted in its Opening Brief, this same argument has already been expressly rejected by the Oregon Supreme Court.²⁶⁰

iv. EFSC Was within Its Authority When It Properly Granted a Variance from and Exception to the Ambient Antidegradation Standard.

STOP B2H and Mr. Larkin seem to suggest that Idaho Power is not in compliance with ODEQ’s Noise Rules because the ambient antidegradation threshold will be exceeded at a number of locations.²⁶¹ That argument is simply incorrect. The Oregon Supreme Court has affirmed that EFSC was within its authority when it properly granted Idaho Power a variance from and exception to the ambient antidegradation standard under certain circumstances,²⁶² which is

²⁵⁸ Greg Larkin’s Opening Brief at 38, 40-41 of 67.

²⁵⁹ Greg Larkin’s Opening Brief at 37, 40-41 of 67.

²⁶⁰ Idaho Power’s Opening Brief at 45; *STOP B2H Coal.*, 370 Or at 807-08 (“EFSC determined that noise exceedances would be unusual or infrequent based on the evidence showing that exceedances may occur only in less than two percent of the total hours in a year. To the extent Stop B2H contends that EFSC committed a legal error in interpreting what is meant by ‘unusual or infrequent’ under the rule, we see no error. Nothing in the rule or statute required EFSC to use the number of days instead of the percentage of hours in assessing whether noise exceedances would be unusual or infrequent.”).

²⁶¹ STOP B2H’s Opening Brief at 29; Greg Larkin’s Opening Brief at 38 of 67.

²⁶² *STOP B2H Coal.*, 370 Or at 807 (“Stop B2H’s contention that the legislature intended to give EFSC authority to grant exceptions only where the statute stated that authority expressly—as in ORS 469.501(2) and 469.504(2)—is inconsistent with the legislature’s broad grant of statutory authority to EFSC throughout the energy facility siting act as summarized above. We conclude that EFSC had the authority to grant (1) an exception to the noise standards under OAR 340-035-0035(6)(a), and (2) a variance under OAR 340-035-0100 and ORS 467.060.”); see also Idaho Power’s Opening Brief at 45.

clearly envisioned by ODEQ's Noise Rules. To the extent that Mr. Larkin further argues that the Oregon Supreme Court was incorrect in its conclusion regarding EFSC's authority to issue a variance from and exception to ODEQ's Noise Rules based on a theory of *Auer* deference (i.e., that courts will give deference to an agency's interpretation of its own rules, so long as that interpretation is plausible),²⁶³ the Oregon Supreme Court's ruling is settled law and the federal precedent Mr. Larkin cites is inapplicable to the decision of a state agency.²⁶⁴

Without providing any new evidence or support, STOP B2H relies on the same arguments it raised during the EFSC proceeding and before the Oregon Supreme Court to argue that EFSC improperly granted Idaho Power an exception to and variance from the ambient antidegradation standard because the Company did not comply with the "criteria for exceptions and variances[.]"²⁶⁵ Again, these arguments were expressly rejected by the Oregon Supreme Court where the court ruled that EFSC's decision "was based on weather data evaluated by a meteorologist and detailed sound measurement studies," and that "evidence constitutes substantial evidence supporting EFSC's conclusion that noise exceedances would be 'unusual or infrequent,' thereby justifying an exception under OAR 340-035-0035(6)(a)."²⁶⁶ Moreover, with respect to the variance, the Oregon Supreme Court concluded that "there was substantial evidence to support granting a variance[.]" in part, because EFSC's Final Order explained that

²⁶³ Greg Larkin's Opening Brief at 23 of 67 (citing *Auer v. Robbins*, 519 US 452, 461 (1997)).

²⁶⁴ Mr. Larkin relies on several federal cases in support of his deference argument, but these federal cases are inapplicable because that precedent applies only to federal agencies—EFSC is a state agency. See Greg Larkin's Opening Brief at 23-24 of 67 (citing *Kisor v. Wilkie*, 139 S. Ct. 2400, 2413 (2019); *Gonzales v. Oregon*, 546 US 243 (2006)). In addition, while Mr. Larkin does not provide a full citation to *Christopher v. SmithKline Beecham Corp.*, Idaho Power assumes—based on Mr. Larkin's quotes from the Supreme Court case—that Mr. Larkin is referencing *Christopher v. SmithKline Beecham Corp.*, 567 US 142 (2012). *Id.* at 23-24 of 67. In Oregon, a court conducting judicial review of an agency's interpretation of its own regulations does not rely on United States Supreme Court deference doctrines, rather "Oregon courts . . . defer[] to an agency's interpretation of its own rule if the interpretation is plausible and not inconsistent with the rule, the rule's context, or any other source of law." *Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Comm'n*, 346 Or 366, 410 (2009); *Don't Waste Or. Comm. v. Energy Facility Siting Council*, 320 Or 132, 142 (1994). For the above reasons, Mr. Larkin's challenge to the Oregon Supreme Court's ruling that EFSC was within its authority to grant an exception to and variance from the ambient antidegradation standard is without merit, and should be rejected.

²⁶⁵ STOP B2H's Opening Brief at 30.

²⁶⁶ *STOP B2H Coal.*, 370 Or at 808.

Idaho Power "cannot be accountable for weather conditions that may cause audible corona noise, as the weather is a condition beyond its control."²⁶⁷

v. Noise Mitigation Provided in the Site Certificate Is Sufficiently Protective of Public Health and Safety.

STOP B2H and Mr. Larkin also argue that since corona noise cannot be mitigated at the source, the Commission should "insist on some additional safety measures"²⁶⁸ and consider alternative mitigation measures before approving a CPCN for the Project, including: (1) requiring Idaho Power to perform site-specific monitoring for baseline ambient background levels for any of the 41 NSRs anticipated to experience exceedances of the ambient antidegradation standard identified in Noise Control Condition 1 if the landowners request the monitoring;²⁶⁹ (2) expanding the list of NSRs anticipated to experience exceedances of the ambient antidegradation standard identified in Noise Control Condition 1 to include properties with predicted corona sound levels 1 or 2 dBA below the ambient antidegradation standard threshold (i.e., properties where an exceedance is not anticipated);²⁷⁰ (3) revising Noise Control Condition 3 to require Idaho Power implement monitoring and maintenance for the entire transmission line specific to noise-generating issues and apply new noise mitigating technologies on the transmission line as they become available over the life of the Project;²⁷¹ (4) requiring Idaho Power to provide mitigation outside NSR residences to address corona noise impacts;²⁷² (5) undergrounding the transmission line;²⁷³ (6) moving the line to an alternative route where there are fewer NSRs anticipated to exceed the ambient antidegradation standard;²⁷⁴ and (7) requiring Idaho Power to purchase noise easements from landowners.²⁷⁵

²⁶⁷ STOP B2H Coal., 370 Or at 808-09.

²⁶⁸ STOP B2H's Opening Brief at 30 (emphasis omitted).

²⁶⁹ STOP B2H's Opening Brief at 30-31; Greg Larkin's Opening Brief at 39 of 67.

²⁷⁰ STOP B2H's Opening Brief at 31.

²⁷¹ STOP B2H's Opening Brief at 31-32

²⁷² Greg Larkin's Opening Brief at 40 of 67.

²⁷³ Greg Larkin's Opening Brief at 41 of 67.

²⁷⁴ Greg Larkin's Opening Brief at 41 of 67.

²⁷⁵ Greg Larkin's Opening Brief at 42 of 67.

As an initial matter, many of these recommended changes to the Site Certificate's noise control conditions and proposed alternative mitigation measures were already raised in the EFSC contested case proceeding,²⁷⁶ and carefully considered, thoroughly vetted, and rejected as unnecessary by EFSC at the Exceptions Hearing.²⁷⁷ Further, when considering proposed mitigation, the Commission should keep in mind that the highest level of predicted corona noise at any NSR is 46 dBA,²⁷⁸ which Dr. Ellenbogen noted in his testimony is equivalent to a "library-room quiet" sound that does not pose any health risk (e.g., hearing loss, tinnitus, migraines, dizziness, sleep disturbance and sleep disorders such as insomnia, stress and anxiety) as was demonstrated in the Health Canada Study and by the Occupational Safety and Health Administration's noise exposure guidelines.²⁷⁹

STOP B2H argues that Idaho Power should be required to perform site-specific monitoring at the NSRs predicted to experience exceedances of the ambient antidegradation standard as identified in Noise Control Condition 1 because the STC rating of sound-attenuating windows to be installed pursuant to Noise Control Condition 1 is dependent on the increase in the sound level from the ambient.²⁸⁰ As discussed above, however, EFSC found that the use of representative MPs, rather than site-specific monitoring, was reasonable because:

where there were multiple [MPs] in proximity to NSRs, [Idaho Power] selected the MPs with the lower ambient sound level and that were generally located further from existing ambient sound sources than the NSRs to provide more conservative representative ambient sound levels.²⁸¹

Because the late-night ambient sound levels at the representative MPs selected by Idaho Power

²⁷⁶ Final Order, Attachment 6 at 8846-73, 8952-53, 8956-58, 8962-68 of 10603.

²⁷⁷ It is important to note that, in many instances, EFSC went painstakingly line-by-line through the exact phrasing of the proposed noise control conditions when considering limited parties' recommended changes, many of which are repeated in this proceeding. Idaho Power Company's Surrebuttal Testimony and Exhibits of Mark Bastasch (Idaho Power/2003, Bastasch/8-14) (Apr. 7, 2023) (EFSC Exceptions Hearing – Day 3 (Aug. 31, 2022)).

²⁷⁸ See generally Final Order, Attachment X-4, Noise Analysis Results by NSR Location at 10553-58 of 10603.

²⁷⁹ Idaho Power/1200, Ellenbogen/6-12, 22-28, 37.

²⁸⁰ STOP B2H's Opening Brief at 30-31.

²⁸¹ Final Order at 669 of 10603.

are conservative in nature in relation to the NSRs, it is not apparent that site-specific monitoring at the NSRs will result in higher rated sound-attenuating windows. For the above reasons, requiring site-specific monitoring will add unnecessary cost and process with no likely benefits for NSR property owners.

STOP B2H argues that the list of NSRs expected to experience exceedances of the ambient antidegradation standard as identified in Noise Control Condition 1 should be expanded to include properties with predicted sound levels 1 or 2 dBA **below** the ambient antidegradation standard threshold.²⁸² STOP B2H's recommendation is inappropriate as a matter of law and unnecessary due to the conservative nature of Idaho Power's noise analysis. As Idaho Power stated in its Opening Brief, under OAR 340-035-0035(1)(b)(B)(i), an exceedance of the ambient antidegradation standard occurs when the predicted noise from the Project is more than 10 dBA above ambient sound levels, and the standard does not contemplate a margin of error.²⁸³ In addition, as noted in the Contested Case Order, which EFSC adopted, "Idaho Power's approach to estimating potential exceedances of the ambient antidegradation standard is intentionally conservative and, for that reason, **likely overestimates** the frequency of actual exceedances."²⁸⁴ For the above reasons, STOP B2H's recommendation to expand the list of NSRs identified in Noise Control Condition 1 is both inappropriate and unnecessary.

²⁸² STOP B2H's Opening Brief at 31. STOP B2H also argues that "[i]f an NSR is not on this list of 41 [NSRs] and then finds noise intrusions after the fact, they must follow the complaint process and prove their eligibility for mitigative measures, which is burdensome and costly." *Id.* (emphasis omitted). Idaho Power addressed the reasons why the complaint process enumerated in Noise Control Condition 2 is not costly and burdensome on landowners in its Opening Brief. Idaho Power's Opening Brief at 46-47.

²⁸³ Idaho Power's Opening Brief at 42-43.

²⁸⁴ Final Order, Attachment 6 at 8732 of 10603 (emphasis added). For example, as Mr. Bastasch noted in his testimony, Idaho Power assumed in its noise analysis that B2H would be operating at the maximum operational voltage of 550 kV, which is the voltage at which corona sounds would be at their loudest. Idaho Power/1100, Bastasch/18. In fact, however, the Company expects that B2H will operate at maximum voltage only 0.01 percent of the time, with a normal operating voltage of 525 kV approximately 50 percent of the time. Idaho Power/1100, Bastasch/18-19. Importantly, normal operating conditions at 525 kV will yield approximately 2 dBA less sound than the 550 kV voltage level that was used in the sound modeling. *Id.* at 19. **Thus, under normal operating conditions, over half of the modeled exceedances in Attachment X-4 to the Final Order will likely not occur. *Id.***

STOP B2H argues that Noise Control Condition 3 should be revised to require Idaho Power to perform regular monitoring and maintenance along the entire transmission line for noise-generating issues and to apply new noise mitigating technologies to the entire transmission line as they become available over the life of the Project.²⁸⁵ For the reasons discussed in Idaho Power's Opening Brief, STOP B2H's proposed changes to Noise Control Condition 3 are redundant, unnecessary, and impractical.²⁸⁶

Mr. Larkin argues that "[t]here is no indication that Idaho Power intends to provide mitigation for impacts outside the home where the exceedances are documented to occur"²⁸⁷ and Idaho Power should be required to provide mitigation outside NSR residences to address corona noise impacts.²⁸⁸ As an initial matter, Mr. Larkin misstates the record. While the majority of the mitigation measures detailed in Noise Control Condition 1 (e.g., installation of sound attenuating windows, insulation of the structure, and air-sealing of the residence) address sound proofing the NSR residential structure itself because property owners are expected to be located inside when corona noise is anticipated to occur (i.e., during foul weather events), Noise Control Condition 1

²⁸⁵ STOP B2H's Opening Brief at 31-32.

²⁸⁶ Idaho Power's Opening Brief at 46.

²⁸⁷ Greg Larkin's Opening Brief at 41 of 67 (referencing Idaho Power's Response to Greg Larkin's Data Request No. 83 (Mar. 14, 2023)). Note that nothing in Idaho Power's Response to Greg Larkin's Data Request No. 83 suggested that Idaho Power would not provide mitigation measures outdoors. Rather, the focus of the inquiry was regarding Idaho Power's estimated costs associated with mitigation for noise impacts. See Idaho Power's Responses to Greg Larkin Data Requests No. 26-61 and No. 62-84 at 77 of 82 (May 9, 2023).

²⁸⁸ Greg Larkin's Opening Brief at 40 of 67. Mr. Larkin references *Scott v. City of Jacksonville*, LUBA Order No. 2009-107, 60 Or. LUBA 307 (Jan. 12, 2020) for the proposition that the Commission must require "mitigation measures to be related to the adverse impact criterion." *Id.* at 41 of 67. However, LUBA Order No. 2009-107 is not relevant to this proceeding; rather, in that order, the Oregon Land Use Board of Appeals ("LUBA") found that the city's approval of a conditional use permit failed to comply with ORS 227.173(3) because the decision did not explicitly relate the mitigation measures to address the impact of amplified music or related crowd noise on nearby residences that were discussed in the July 1, 2009 staff report—and incorporated into the city's decision—to the decision's findings regarding compliance with the Jacksonville Municipal Code ("JMC") 17.104.050(C)(6), which requires the city to find the proposed permitted use will have "minimal adverse impact upon adjoining properties." 60 Or. LUBA at 313-14. The "adverse impact criterion," JMC 17.104.050(C)(6), referenced in that order is not relevant to the determination of appropriate mitigation measures for noise impacts in this case. However, to the extent that Mr. Larkin is concerned with compliance with local land use regulations, under OAR 860-025-0040(7), the Commission must adopt the findings from EFSC's Final Order which assure that B2H complies with the Statewide Planning Goals and with the substantive criteria of the affected local governments' comprehensive plans and land use regulations. Idaho Power's Opening Brief at 93.

also provides as an example of alternative mitigation “planting of trees” outdoors.²⁸⁹ Upon request, Idaho Power will work with an NSR property owner to discuss alternative mitigation options, such as planting vegetation, that would mitigate corona sound as experienced outdoors due to the masking effect of rain and wind interacting with foliage.²⁹⁰ Therefore, as Mr. Larkin’s assertion regarding Idaho Power’s proposed mitigation measures outdoors is inaccurate, Mr. Larkin’s recommendation is unnecessary.

Mr. Larkin argues that the Commission should consider requiring Idaho Power to underground the transmission line to address corona “noise impacts on citizen safety.”²⁹¹ Mr. Larkin’s recommendation is unreasonable as the costs of undergrounding outweigh the benefits of avoiding corona noise where the predicted levels of corona noise are magnitudes below those that would pose a health risk. As Mr. Stippel noted in his testimony, during the EFSC proceeding Dennis Johnson testified that the estimated costs for undergrounding just the 1.7-mile length of transmission line at the National Historic Oregon Trail Interpretive Center (“NHOTIC”) are in the range of \$94 to \$190 million—27 to 55 times as much as constructing overhead transmission lines.²⁹² Considering that the evidence in the record demonstrates that predicted corona noise levels do not pose a health risk, imposing this costly requirement is unnecessary and unreasonable.

Mr. Larkin recommends that the Commission require Idaho Power move the line to an alternative route—the Glass Hill Alternative—where there are fewer NSRs anticipated to exceed

²⁸⁹ Final Order, Attachment 1 at 785-86 of 10603 (Noise Control Condition 1).

²⁹⁰ See Idaho Power/1100, Bastasch/19-20 (“A synergistic effect was noted with the combination of rain and wind resulting in even louder sound levels.”); Idaho Power/1109, Bastasch/6 (BPA, I-5 Corridor Reinforcement Final EIS (Feb. 2016)) (“Though foul weather may induce corona, it can also mask it by increasing ambient noise (due to wind or heavy rain hitting foliage). Also during such conditions, people are more likely to be indoors where sound from nearby transmission lines would be reduced.”).

²⁹¹ Greg Larkin’s Opening Brief at 41 of 67.

²⁹² Idaho Power/1500, Stippel/9; Idaho Power Company’s Reply Testimony and Exhibits of Kirk Ranzetta (Idaho Power/705, Ranzetta/34) (Feb. 21, 2023) (EFSC Rebuttal Testimony of Dennis Johnson (Nov. 12, 2021)); Idaho Power/706, Ranzetta/18-19 (Class 4 Undergrounding Cost Estimate (Nov. 8, 2021)).

the ambient antidegradation standard.”²⁹³ This suggestion is unreasonable and unnecessary. As an initial matter, Idaho Power has worked with agencies and stakeholders to route the Project in a manner that minimizes impacts and takes into consideration the various constraints located throughout the proposed Project area, and sought to balance the myriad interests in siting the Project.²⁹⁴ Impacts from corona noise were just one of many factors Idaho Power had to consider when selecting a route. Furthermore, Mr. Stippel testified that while there appear to be fewer NSRs along the Glass Hill Alternative, and therefore there may be fewer exceedances of ODEQ’s ambient antidegradation standard, the Company cannot know for sure whether this is the case because Idaho Power did not propose to construct the Glass Hill Alternative, and therefore did not study noise impacts for that route.²⁹⁵ Importantly, as discussed in Mark Bastasch’s testimony, there are **only** four anticipated NSR exceedances of the ambient antidegradation standard along the Morgan Lake Alternative, and three of the four anticipated NSR exceedances are at the threshold of compliance such that they are unlikely to occur due to Idaho Power’s conservative assumptions and modeling inputs—one is 2 dBA over the ambient antidegradation standard threshold and two are only 1 dBA over the threshold.²⁹⁶ For the above reasons, the Commission should reject Mr. Larkin’s recommendation.

Mr. Larkin recommends that the Commission require Idaho Power to purchase noise easements from NSR property owners as alternative mitigation.²⁹⁷ In making this suggestion, Mr. Larkin seems to be arguing that Idaho Power should pay money to landowners in lieu of other mitigation. Mr. Larkin’s proposal is unnecessary. Idaho Power notes that Noise Control Condition 1 requires Idaho Power to work with landowners to develop a site-specific mitigation plan, and if

²⁹³ Greg Larkin’s Opening Brief at 41 of 67. Based on Greg Larkin’s previous testimony, Idaho Power assumes Mr. Larkin is referring to the Glass Hill Alternative. See Greg Larkin’s Amended Opening Testimony and Exhibits (Greg Larkin/100, Larkin/20-21) (Feb. 1, 2023).

²⁹⁴ Idaho Power Company’s Reply Testimony and Exhibits of Mitch Colburn (Idaho Power/600, Colburn/1-2) (Feb. 21, 2023).

²⁹⁵ Idaho Power/1500, Stippel/3.

²⁹⁶ Idaho Power/1500, Stippel/3.

²⁹⁷ Greg Larkin’s Opening Brief at 42 of 67.

a particular landowner prefers payment in lieu of having Idaho Power install mitigation, Idaho Power would be willing to discuss that option. For these reasons, it would be legally problematic and unnecessary for the Commission to require that Idaho Power purchase a noise easement from NSRs that are anticipated to exceed the ambient antidegradation standard.

vi. Idaho Power Has Adequately Identified Mitigation Measures the Company Will Offer to NSRs Expected to Experience Exceedances of the Ambient Antidegradation Standard and Included the Costs of “Environmental Mitigations” in Its Construction Cost Estimate.

Mr. Larkin argues that Idaho Power failed to “[i]dentify and disclose the mitigation that will be provided at” NSRs and that the Company “failed to include in their budget the costs of providing mitigation” for anticipated exceedances of the ambient antidegradation standard.²⁹⁸ Mr. Larkin mischaracterizes the record. While not an exclusive list, Noise Control Condition 1 explicitly describes the types of mitigation measures that Idaho Power will offer to NSRs anticipated to experience exceedances of the ambient antidegradation standard, including STC-rated sound attenuating windows, as well as air-sealing of the NSR residence, planting trees, and installing insulation.²⁹⁹ Importantly, Staff found that Idaho Power provided adequate information on noise mitigation efforts in the Reply Testimony of Mark Bastasch.³⁰⁰ In addition, consistent with the requirements of OAR 860-025-0030(2)(d)(C), Idaho Power included in its cost estimates the costs of “environmental mitigations.”³⁰¹ Although Idaho Power has not yet finalized the specific cost estimates for various mitigation actions, including site-specific noise mitigation plans that must be negotiated with NSR property owners,³⁰² total expected mitigation costs are currently included as a component of the total construction cost estimate.³⁰³

²⁹⁸ Greg Larkin’s Opening Brief at 39-40 of 67.

²⁹⁹ Final Order, Attachment 1 at 785-86 of 10603 (Noise Control Condition 1)

³⁰⁰ Staff/400, Pal/16.

³⁰¹ Idaho Power/1600, Barretto/6; see also Idaho Power’s Petition for CPCN at 22.

³⁰² Idaho Power cannot determine the exact costs for the noise mitigation measures at each NSR until such mitigation measures have been individually agreed upon by the NSR property owners. Idaho Power’s Responses to Greg Larkin Data Requests No. 26-61 and No. 62-84 at 36 of 82 (May 9, 2023) (Idaho Power’s Response to Greg Larkin’s Data Request No. 56 (Mar. 14, 2023)).

³⁰³ Idaho Power/1600, Barretto/6.

vii. *Corona Noise Will Not Cause Adverse Impacts to Recreational Day-Use Areas.*

STOP B2H argues, without evidence, that the recreation and tourism sites in Eastern Oregon—particularly the recreational day-use areas in Morgan Lake Park—will be negatively impacted by corona noise even though these areas are not considered NSRs for purposes of ODEQ’s Noise Rules.³⁰⁴ As STOP B2H acknowledges, because these recreational day-use areas are not considered NSRs under ODEQ’s Noise Rule (i.e., they are not properties typically used for sleeping),³⁰⁵ Idaho Power is in compliance with ODEQ’s Noise Rules at these sites.³⁰⁶ Furthermore, EFSC found that taking into consideration the ambient sound level at these recreational day-use sites, it is very unlikely that visitors will hear the corona noise from the transmission line.³⁰⁷ For these reasons, the evidence in the record demonstrates that corona noise will likely not cause significant adverse impacts to these recreational areas.

viii. *Notice Requirements Have Been Satisfied in the EFSC and CPCN Proceedings.*

Without any evidence or support, Mr. Larkin argues that EFSC failed to provide parties to the EFSC contested case proceeding notice of their rights to a hearing in a contested case as

³⁰⁴ STOP B2H’s Opening Brief at 32, 32 n.92.

³⁰⁵ OAR 340-035-0015(38) (defining NSRs, otherwise known as “noise sensitive properties” as “real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries”).

³⁰⁶ Final Order at 555 of 10603 (“The Council verified with the City of La Grande that these areas are not campgrounds but are day use areas, therefore are not evaluated for compliance with the DEQ noise rules. The results of the applicant’s acoustic noise analysis using H-frames for the Morgan Lake alternative segment at Morgan Lake Park is 44-49 dBA, which is the noise level of a soft whisper or an urban residence.”).

³⁰⁷ Final Order at 555 of 10603 (“Ambient noise levels are higher during the day and activities such as fishing and picnicking at the day use areas would involve common noises, thus any perceptible corona noise would likely not be audible.”). STOP B2H further argues that other recreational sites, such as the NHOTIC, will also be adversely impacted by corona noise. STOP B2H’s Opening Brief at 32, 32 n.92. However, EFSC concluded that corona noise from B2H would likely not be audible from inside the visitor center at the NHOTIC, and during foul weather that would generate the loudest corona noise, there would be fewer visitors outside on the walking trails. Final Order at 309 of 10603 (“Operational noise would likely not be audible from inside the center and during foul weather conditions that would generate the loudest corona noise, it is anticipated that there would be fewer visitors outside on the walking trails. . . . The higher ambient noise levels during the day would likely mask corona noise generated from the proposed transmission line that may be perceptible to individuals using the walking trails at NHOTIC or any other protected area.”).

required under ORS 183.415.³⁰⁸ Mr. Larkin is incorrect. Mr. Larkin's authorized representative, Irene Gilbert, raised this same argument during the EFSC contested case proceeding, and the Hearing Officer rejected it in the Contested Case Order as a matter of law, which decision EFSC adopted.³⁰⁹ To the extent Mr. Larkin is not challenging EFSC's notice to "all parties"³¹⁰ of their right to a hearing in a contested case,³¹¹ but rather EFSC's obligation to provide public notice upon receipt of a Notice of Intent ("NOI") to file an ASC or notice of a complete ASC to impacted landowners (specifically those anticipated to be impacted by corona noise), the rules for such notice requirements are set out in ORS 469.330 through 469.370, and OAR Chapter 345, Division 015. The Final Order describes EFSC's satisfaction of such notice requirements in the description of the Project's procedural history.³¹² Importantly, EFSC notes in its Final Order that—while not required by rule—ODOE mailed specific notices to individuals identified in the list required by OAR 345-021-0010(1)(y)(E) as a courtesy, which was a "list of the names and addresses of all owners of noise sensitive property, as defined in OAR 340-035-0015[.]"³¹³ This list of NSR property owners is Attachment X-7 to Exhibit X of the ASC.³¹⁴ Regardless, EFSC's satisfaction of its notice requirements is not a matter properly before this Commission.³¹⁵

³⁰⁸ Greg Larkin's Opening Brief at 43-45 of 67.

³⁰⁹ Final Order, Attachment 6 at 8957-58 of 10603 ("[ODOE] has no obligation under ORS 183.415 to send notice to all landowners potentially impacted by the proposed facility. [ODOE's] notice obligation under ORS 183.415 is limited to the parties in the contested case."). Moreover, as with Mr. Larkin in this proceeding, the Hearing Officer noted that Ms. Gilbert failed to explain "why she believes that [ODOE's] notice . . . was inadequate or otherwise failed to comply with applicable law." *Id.* at 8957 of 10603.

³¹⁰ As pertinent here, "party" means "[a]ny person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result." ORS 183.310(7)(c).

³¹¹ "ORS 183.415 applies to contested cases and sets out the requirement for state agencies to provide 'all parties' notice of their right to a hearing in a contested case." Final Order, Attachment 6 at 8957 of 10603; ORS 183.415(2) ("In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.").

³¹² See Final Order at 9-16 of 10603.

³¹³ Final Order at 15 n.16 of 10603. Note that EFSC mistakenly refers to "OAR 345-021-0010(x)(E)" in the Final Order. See *id.*

³¹⁴ Idaho Power/1103, Bastasch/333 (Idaho Power's Response to Staff Data Request 26, Attachment 5, ASC, Exhibit X).

³¹⁵ The failure of any agency to give parties notice of their rights to and the procedures for a contested case hearing is appealable to the courts, not this Commission, and further "[t]he failure of an agency to give notice . . . does not invalidate any determination or order of the agency unless upon an appeal from or review

Mr. Larkin also argues that the Commission failed to provide proper notice to parties to this case of their contested case rights to a hearing as required by ORS 183.415.³¹⁶ Again, Mr. Larkin is incorrect. The Commission provided parties notice of their rights in the contested case when granting individuals' Petitions to Intervene.³¹⁷ To the extent Mr. Larkin is instead contesting Idaho Power's notice to landowners of this proceeding, Idaho Power's Petition includes the names and addresses of potentially impacted landowners³¹⁸ and certification verifying that notice of the Petition was mailed to said persons in accordance with OAR 860-025-0030(2)(f).³¹⁹ Indeed, in response to a motion by STOP B2H challenging Idaho Power's notice of its Petition, ALJ Mellgren ruled,³²⁰ and this Commission affirmed,³²¹ that Idaho Power provided proper notice in accordance with OAR 860-025-0030(2)(f). Mr. Larkin has not identified any potentially impacted landowners that did not receive initial notice of Idaho Power's Petition for a CPCN and this proceeding. For the above reasons, Mr. Larkin's arguments regarding notice are without merit and should be rejected.

ix. Future Litigation Costs Are Too Speculative and Therefore Were Not Included in Idaho Power's Cost Estimates.

Mr. Larkin argues that a site certificate or other authorization, such as a CPCN, does not prevent landowners from bringing civil claims of trespass and nuisance related to corona noise from B2H.³²² Idaho Power does not take any position on the likelihood or merits of any such actions. To the extent Mr. Larkin is also arguing that Idaho Power failed to include costs estimates

of the determination or order a court finds that the failure affects the substantial rights of the complaining party." ORS 183.413(3).

³¹⁶ Greg Larkin's Opening Brief at 44-45 of 67.

³¹⁷ See, e.g., ALJ Ruling, Disposition: Petition to Intervene Granted (Dec. 13, 2022) (granting Greg Larkin's Petition to Intervene and attaching a Notice of Contested Case Rights and Procedures); see also ORS 183.413(2) ("Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall serve personally or by mail a written notice to each party to the hearing[.]").

³¹⁸ Idaho Power's Petition for a CPCN, Attachment 10 (Landowner Information and Parcel Maps).

³¹⁹ Idaho Power's Notice of Petition for Certificate of Public Convenience and Necessity at 1 (Sept. 30, 2022).

³²⁰ ALJ Ruling, Disposition: Motion Denied at 2 (Jan. 13, 2023).

³²¹ Order No. 23-103 at 3-4.

³²² Greg Larkin's Opening Brief at 36-37 of 67.

for future litigation in its Petition,³²³ the Company is not required to do so, and any such estimates would be entirely speculative or “theoretical.”³²⁴

3. Construction of the Project Is Practicable.

a. RFA-1 Will not Delay Construction of B2H.

STOP B2H argues that the timing for issuance of the Final Order on RFA-1 as described in Lindsay Barretto’s Reply Testimony³²⁵ is unlikely.³²⁶ While not entirely clear, it appears that STOP B2H is suggesting that Idaho Power may not be able to timely construct the Project in light of the fact that EFSC has not yet issued a Final Order on Idaho Power’s RFA-1. This concern is misplaced. As Ms. Barretto explained in her Surrebuttal Testimony, the Company anticipates a Draft Proposed Order in late May or early June 2023.³²⁷ Thus, while the estimate for timing has shifted slightly, Idaho Power still expects to obtain the Final Order for RFA-1 during the summer of 2023.

STOP B2H also asserts, without any support, that an amendment to the Site Certificate is not a short process because it is “an automatic contested case.”³²⁸ This statement is incorrect. EFSC retains discretion as to whether to grant a contested case request and may grant a contested case only if the request presents a significant issue of fact or law.³²⁹

³²³ Greg Larkin’s Opening Brief at 37 of 67.

³²⁴ Transcript at 45, lines 18-22 (“[I]f mitigation wasn’t done properly or something like that and then resulted in something later that had to be litigated, I’ll say that’s theoretical, is not contemplated and included in the -- in the cost estimate for the project.”).

³²⁵ Idaho Power/400, Barretto/19-21 (“The Company expects to obtain a final order for RFA1 in June 2023.”).

³²⁶ STOP B2H’s Opening Brief at 12-13.

³²⁷ Idaho Power/1600, Barretto/28.

³²⁸ STOP B2H’s Opening Brief at 12.

³²⁹ OAR 345-027-0371(9) (“After identifying the issues properly raised the Council must determine whether any properly raised issue justifies a contested case proceeding on that issue. To determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.”).

In any event, as described in Idaho Power's Opening Brief, due to the Company's phased approach to construction, Idaho Power does not need to complete RFA-1 before beginning construction on another segment where all pre-construction commitments and conditions have been satisfied.³³⁰

b. *Mr. Larkin's Assertion That Litigation Will Increase the Risk of Cost Overruns Is Speculative.*

Mr. Larkin argues that the risk of cost overruns for the Project is increased "given the level of resistance to it[]s development" and people's intent to "aggressively pursue" actions "requiring the developer fully comply with" applicable laws.³³¹ Mr. Larkin's argument appears to be that costs for the Project will increase because there may be citizen-lawsuits related to the development of the Project. The Commission should reject this argument, as it is entirely speculative. Moreover, at the evidentiary hearing, Mr. Larkin's authorized representative, Ms. Gilbert, suggested that the litigation-related concern was based on the potential for Idaho Power failing to mitigate Project impacts.³³² As Ms. Barretto explained, Idaho Power's cost estimates include mitigation costs but do not include these "theoretical" litigation costs that would arise "if mitigation wasn't done properly."³³³ Importantly, however, the Site Certificate requires Idaho Power to mitigate Project impacts, and Idaho Power has committed to meeting these requirements.³³⁴ Additionally, EFSC has continuing oversight to monitor the Company's

³³⁰ Idaho Power's Opening Brief at 53-54, 88; see also Idaho Power/404 (Time and Location Schedule (Confidential)); Transcript at 32, line 17 – 33, line 1 ("Part of the -- the -- I guess, a key philosophy for construction of this project is to construct in segments, and so we'll have a partial notice to proceed from the BLM and kind of similar partial state approval, and with the construction schedule, you know, there are -- there are environmental like seasonal, cultural easements and other constraints in the project schedule, and so we -- it's key that flexibility is built into the plan for construction.").

³³¹ Greg Larkin's Opening Brief at 62 of 67.

³³² Transcript at 45, lines 2-5 ("[I]f the mitigation is not occurring, then there would be litigation in particular when it comes to noise and -- or fires, and so there, I'm assuming, will be costs for litigation.").

³³³ Transcript at 45, lines 12-23; see also Idaho Power/1600, Barretto/6 ("Consistent with the requirements of OAR 860-025-0030(2)(d)(C), Idaho Power included in its cost estimates the costs of 'environmental mitigations.' Although Idaho Power has not yet finalized the specific cost estimates for various mitigation actions, total expected mitigation costs are currently included as a component of the total construction cost estimate.").

³³⁴ See, e.g., Final Order at 363 of 10603 (**Fish and Wildlife Condition 4**: . . . The final Fish and Wildlife

compliance with the Site Certificate.³³⁵ To the extent that Mr. Larkin's argument regarding litigation costs is based on an erroneous assumption that Idaho Power will fail to comply with the mitigation requirements in the Site Certificate or other legal obligations, this assumption is contrary to the evidence in the record, and should be rejected.

4. The Project Is Justified in the Public Interest Compared to Alternatives.
 - a. *The Evidence in the Record Does Not Support the Assertion That Alternatives to Construction Could Feasibly Serve Idaho Power's Customers.*

In their Opening Briefs, STOP B2H and Ms. Geer identify several alternatives to construction of a transmission line that they assert could reliably serve the Company's customers. However, as discussed in Idaho Power's Opening Brief, the Company considered diverse resource portfolios through the IRP process, and portfolios including the Project have been consistently identified as the least cost, least risk portfolio.³³⁶

- i. *Undergrounding the Project Was Thoroughly Analyzed at EFSC, and the Costs and Impacts of Such an Alternative Would Be Substantial.*

STOP B2H and Ms. Geer both argue that an underground direct current ("DC") transmission line following the right-of-way of a railroad or the interstate freeway could be feasible.³³⁷ To support this assertion, STOP B2H acknowledges that "[t]here [are] only a few examples" of an underground 500-kV alternating current ("AC") line, but points out that there are

Habitat Mitigation Plan shall address the potential habitat impacts through mitigation banking, an in-lieu fee program, development of mitigation projects by the certificate holder, or a combination of the same.").

³³⁵ Final Order, Attachment 1 at 747 of 10603 ("After issuance of this site certificate, [EFSC] shall have continuing authority over the site and may inspect, or direct [ODOE] to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of this site certificate (ORS 469.430)."); ORS 469.430(1)(a) ("[EFSC] has continuing authority over the site for which the site certificate is issued, including but not limited to the authority to: (a) Inspect, or direct [ODOE] to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of the site certificate or any order issued by the department under ORS 469.405(3)[.]").

³³⁶ Idaho Power's Opening Brief at 15-18.

³³⁷ STOP B2H's Opening Brief at 17-19; Susan Geer's Opening Brief at 12 (May 15, 2023).

many underground DC lines that have been in operation for decades.³³⁸ STOP B2H also cites two transmission line projects which they assert involve “some undergrounding on land” and building “along a railroad right of way crossing multiple states for 350 miles.”³³⁹

As an initial matter, STOP B2H’s suggestion that a DC transmission line would be preferable is being raised for the first time in briefing and is entirely unsupported by the record. In fact, STOP B2H acknowledges in their Opening Brief that they did not offer any evidence relating to the two transmission line projects they cite as examples,³⁴⁰ and therefore, their argument is not supported by any evidence in the record.

Moreover, although Idaho Power had no opportunity to present evidence relating to STOP B2H’s newly raised suggestion, the Company notes that an underground DC line would be an impracticable alternative to B2H for two reasons. First, contrary to STOP B2H’s assertion, AC transmission is not “outdated,” and the grid will need much more AC transmission in an electrical system dominated by variable renewable resources.³⁴¹

Second, the costs and additional impacts of an underground transmission line would be prohibitive. Undergrounding a segment of the transmission line near the NHOTIC was the subject of extensive expert testimony and thoroughly vetted in the EFSC proceedings.³⁴² In refusing to require Idaho Power underground the transmission line, EFSC recognized the following conclusions of the Company’s expert witness and engineering consultant, Dennis Johnson of POWER Engineers:

1) the costs to underground the approximately 1.6 mile 500 kV segment [near the NHOTIC] would be very high, approximately \$98.6 to 107.6 million more than

³³⁸ STOP B2H’s Opening Brief at 17-18.

³³⁹ STOP B2H’s Opening Brief at 18.

³⁴⁰ STOP B2H’s Opening Brief at 18.

³⁴¹ DC transmission lines work best over very long distances, or potentially between major electrical interconnections that are not AC connected, and using a DC line in place of B2H likely would have resulted in less transfer capability between the Pacific Northwest and Idaho. On the other hand, an AC 500-kV line matches the BPA high-voltage transmission system, and fits well with the Gateway West 500-kV transmission project as well, as multiple pieces to a larger transmission network. Thus, AC, and not DC, is the best option for the Project. If the Commission seeks to allow evidence on this topic, Idaho Power would supplement the record to support these assertions.

³⁴² Final Order at 319-21 of 10603.

building the segment traditional overhead configuration, and 2) the ground disturbance from underground installation would be ‘substantially greater’ than for an overhead transmission line.³⁴³

For context, the cost of undergrounding the 1.6 mile segment near the NHOTIC was approximately 27 to 55 times as much as constructing overhead transmission lines.³⁴⁴ Additionally, in evidence filed in the EFSC proceedings, Idaho Power’s expert witness, Mr. Johnson, provided a rough estimate for the costs of undergrounding the entire length of the Project.³⁴⁵ Mr. Johnson, who prepared the report on undergrounding the 1.6 mile segment near the NHOTIC,³⁴⁶ extrapolated the per-mile cost of that detailed study and calculated that it would cost approximately \$16.3-33.2 billion to underground the entire Project.³⁴⁷ Based on EFSC’s conclusions and the testimony filed in that proceeding, even if undergrounding the Project may be feasible from an engineering perspective, the cost and associated impacts, such as ground disturbance,³⁴⁸ flattening of sidehills traversed by the transmission line,³⁴⁹ and impacts to cultural resources that would otherwise be spanned by an overhead transmission line,³⁵⁰ would make burying the transmission line an impracticable alternative. Idaho Power requests that the Commission give due consideration to EFSC’s conclusions.

ii. The Alternatives STOP B2H Proposes Were Thoroughly Considered in Idaho Power’s 2021 IRP.

STOP B2H lists several potential alternatives to construction that they assert are “feasible

³⁴³ Final Order at 320 of 10603.

³⁴⁴ Idaho Power/705, Ranzetta/34 (EFSC Rebuttal Testimony of Dennis Johnson (Nov. 12, 2021)).

³⁴⁵ Idaho Power/705, Ranzetta/41 (EFSC Rebuttal Testimony of Dennis Johnson (Nov. 12, 2021)).

³⁴⁶ Idaho Power/706, Ranzetta/1 (Class 4 Undergrounding Cost Estimate (Nov. 8, 2021)).

³⁴⁷ Idaho Power/705, Ranzetta/41 (EFSC Rebuttal Testimony of Dennis Johnson (Nov. 12, 2021)).

³⁴⁸ The total construction disturbance area for an underground line for the 1.7-mile segment near the NHOTIC would be 53.2 acres, compared to 23.8 acres for an overhead transmission line, and would require the removal of 332,000 cubic yards of material. Idaho Power/705, Ranzetta/20-21, 24 (EFSC Rebuttal Testimony of Dennis Johnson (Nov. 12, 2021)).

³⁴⁹ The right-of-way for an underground transmission line would have to be flattened. Idaho Power/705, Ranzetta/23 (EFSC Rebuttal Testimony of Dennis Johnson (Nov. 12, 2021)). While these sidehills could be restored after installation, it would not be recommended because burying the transmission line deeper from the ground surface lowers the ampacity by making it harder for the surrounding soil to dissipate the heat. *Id.*

³⁵⁰ In the area near the NHOTIC, Oregon Trail segments with intact trail ruts were of particular concern. Idaho Power/705, Ranzetta/25 (EFSC Rebuttal Testimony of Dennis Johnson (Nov. 12, 2021)).

and climate-friendly project alternatives,” including increased energy efficiency, demand-side management, and battery storage.³⁵¹ STOP B2H claims, without support, that Idaho Power has “actively worked against” selection of such resources.³⁵² However, there is no support for this claim. On the contrary, as explained Mr. Ellsworth’s Reply Testimony, Idaho Power fully evaluated these resources in its 2021 IRP, as well as its earlier IRPs, both as competing alternatives to B2H or complementary to B2H as part of a total resource portfolio.³⁵³

Consistent with the Commission’s IRP guidelines, Idaho Power included in its 2021 IRP analysis of “demand-side options which focus on conservation and demand response.”³⁵⁴ The result of the IRP analysis is that the Preferred Portfolio, which includes B2H, is \$228 million more cost effective than the least-cost non-B2H portfolio.³⁵⁵ In fact, Staff specifically cited this testimony in concluding that Idaho Power had demonstrated that “the preferred portfolio with B2H is still cost-effective.”³⁵⁶ Therefore, there is no basis for STOP B2H’s suggestions that renewable resources, energy efficiency, and demand response could serve as reliable alternatives to B2H.³⁵⁷

iii. Construction of Additional Generation Alone Cannot Serve the Company’s Customers.

STOP B2H also asserts that Idaho Power could “secur[e] or build[] more renewable generation close to load/demand and existing substations” as an alternative to the Project.³⁵⁸ However, as explained in Idaho Power’s Opening Brief, the Company has analyzed the possibility of constructing additional renewable generation within its footprint to serve load and those studies

³⁵¹ STOP B2H’s Opening Brief at 13-14.

³⁵² STOP B2H’s Opening Brief at 14.

³⁵³ Idaho Power/500, Ellsworth/34-35.

³⁵⁴ *In re Pub. Util. Comm’n of Or., Investigation into Integrated Res. Planning Requirements*, Docket UM 1056, Order No. 07-047, App. A at 1 of 7 (Feb. 9, 2007).

³⁵⁵ Idaho Power/500, Ellsworth/34.

³⁵⁶ Staff/400, Pal/16.

³⁵⁷ Additionally, regarding STOP B2H’s more general assertion that Idaho Power has not adopted the alternatives that STOP B2H raises, it should be noted that the Preferred Portfolio already includes some of the alternatives STOP B2H proposes, including energy efficiency and demand-response. Idaho Power/500, Ellsworth/45 (“Energy efficiency and demand-response are components of the Company’s 2021 IRP Preferred Portfolio, which also includes B2H.”); *see also* 2021 IRP at 193 of 214 (detailing the energy efficiency components of the preferred portfolio).

³⁵⁸ STOP B2H’s Opening Brief at 14.

showed that, at a certain point, continued addition of wind, solar, and storage inside the Idaho Power footprint has significant diminishing returns on capacity contribution due to homogeneous weather patterns spread across the Idaho Power footprint causing simultaneous system-wide low wind, or low solar, or a combination of the two.³⁵⁹

STOP B2H also argues that Idaho Power should upgrade existing transmission lines in Path 14 instead of constructing B2H.³⁶⁰ However, Mr. Ellsworth has explained that rebuilding or upgrading these lines alone would not result in any incremental capacity gains without upgrading lines (or building a new line) from Brownlee to Boise as well.³⁶¹ Not only would this alternative be financially imprudent, it would also be less reliable, and unlock less capacity than a new 500-kV transmission line unless all lines are rebuilt at 500-kV, which would further increase costs.³⁶²

Additionally, because two of the existing transmission lines share a common tower, North American Electric Reliability Corporation (“NERC”) standards require Idaho Power to include in its reliability studies the simultaneous loss of both transmission circuits, which limits the effectiveness of a rebuild along that route.³⁶³ These contingency analyses are particularly important in this case, because such an outage did occur on these lines in 2004 during a day with high summer loads.³⁶⁴ As Mr. Ellsworth described in his testimony:

By losing these lines, Idaho Power’s import capability was dramatically reduced, and the Company was forced to rotate customer outages for several hours due to a lack of resource availability. With the addition of the B2H project, the impact of this outage would be substantially reduced.³⁶⁵

STOP B2H asserts that upgrading the existing transmission lines may be more expensive than the Project, but that the Commission should consider other “qualitative risks” like “[l]oss of natural, cultural and historical resources, habitats, and livelihoods[.]”³⁶⁶ However, many of the

³⁵⁹ Idaho Power’s Opening Brief at 59-60; see *also* Idaho Power/500, Ellsworth/30.

³⁶⁰ STOP B2H’s Opening Brief at 15-16.

³⁶¹ Idaho Power/500, Ellsworth/44.

³⁶² Idaho Power/500, Ellsworth/44.

³⁶³ Idaho Power/500, Ellsworth/44.

³⁶⁴ Idaho Power/100, Ellsworth/38.

³⁶⁵ Idaho Power/100, Ellsworth/38

³⁶⁶ STOP B2H’s Opening Brief at 16.

“risks” that STOP B2H identifies were thoroughly assessed in the EFSC proceedings, where Idaho Power demonstrated that, taking into account mitigation, impacts to historic, cultural, and archaeological resources will be less than significant and that impacts to habitat will be consistent with Oregon Department of Fish & Wildlife (“ODFW”) requirements.³⁶⁷

iv. Microgrids Are Not an Adequate Alternative to the Project.

Ms. Geer suggests “[d]ecentralized microgrids” as an alternative to the Project.³⁶⁸ However, there is no support for this position. Although discussion of decentralized microgrids has been limited in this docket, commenters discussed microgrids both in Idaho Power’s IRP dockets and in the EFSC proceedings for B2H.³⁶⁹ As Idaho Power explained in those proceedings, the Company acknowledges that tools such as microgrids will likely play a part in the utility of the future, but they cannot substitute for a reliable transmission grid.³⁷⁰ This is particularly true as renewable generation increases and as regional markets expand.³⁷¹ It is widely understood that, as renewable generation grows, the need for flexible dispatchable resources will also grow, and regional transmission like B2H will be the key to linking these complementary resources together.³⁷² For these reasons, Ms. Geer’s suggestion that microgrids can serve as an alternative to the Project is not persuasive.

³⁶⁷ Final Order at 409, 547 of 10603.

³⁶⁸ Susan Geer’s Opening Brief at 12.

³⁶⁹ See Final Order, Attachment 3, Applicant Responses to Select Public Comments on the Draft Proposed Order at 7678-79 of 10603 (discussing Idaho Power’s response to comments relating to microgrids in the docket for its 2017 IRP) [hereinafter, “Final Order, Attachment 3”] (discussing Idaho Power’s response to comments relating to microgrids in the docket for its 2017 IRP).

³⁷⁰ Final Order, Attachment 3 at 7678 of 10603.

³⁷¹ Final Order, Attachment 3 at 7678 of 10603. Wholesale power markets are driven, in part, by increased renewable generation which, as a generally variable and non-dispatchable resource, is relatively difficult to integrate onto the grid. *Id.* at 7678-79 of 10603. Markets, by utilizing regional transmission interconnections, spread this variability across an entire region, thereby allowing the least cost generation to balance variable resources. *Id.* at 7679 of 10603.

³⁷² Final Order, Attachment 3 at 7679 of 10603.

b. *Idaho Power Thoroughly Considered Potential Alternative Routes and the Selected Route Is Justified.*

i. *The Project Route Segment in Morrow County Is Justified in the Public Interest.*

(a) Idaho Power Adequately Considered Non-Exclusive Farm Use ("EFU") Alternatives before Siting the Project in EFU Zones.

Mr. Myers, STOP B2H, and Ms. King raise various arguments challenging Idaho Power's analysis regarding siting the Project on EFU lands. Mr. Myers argues that Idaho Power has not "honor[ed] the directives . . . to as much as possible avoid placing B2H over Exclusive Farm Use zones."³⁷³ Similarly, STOP B2H argues that an alternative route segment collocating the Project with the Wheatridge intraconnection transmission corridor should be considered to avoid impacts to farms and natural resources.³⁷⁴ These arguments are unpersuasive.

Contrary to Mr. Myers' assertions, Idaho Power has fully complied with the statutory requirements relevant to siting transmission lines in EFU lands. A transmission line like the Project may be permitted in EFU land as a "utility facility necessary for public service."³⁷⁵ To site a utility facility necessary for public service in EFU land, an applicant must comply with ORS 215.275.³⁷⁶ As relevant to the intervenors' arguments, ORS 215.275(2) requires an applicant to "show that reasonable alternatives **have been considered** and that the facility must be sited in an exclusive farm use zone due to one or more of the" factors listed in the statute. While an applicant must consider non-EFU alternatives, ORS 215.275 "does not require that an applicant proceed through additional inquires that are designed to minimize impacts on EFU-zoned land, where non-EFU-zoned alternatives are not available."³⁷⁷

As discussed in Idaho Power's Opening Brief,³⁷⁸ Idaho Power analyzed potential

³⁷³ Sam Myers' Opening Brief at 22 of 26.

³⁷⁴ STOP B2H's Opening Brief at 21.

³⁷⁵ ORS 215.283(1)(c).

³⁷⁶ ORS 215.275(1).

³⁷⁷ *WKN Chopin, LLC v. Umatilla Cnty.*, LUBA Order No. 2012-016, 66 Or. LUBA 1 at 16 (July 11, 2012).

³⁷⁸ Idaho Power's Opening Brief at 64-65.

alternatives in its ASC and demonstrated that EFU lands cover approximately 77 percent of the seven-county study area in Oregon, and the only way to avoid EFU lands was to site entirely outside of Oregon—and EFSC agreed with Idaho Power’s conclusion.³⁷⁹ Specifically, EFSC concluded that the Project must be sited in EFU lands because B2H is locationally dependent (meaning it must cross EFU-zoned land to achieve a reasonably direct route), there is a lack of available non-resource lands, and siting the Project in EFU lands would utilize existing federal rights of way such as the BLM Vale District Utility Corridor, the West-wide Energy Corridor, and the Wallowa-Whitman National Forest Utility Corridor.³⁸⁰

Ms. King cites ORS 215.243(2) as the statement of a legislative policy protecting agricultural lands, which reads:

The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

However, the Oregon Court of Appeals has specifically addressed this statement, and has found that “that policy does not replace specific legislative authority to permit a nonfarm use on EFU-zoned land.”³⁸¹ As discussed above, the legislature specifically authorized transmission lines in EFU zones if the applicant can show that the line is a “utility facility necessary for public service.”³⁸²

Relatedly, Mr. Myers and Ms. King argue that Idaho Power should have “re-analyz[ed] or review[ed] the Alternative routes in order to avoid exclusive Farm use zones,”³⁸³ apparently suggesting that the Company was required to continue to re-evaluate alternatives to its proposed route—even after it has fully complied with ORS 215.275 and after it has filed its ASC with

³⁷⁹ Final Order at 252-53 of 10603 (“[U]nless the route were located almost entirely outside of the state of Oregon, no route could avoid EFU zoned land entirely[.]”).

³⁸⁰ Final Order at 252-54 of 10603.

³⁸¹ *Keicher v. Clackamas Cnty.*, 175 Or App 633, 638 (2001).

³⁸² ORS 215.283(1)(c).

³⁸³ Sam Myers’ Opening Brief at 22-23; Wendy King’s Opening Brief at 20.

EFSC.³⁸⁴ In fact, there is no such requirement. On the contrary, as a practical matter, there must be a date when the alternatives analysis is complete, and the Commission should not require a CPCN petitioner to reopen the alternatives analysis that EFSC has already reviewed and approved. Otherwise, it is possible that a utility facility could never be sited because intervenors could propose a new alternative at any stage in the process and demand that the utility re-initiate the siting analysis. Given the fact that EFSC has already approved the Company's alternatives analysis,³⁸⁵ reopening the siting of the Project through this docket would disregard the role of EFSC as the State's siting authority, be burdensome, and cause the Project to be delayed beyond the date of the resource need that it is designed to address.

Ms. King also challenges Idaho Power's consideration of siting constraints, asserting that Idaho Power failed to follow the criteria relating to collocating the line within existing rights-of-way and reducing impacts to EFU lands.³⁸⁶ Ms. King cites, among other things, OAR 345-021-0010(1)(b)(D)(i)-(vii) for the constraints that she alleges Idaho Power did not apply.³⁸⁷ The rule referenced, OAR 345-021-0010, is a regulation governing what must be included in an ASC at EFSC,³⁸⁸ and the specific provisions Ms. King cites govern the corridor selection for transmission lines.³⁸⁹ As discussed in Idaho Power's Opening Brief, Idaho Power analyzed siting constraints consistent with the rule in its ASC and EFSC reviewed Idaho Power's corridor selection in its Final Order.³⁹⁰ It appears that Ms. King is suggesting that the criterion regarding collocating with existing rights-of-way should be elevated above other considerations. However, that criterion is simply one among the several that must be considered. EFSC's rule requires applicants to "discuss the reasons for selecting the corridors, based upon evaluation of

³⁸⁴ Final Order at 252-54 of 10603.

³⁸⁵ Final Order at 252-54 of 10603.

³⁸⁶ Wendy King's Opening Brief at 26-27.

³⁸⁷ Wendy King's Opening Brief at 27.

³⁸⁸ OAR 345-021-0010(1).

³⁸⁹ OAR 345-021-0010(1)(b)(D).

³⁹⁰ Idaho Power's Opening Brief at 61-64; see Final Order at 59 of 10603.

the following factors[.]”³⁹¹ No single factor is determinative. Rather, the applicant must evaluate all the factors in its corridor selection. Consistent with this regulation, Idaho Power’s route balances the various interests and impacts relating to siting.³⁹²

(b) Ms. King’s Challenges to Idaho Power’s Siting Studies Are Erroneous.

Ms. King raises several arguments challenging various findings in Idaho Power’s siting studies. As discussed below, Ms. King’s arguments are inconsistent with the evidence in the record and should be given no weight.

One of Ms. King’s assertions is that the “preferred route” identified in Idaho Power’s 2010 Siting Study—which, it should be noted, is not the same route for which Idaho Power seeks a CPCN—was located south of Gleason Butte in Morrow County, similar to the location of the Wheatridge intraconnection corridor.³⁹³ However, Ms. King misrepresents Idaho Power’s siting study. Idaho Power analyzed the route segment that Ms. King discusses in her brief,³⁹⁴ but did not identify that route segment as part of the preferred route in the 2010 Siting Study.³⁹⁵

Ms. King further asserts that, although the Green Energy Corridor in Morrow County “served to meet Idaho Power’s need,” the Company did not utilize the Wheatridge intraconnection corridor, which she claims would alleviate agricultural concerns.³⁹⁶ In support of this argument, Ms. King incorrectly suggests that the Wheatridge intraconnection transmission corridor was available for siting in December 2014, relying on a map of the site boundary that was included in EFSC’s Final Order for Wheatridge.³⁹⁷ However, as explained in Mr. Colburn’s testimony, because Wheatridge and B2H proceeded through the EFSC site certificate process at roughly

³⁹¹ OAR 345-021-0010(1)(b)(D).

³⁹² See Idaho Power/600, Colburn/6 (“Idaho Power’s objectives when siting the Project were to address community concerns while balancing regulatory requirements, construction difficulty, and overall costs.”).

³⁹³ Wendy King’s Opening Brief at 18.

³⁹⁴ Idaho Power/602, Colburn/41 (2010 Siting Study). The route segment to which Ms. King is referring is referred to as the “East Route” in the Siting Study.

³⁹⁵ Idaho Power/602, Colburn/112 (2010 Siting Study). The Proposed Route in the 2010 Siting Study was located further north near the City of Boardman.

³⁹⁶ Wendy King’s Opening Brief at 21.

³⁹⁷ Wendy King’s Opening Brief at 22.

the same time, and no party had recommended collocating these projects, Idaho Power did not consider collocating the Project with Wheatridge.³⁹⁸

(c) Ms. King's Arguments Regarding Mr. Colburn's Testimony Discussing the Wheatridge Intraconnection Corridor Are Misleading.

Ms. King raises several challenges to statements in Mr. Colburn's testimony. As discussed below, Mr. Colburn's testimony is consistent with the exhibits in the record.

In her Opening Brief, Ms. King accuses Mr. Colburn of "false[ly]" testifying that Wheatridge "**has** not been approved"³⁹⁹ and includes what appears to be an excerpt of Mr. Colburn's testimony. Ms. King asserts that the excerpted statement is false because "[t]he Wheatridge Energy Site Certificate was issued April 2017 additional amendments were completed November 2020."⁴⁰⁰ However, Ms. King is mischaracterizing Mr. Colburn's testimony. Mr. Colburn did not state that Wheatridge has not been approved, but rather he accurately testified that the Wheatridge facility "**had**" not been approved **at the time that Idaho Power conducted its siting studies**.⁴⁰¹ It is entirely inappropriate for Ms. King to alter Mr. Colburn's testimony and then accuse Mr. Colburn of making false statements. The fact that Wheatridge was subsequently approved is immaterial to Mr. Colburn's statements that it had not been approved at the time.

Ms. King similarly alleges a "large discrepancy" between Mr. Colburn's Reply Testimony and his Surrebuttal Testimony because in his Reply Testimony Mr. Colburn stated that Mr. Myers' alternative route was four miles longer than the Project route but in his Surrebuttal Testimony Mr. Colburn testified that using the Wheatridge intraconnection corridor would be seven miles longer than the Project route.⁴⁰² This variation is due to the fact that Mr. Colburn was discussing two different alternate routes. In his Reply Testimony (February 20, 2023), Mr. Colburn was

³⁹⁸ Idaho Power/1800, Colburn/5.

³⁹⁹ Wendy King's Opening Brief at 24 (emphasis added).

⁴⁰⁰ Wendy King's Opening Brief at 24.

⁴⁰¹ Idaho Power/1800, Colburn/7.

⁴⁰² Wendy King's Opening Brief at 25.

responding to Mr. Myers' non-specific proposal to reroute the Project "south of Gleason Butte" provided in his Amended Opening Testimony.⁴⁰³ Idaho Power performed a Google Earth-based desktop analysis comparing the length of the proposed location for the Project in comparison with a route passing south of Gleason Butte.⁴⁰⁴ Mr. Myers did not specifically propose collocating the Project with the Wheatridge intraconnection transmission corridor until his Rebuttal Testimony (March 20, 2023),⁴⁰⁵ and for that reason Mr. Colburn addressed that specific proposal in his Surrebuttal Testimony (April 7, 2023).

(d) Ms. King's Concerns regarding Sam Myers' Farm Were Raised and Assessed at the EFSC Proceedings.

Ms. King questions Idaho Power's compliance with ORS 215.275(5), requiring mitigation for impacts to farm and forest practices, on the basis that the right-of-way for the Project will cross Mr. Myers' cropland and impact his farming operations.⁴⁰⁶ These concerns are unfounded.

As an initial matter, compliance with ORS 215.275(5) was thoroughly litigated at EFSC, and EFSC adopted the Hearing Officer's conclusion that "Idaho Power adequately evaluated the impacts from the proposed facility on accepted farm practices and the cost of accepted farm practices. The proposed measures to mitigate the facility's impacts to surrounding farmlands are adequate and appropriate."⁴⁰⁷ Pursuant to OAR 860-025-0040(7), Idaho Power requests that the Commission adopt EFSC's conclusions regarding land use approvals for the Project under ORS 215.275.⁴⁰⁸

Moreover, although ORS 215.275(5) requires that EFSC include conditions to "mitigate and minimize impact" of the proposed facility on accepted farm practices, the statute does not

⁴⁰³ Idaho Power/600, Colburn/31-32.

⁴⁰⁴ Idaho Power/600, Colburn/32.

⁴⁰⁵ Sam Myers' Amended Rebuttal Testimony and Exhibits at 2-5 of 12 (Mar. 20, 2023).

⁴⁰⁶ Wendy King's Opening Brief at 28.

⁴⁰⁷ Final Order at 36 of 10603.

⁴⁰⁸ The rule states: "If a proposed transmission line is subject to the jurisdiction of the Energy Facility Siting Council (EFSC), the Commission . . . will adopt the findings [relating to compliance with the Statewide Planning Goals and is compatible with the acknowledged comprehensive plan(s) and land use regulations of each local government] made as a part of the EFSC-issued site certificate[.]"

require “the absolute avoidance or elimination” of impacts; rather, the statute requires “the general reduction in the intensity and frequency of an impact.”⁴⁰⁹ When assessing compliance with that standard, EFSC specifically considered the impacts to Mr. Myers’ farm before adopting the Hearing Officer’s conclusion as follows:

[A]lthough the proposed project may impact Mr. Myers’ agricultural operations, a preponderance of the evidence demonstrates that Idaho Power sited the project in a manner that will generally reduce the intensity and frequency of impacts to farmlands, and that the Company will further minimize and mitigate the specific impacts to Mr. Myers’ operations when negotiating an easement with him. Idaho Power has shown that the project complies with the Land Use standard notwithstanding the impact the project may have on Mr. Myers’ farm practices.⁴¹⁰

Ms. King also raises concerns regarding aerial application of chemicals on Mr. Myers’ farm.⁴¹¹ However, such impacts were thoroughly litigated at EFSC.⁴¹² In its Final Order, EFSC adopted the Hearing Officer’s conclusions as follows:

Idaho Power will reduce the intensity and frequency of impacts to farmlands, consistent with ORS 215.275(5). As to Mr. Myers’ farmland in particular, Idaho Power acknowledged that the proposed transmission line may impact Mr. Myers’ ability to use aerial applications. As discussed above, the Company will attempt to reduce potential impacts to active agricultural fields through micro-siting facility components. Moreover, although such negotiations are outside the Council’s site certificate approval process, the Company will work with the landowner(s) to negotiate an easement for the right-of-way, and will minimize impacts to the extent practicable.⁴¹³

Pursuant to OAR 860-025-0040(7), Idaho Power requests that the Commission adopt EFSC’s conclusion.

Ms. King also raises the fact that Mr. Myers’ farm is a Century Farm eligible for the National Registry of Historic Places.⁴¹⁴ Idaho Power is aware of this designation and fully assessed potential impacts to Mr. Myers’ farm and analyzed potential impacts to the farm as a

⁴⁰⁹ *Friends of Parrett Mtn. v. Nw. Nat. Gas Co.*, 336 Or 93, 115 (2003)

⁴¹⁰ Final Order, Attachment 6 at 8844-45 of 10603.

⁴¹¹ Wendy King’s Opening Brief at 34.

⁴¹² Final Order at 35 of 10603 (adopting Hearing Officer’s conclusion that Idaho Power “adequately analyzed the impact the proposed transmission line may have on Mr. Myers’ ability to utilize aerial application on his farmland”).

⁴¹³ Final Order, Attachment 6 at 8844 of 10603.

⁴¹⁴ Wendy King’s Opening Brief at 35.

historic resource in the Company's ASC at EFSC.⁴¹⁵ EFSC ultimately concluded that the Project, taking into account mitigation, is not likely to result in significant adverse impacts to any historic resources.⁴¹⁶

- (e) Ms. King's Proposal for Idaho Power to Amend the Site Certificate to Include the Wheatridge Intraconnection Corridor Is Not Justified and Should Be Rejected.

Ms. King argues that Idaho Power “could submit [an] amended application in EFSC” for the alternative route segment Ms. King proposes “while other portions of the line are being built.”⁴¹⁷ This proposal should be rejected for two reasons. *First*, Idaho Power provided evidence demonstrating that Ms. King's alternative proposal would still impact agricultural lands and would **also** include impact more individual parcels owned by landowners who have not been involved in the EFSC process, and thus no route modification is warranted.⁴¹⁸ *Second*, while it is permissible to construct the transmission line in segments and the Company could, theoretically, pursue an amendment to its site certificate during construction, it would be difficult to do so for a segment like the one Ms. King proposes and could jeopardize the timeline for completing the Project.

As discussed above in Section II(C)(3)(a), Idaho Power is currently seeking an amendment to its site certificate for three discrete transmission line route modifications to the Project site.⁴¹⁹ However, Idaho Power proposes those route modifications **at the landowners' request** and, importantly, those changes will move the transmission line from one location to another area **on the same properties**.⁴²⁰ That is, for the proposed route modifications, the

⁴¹⁵ Wendy King's Opening Brief at 35 (quoting Idaho Power's ASC Exhibit S at S-166).

⁴¹⁶ Final Order at 547 of 10603.

⁴¹⁷ Wendy King's Opening Brief at 38.

⁴¹⁸ Transcript at 106, line 23 – 107, line 3 ([F]rom my own evaluation of the routes [Mr. Myers] proposed, I saw, you know, new impacts to irrigated agriculture on the western edge of the two route options.”); Idaho Power/1800, Colburn/7 (“A route following the Wheatridge corridor would be substantially longer than the Proposed Route, replacing a 14-mile segment of the Proposed Route with an alternative that is approximately 21 miles long. This Wheatridge route would impact 19 separate parcels, compared to the 17 parcels crossed by the Proposed Route—and would involve new landowners who have not yet been involved in the B2H EFSC proceeding.”).

⁴¹⁹ See STOP B2H/102, Kreider/13 (Request for Amendment #1).

⁴²⁰ STOP B2H/102, Kreider/12.

Company is not moving the Project onto another landowners' parcel or involving new landowners for which condemnation may be necessary. Because the affected landowners support these route modifications and the route modifications will not affect additional landowners, it is possible that RFA-1 may be approved without a contested case. Moreover, the route modifications in RFA-1 will not require condemnation because the Company has negotiated easements with the affected landowners.⁴²¹

Conversely, Ms. King's proposed route segment would impact more parcels and would likely require Idaho Power to obtain condemnation authority beyond what has been requested in this proceeding. Compared to the three parcels affected by the transmission line modifications in RFA-1, Ms. King's proposed route would affect 19 separate parcels.⁴²² Finally, given the fact that landowners potentially impacted by Ms. King's proposed alternative have already filed comments opposing this route modification,⁴²³ it is possible that such a modification could result in a contested case at EFSC and also possible that Idaho Power would have to seek an amendment to its CPCN (or an entirely new CPCN) in order to obtain condemnation authority for the additional parcels.⁴²⁴

For these reasons, Ms. King's proposal to restart the approval process for a new route segment that was not proposed until after EFSC approved the Project route while constructing other segments of the Project is untenable and is not justified.

ii. The Project Route Segment in Union County Is Justified in the Public Interest.

(a) The Potential Impacts Resulting from the Morgan Lake Alternative Have Been Thoroughly Analyzed and Mitigated.

Ms. Geer identifies various impacts that she alleges will result from the Morgan Lake

⁴²¹ Idaho Power/400, Barretto/20.

⁴²² Idaho Power/1800, Colburn/7.

⁴²³ See Melissa Lindsay's Comments (Apr. 28, 2023).

⁴²⁴ See Idaho Power's Petition for CPCN, Attachment 10 at 8-17 of 69 (identifying parcels in Morrow County for on which the Company has acquired, or has determined it may need to acquire, an easement, identifying the parcels for which Idaho Power seeks authority to condemn).

Alternative. Many of the impacts that Ms. Geer identifies are potential impacts to habitat near the Morgan Lake Alternative, and Ms. Geer also raises concerns regarding noise and recreational impacts. As discussed in detail below, the potential impacts resulting from the Morgan Lake Alternative are comparable to the potential impacts of other route segments considered in Union County and Idaho Power demonstrated in the EFSC process that, taking into account mitigation, the impacts from the Morgan Lake Alternative will be consistent with all applicable standards.

Ms. Geer argues that the Morgan Lake Alternative impacts more forested acres than other alternatives.⁴²⁵ While it is true that the Morgan Lake Alternative would affect 656 forested acres compared to the 592 forested acres that would be impacted by the Glass Hill Alternative,⁴²⁶ this impact must be considered in the context of Idaho Power's extensive siting for the Project. As Idaho Power's Vice President of Planning, Engineering, and Construction, Mitch Colburn, explained in his Reply Testimony, one impact cannot be evaluated in isolation—all impacts need to be considered when comparing route alternatives.⁴²⁷ For example, while the Morgan Lake Alternative affects more forested acres, the Glass Hill Alternative would impact more wetland and non-wetland water bodies.⁴²⁸ As a whole, the habitat located near the Morgan Lake Alternative is comparable to the habitat near the Glass Hill Alternative.⁴²⁹

Ms. Geer argues that the Morgan Lake Alternative would affect the habitat of federal species of concern, including the white-headed woodpecker, Columbia spotted frog, and sandhill cranes.⁴³⁰ Idaho Power has conducted surveys for all three species along the Project route.⁴³¹ Neither Columbia spotted frogs nor white-headed woodpeckers were identified in Idaho Power's

⁴²⁵ Susan Geer's Opening Brief at 9.

⁴²⁶ Idaho Power Company's Reply Testimony and Exhibits of Michael Ottenlips (Idaho Power/1400, Ottenlips/11) (Feb. 21, 2023).

⁴²⁷ Idaho Power/600, Colburn/2.

⁴²⁸ Idaho Power/1400, Ottenlips/11.

⁴²⁹ Idaho Power/1400, Ottenlips/10.

⁴³⁰ Susan Geer's Opening Brief at 9.

⁴³¹ Idaho Power Company's Surrebuttal Testimony and Exhibits of Michael Ottenlips (Idaho Power/2401, Ottenlips/4, 6) (Apr. 7, 2023) (Excerpts from Exhibit P1 of the ASC).

surveys.⁴³² Sandhill cranes were identified in baseline surveys,⁴³³ however, EFSC did not require avoidance or any species-specific mitigation for cranes. Instead, avian protections are provided in Fish and Wildlife Condition 10 in the Site Certificate, which requires that within 30 days of an identified avian mortality believed to have been caused by electrocution or collision, Idaho Power must consult with ODFW and ODOE regarding the incident and whether adaptive management strategies are warranted.⁴³⁴

Ms. Geer also asserts that the Morgan Lake Alternative will affect “likely habitat” for what Ms. Geer describes as a “newly discovered species of goldenweed” and for a species of milkweed that provides food for Monarch butterflies.⁴³⁵ While not entirely clear, Ms. Geer appears to be suggesting that the “newly discovered species” and this milkweed species must be protected as rare plants, or that they may warrant designation as threatened or endangered species. However, it does not appear from Ms. Geer’s testimony that either species has been listed as threatened or endangered under Oregon law.⁴³⁶ Moreover, even if these plant species were listed as threatened or endangered, that fact would not require Idaho Power to modify the Project route.

For context, under EFSC’s Threatened and Endangered Species Standard, for any plant species that the Oregon Department of Agriculture (“ODA”) has listed as threatened or endangered under ORS 564.105(2), an applicant must demonstrate that the proposed facility is consistent with the protection and conservation program, if any, that ODA has adopted under ORS 564.105(3).⁴³⁷ If ODA has not adopted such a program, the applicant must demonstrate that the facility, taking into account mitigation, is “not likely to cause a significant reduction in the

⁴³² Idaho Power/2401, Ottenlips/6 (Excerpts from Exhibit P1 of the ASC).

⁴³³ Idaho Power/2401, Ottenlips/4 (Excerpts from Exhibit P1 of the ASC).

⁴³⁴ Final Order at 376 of 10603.

⁴³⁵ Susan Geer’s Opening Brief at 10-12.

⁴³⁶ OAR 603-073-0070 (state list of endangered and threatened plant species); *see also About the Plants*, Or. Dep’t of Agric., <https://www.oregon.gov/oda/programs/plantconservation/pages/aboutplants.aspx> (last visited May 26, 2023).

⁴³⁷ OAR 345-022-0070(1)(a).

likelihood of survival or recovery of the species[.]”⁴³⁸ To ensure compliance with this standard, the Site Certificate requires Idaho Power to implement a 33-foot buffer around threatened or endangered plant species identified in pre-construction field surveys.⁴³⁹ However, [i]f complete avoidance is not possible . . . [Idaho Power] shall install temporary construction mats over soils where the threatened or endangered plant species have been observed and where construction vehicles will be operated.”⁴⁴⁰ These measures implement protections for the threatened and endangered plant species while still allowing Idaho Power to continue with construction activities.

Ms. Geer asserts that Morgan Lake Alternative will affect more residences than the Glass Hill Alternative, “particularly with noise levels[.]”⁴⁴¹ However, the noise impacts from the Morgan Lake Alternative must be considered in context. As discussed above in Section II(C)(2)(c), noise impacts from the Project were thoroughly litigated at EFSC (and EFSC’s conclusions were affirmed on appeal to the Oregon Supreme Court), and Idaho Power has committed to mitigation to address potential impacts. Moreover, as Idaho Power’s witness, Joe Stippel, explained in his testimony, there are only four anticipated NSR exceedances of the ambient antidegradation standard along the Morgan Lake Alternative, and three of the four anticipated NSR exceedances are unlikely to actually result in exceedances because the Company’s noise analysis is based on conservative assumptions and modeling inputs and, with those inputs, the projected noise levels are at the threshold of compliance—one is 2 dBA over the ambient antidegradation standard threshold and two are only 1 dBA over the threshold.⁴⁴²

Ms. Geer also contends that the Morgan Lake Alternative will impact more recreational opportunities, including Morgan Lake Park and Spring Creek Recreation Area.⁴⁴³ However,

⁴³⁸ OAR 345-022-0070(1)(b). In its Final Order, EFSC concluded that Idaho Power had demonstrated compliance with this standard. Final Order at 424 of 10603.

⁴³⁹ Final Order at 806 of 10603.

⁴⁴⁰ Final Order at 806 of 10603.

⁴⁴¹ Susan Geer’s Opening Brief at 14, 15.

⁴⁴² Idaho Power/1500, Stippel/3.

⁴⁴³ Susan Geer’s Opening Brief at 14, 15.

recreational impacts were assessed at EFSC and EFSC concluded that the Project, taking into account mitigation, is not likely to result in significant impacts to important recreational opportunities.⁴⁴⁴ It should be noted that recreational impacts to Morgan Lake Park in particular were thoroughly litigated in the EFSC contested case.⁴⁴⁵ Idaho Power committed to substantial mitigation for impacts to Morgan Lake Park, including funding for recreational improvements at the park⁴⁴⁶, and the use of shorter H-frame towers near Morgan Lake Park to mitigate visual impacts—the latter of which EFSC incorporated into a mandatory condition in the Site Certificate.⁴⁴⁷

(b) The Project Will Not Directly Impact Habitat at Twin Lake and Idaho Power Adequately Considered Indirect Impacts.

Ms. Geer also raises several arguments regarding potential impacts to habitat near Twin Lake, which is located within Morgan Lake Park, many of which she previously raised in her testimony in this docket and at the EFSC proceedings. However, Ms. Geer's arguments should be rejected.

As an initial matter, in its Final Order, EFSC specifically concluded, taking into account mitigation, the Project would not result in significant impacts to Morgan Lake Park.⁴⁴⁸ Idaho Power requests that the Commission give significant consideration to EFSC's conclusion.

Ms. Geer argues that it was “misleading” for Idaho Power's witness, Mr. Ottenlips, to state that the Project will not be located within Morgan Lake Park because Ms. Geer observed survey markers within the park which she states were “presumably placed there by Idaho Power/Tetra Tech[.]”⁴⁴⁹ However, Mr. Ottenlips' statement is correct—the site boundary for the Project will be

⁴⁴⁴ Final Order at 575 of 10603. Spring Creek campground was not found to be an important recreational area. Final Order at 549 n.551 of 10603.

⁴⁴⁵ Final Order at 42-43 of 10603 (discussing contested case issues R-1, R-2, R-3, and R-4—all of which concerned potential recreational impacts to Morgan Lake Park).

⁴⁴⁶ Idaho Power's Opening Brief at 72; Final Order, Attachment 2 at 1086 of 10603.

⁴⁴⁷ Final Order at 562-64 of 10603; Final Order, Attachment 1 at 781 of 10603 (Recreation Condition 1).

⁴⁴⁸ Final Order at 564 of 10603.

⁴⁴⁹ Susan Geer's Opening Brief at 7.

located entirely outside Morgan Lake Park.⁴⁵⁰ Moreover, Ms. Geer raised this same concern in her Rebuttal Testimony, where she suggested that Idaho Power was “confused, because there is a fence line cutting diagonally across this corner of the park” but the fence “is not the property line.”⁴⁵¹ As Mr. Ottenlips explained in his Surrebuttal Testimony, Idaho Power’s surveyors used Global Positioning System (“GPS”) equipment in their surveys to identify the Project site and would not have relied on fences to identify the Project’s site boundary or the property boundaries in the area surveyed.⁴⁵² Thus, the presence or absence of a fence would have no bearing on the readings produced by the GPS equipment.

Ms. Geer also argues that the Project will impact Twin Lake even if no component is sited within Morgan Lake Park.⁴⁵³ Ms. Geer appears to be challenging the fact that Idaho Power focused on potential impacts to habitat within the site for the Project. However, Idaho Power did so appropriately because the analysis area for EFSC’s Fish and Wildlife Habitat Standard is the area within the site boundary.⁴⁵⁴ Considering the site boundary as the analysis area, EFSC determined that, taking into account mitigation, the Project will comply with EFSC’s Fish and Wildlife Habitat Standard,⁴⁵⁵ thereby concluding that Idaho Power had demonstrated compliance with ODFW’s fish and wildlife habitat mitigation goals and standards.⁴⁵⁶ For this reason, Ms. Geer’s assertion does not identify any error in Idaho Power’s assessment of habitat impacts.

⁴⁵⁰ Final Order at 562 of 10603 (“The applicant is not proposing any facility components within [Morgan Lake] Park boundaries[.]”); *see also id.* at 42 of 10603 (“In the [Proposed Contested Case Order], the Hearing Officer found applicant is not required to demonstrate compliance with the Morgan Lake Park Plan because there are no proposed project components located within the park boundary. . . . After hearing argument, EFSC agreed with the findings of facts, conclusions of law and conditions of approval in the [Proposed Contested Case Order].”).

⁴⁵¹ Susan Geer/200, Geer/5.

⁴⁵² Idaho Power/2400, Ottenlips/5.

⁴⁵³ Susan Geer’s Opening Brief at 8.

⁴⁵⁴ Final Order at 348 of 10603; *see also* OAR 345-001-0010(31) (“‘Site boundary’ means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.”).

⁴⁵⁵ Final Order at 409 of 10603.

⁴⁵⁶ OAR 345-022-0060(1) (“To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with: (1) The general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017[.]”).

Relatedly, Ms. Geer argues that Idaho Power did not adequately consider indirect impacts to Twin Lake, including disruption to wildlife due to noise and increased mortality to birds and bats.⁴⁵⁷ However, the potential noise impacts to Morgan Lake Park were assessed in the EFSC proceedings and EFSC concluded that the Project “is unlikely to cause a significant noise impact” there.⁴⁵⁸ As to Ms. Geer’s concern about potential impacts to bats, the Site Certificate for the Project will require Idaho Power to complete surveys for State Sensitive bat species before construction and, if any are observed, the Company must submit for ODOE and ODFW review the proposed avoidance, minimization, or mitigation measures that the Company will implement.⁴⁵⁹ Finally, Ms. Geer’s concern regarding bird mortalities is also addressed in the Site Certificate. Consistent with Idaho Power’s Avian Protection Plan, within 30 days of an identified avian mortality believed to have been caused by electrocution or collision, Idaho Power must consult with ODFW and ODOE regarding the incident and whether adaptive management strategies should be implemented.⁴⁶⁰

Finally, Ms. Geer asserts that “[t]here is an occurrence of the rare plant *Trifolium douglasii*, Douglas clover” near Twin Lake.⁴⁶¹ As explained in the Company’s Opening Brief,⁴⁶² although Douglas clover is not a state- or federally-listed threatened or endangered species, and thus avoidance is not required, Idaho Power has committed that, if a landowner identifies discrete populations of Douglas clover within the segment of the Project site located on the landowner’s parcel, the Company “will attempt to avoid direct impacts to the identified populations by micro-siting Project features outside the boundaries of the populations, if practicable.”⁴⁶³

⁴⁵⁷ Susan Geer’s Opening Brief at 8. Ms. Geer also lists the barrier effect and invasive species, but these indirect impacts are discussed above.

⁴⁵⁸ Final Order at 555 of 10603.

⁴⁵⁹ Final Order at 381 of 10603 (Fish and Wildlife Condition 12).

⁴⁶⁰ Final Order at 376 of 10603 (Fish and Wildlife Condition 10).

⁴⁶¹ Susan Geer’s Opening Brief at 8.

⁴⁶² Idaho Power’s Opening Brief at 77.

⁴⁶³ Idaho Power/1500, Stippel/15-16.

(c) Ms. Geer's Allegations of "Fraud and Deceit" in Siting the Morgan Lake Alternative Are Unsupported.

In her Opening Brief, Ms. Geer repeats her assertions that Idaho Power proposed and obtained approval for the Morgan Lake Alternative through "fraud and deceit."⁴⁶⁴ Idaho Power disagrees entirely with Ms. Geer's allegations and characterization of the siting process. Routing in Union County was very difficult due to competing landowner opinions, environmental resource issues, visual impact concerns, and difficult construction conditions.⁴⁶⁵ The Company engaged with and solicited feedback from local communities, agencies, and stakeholders throughout the siting process, but various commenters supported different routes—with some stakeholders amending their preference throughout the process. In choosing the routes to include in the EFSC application, Idaho Power based its decision on the siting opportunities and siting constraints in the area, as well as the feedback received on the Draft Environmental Impact Statement ("EIS") and as part of the EFSC proceeding.⁴⁶⁶ Idaho Power responds to Ms. Geer's specific assertions below.

Ms. Geer asserts that Idaho Power "incorrectly" says the Morgan Lake Alternative was developed "in response to local landowners," arguing instead that the route was introduced by a single landowner.⁴⁶⁷ However, Idaho Power's testimony discussing the origins of the Morgan Lake Alternative has been entirely accurate, and includes important context that Ms. Geer selectively omits. As Mr. Colburn clearly stated in his Reply Testimony, "Idaho Power worked primarily with one landowner of a large parcel (approximately 7,500 acres), to develop the Morgan Lake Alternative."⁴⁶⁸ However, Mr. Colburn further explained:

[I]t is important to note two pieces of context. First, the impacted landowner and others formed the Glass Hill Coalition to oppose the Glass Hill Alternative, and thus it was not a single landowner driving the need to develop an alternative, but rather was a coordinated group of over 100 landowners. Second, the coordination with

⁴⁶⁴ Susan Geer's Opening Brief at 16.

⁴⁶⁵ Idaho Power/603, Colburn/15 (2012 Supplemental Siting Study).

⁴⁶⁶ Idaho Power/600, Colburn/39-40.

⁴⁶⁷ Susan Geer's Opening Brief at 16-17.

⁴⁶⁸ Idaho Power/600, Colburn/51-52.

the impacted landowner concerned the location of the Project on that landowners' property, and did not involve moving the Project entirely off his property and onto his neighbors' property.⁴⁶⁹

Ms. Geer also asserts that the City of La Grande asked that the Project be withdrawn or, alternatively, that the Company consider only the Glass Hill Alternative.⁴⁷⁰ Ms. Geer cites an April 2019 proclamation from the Mayor of La Grande and a La Grande Observer article discussing that proclamation.⁴⁷¹ While the sources Ms. Geer cites may be accurate representations of the City of La Grande's position at that time, Idaho Power subsequently continued working with the City to address their concerns, and in August 2019, the City filed comments on ODOE's Draft Proposed Order stating that, if the Project is approved, the City would prefer that Idaho Power "use the Morgan Lake Alternative" subject to the agreed upon mitigation.⁴⁷²

Ms. Geer next claims that Idaho Power "promoted the lies" that the Glass Hill Coalition existed as an organized group that "specifically" opposed the Glass Hill Alternative.⁴⁷³ Similarly, STOP B2H asserts that, contrary to Idaho Power's assertions, the Glass Hill Coalition "met a few times early on, had a petition, and then dissolved after the BLM's [Final EIS.]"⁴⁷⁴ However, Idaho Power's testimony is supported by the evidence in the record. The Glass Hill Coalition clearly organized as a group and participated throughout the siting process advocating for a route that would locate the Project near an existing 230-kV transmission line near La Grande.⁴⁷⁵ The Glass Hill Coalition opposed multiple routes, but one of the specific concerns was the impacts of the Glass Hill Alternative.⁴⁷⁶

⁴⁶⁹ Idaho Power/600, Colburn/52.

⁴⁷⁰ Susan Geer's Opening Brief at 15.

⁴⁷¹ Susan Geer/117; Susan Geer/118.

⁴⁷² Final Order at 1085-86 of 10603 (Letter from Robert Strobe to ODOE (Aug. 21, 2019)).

⁴⁷³ Susan Geer's Opening Brief at 19.

⁴⁷⁴ STOP B2H's Opening Brief at 19.

⁴⁷⁵ Susan Geer Rebuttal Testimony, Exhibit 1 at 2 (Glass Hill Coalition Handout (Feb. 28, 2015)); Idaho Power/609, Colburn/17 (Letter from Dan Turley to Oregon Congressional Delegation (Dec. 12, 2016)); Idaho Power/1805, Colburn/2 (Letter from Glass Hill Coalition (May 6, 2019)); Final Order at 6712 of 10603 (Glass Hill Coalition DPO Comments (Aug. 20, 2019)).

⁴⁷⁶ Susan Geer Rebuttal Testimony, Exhibit 1 at 2 (Glass Hill Coalition Handout (Feb. 28, 2015)) (stating that routes considered in the Draft EIS "*including the alternate*, as proposed by Idaho Power Company (IPC) will have unacceptable long term negative impacts[.]") (emphasis added).

Relatedly, Ms. Geer continues to make the false assertion that the Glass Hill Coalition took “no further action or organization as a group beyond” a single meeting on February 28, 2015.⁴⁷⁷ However, the evidence in the record clearly shows that the Glass Hill Coalition continued filing comments up to the Draft Proposed Order phase at EFSC, with their final round of comments being filed August 20, 2019.⁴⁷⁸ Ms. Geer asserts that these comments do not accurately represent “the Glass Hill Coalition,” solely on the basis that neither she nor her witness, Mr. McAllister, have “found anyone beyond the letter writers is represented.”⁴⁷⁹ However, their assertions that the Glass Hill Coalition did not participate in the siting process beyond 2015 are inconsistent with the evidence in the record and therefore should be given no weight.

Ms. Geer also challenges Idaho Power’s testimony that Union County requested B2H be sited “as close to the 230kV line as possible” when, according to Ms. Geer, the county actually advocated for collocating the Project with the 230 kV line.⁴⁸⁰ However, Ms. Geer misrepresents the record. Union County’s letter read: “Union County has provided direction to the B2H Transmission Line Project reviewing entities to place the new proposed 500 kV line *near the existing Idaho Power 250kV [sic] corridor through Union County to the extent possible.*”⁴⁸¹ Ms. Geer’s suggestion that Idaho Power misrepresented Union County’s position is false and should be given no weight.

Ms. Geer argues that “Idaho Power inaccurately portrayed equal opposition to Mill Creek, Morgan Lake, and Glass Hill Alternatives[.]”⁴⁸² However, Idaho Power never portrayed pushback to the various routes as equal. Rather, the Company stated that there was never consensus around a particular route, and instead various groups and stakeholders opposed the different

⁴⁷⁷ Susan Geer’s Opening Brief at 19-20.

⁴⁷⁸ Idaho Power/609, Colburn/17 (Idaho Power’s Response to Staff’s Data Request No. 90 and Referenced Attachments); Idaho Power/1805, Colburn/2 (Letter from Glass Hill Coalition); Final Order at 6712 of 10603 (Glass Hill Coalition DPO Comments (Aug. 20, 2019)).

⁴⁷⁹ Susan Geer’s Opening Brief at 20.

⁴⁸⁰ Susan Geer’s Opening Brief at 20.

⁴⁸¹ Idaho Power/601, Colburn/14 (Idaho Power Response to Staff Data Request No. 60 and Referenced Attachments).

⁴⁸² Susan Geer’s Opening Brief at 24.

routes—even at times changing their position regarding support or opposition for a particular route—and the Company considered that feedback.⁴⁸³

Ms. Geer also challenges Idaho Power’s description of the Confederated Tribes of the Umatilla Indian Reservation’s (“CTUIR”) opposition to the Glass Hill Alternative, because the CTUIR “never got a chance to weigh in on the Mill Creek or Morgan Lake Alternatives because those were only included in the FEIS and no comments were taken.”⁴⁸⁴ Ms. Geer further baselessly asserts that, if the CTUIR had an opportunity to comment on the Mill Creek Route or the Morgan Lake Alternative, “odds are they would prefer the [Glass Hill] route to Morgan Lake Alternative, due to natural resources.”⁴⁸⁵

As an initial matter, it is highly inappropriate and entirely speculative for Ms. Geer to simply assume that the CTUIR would support her position. Ms. Geer has not offered any evidence indicating that she represents the CTUIR, nor has Ms. Geer offered any evidence directly from the CTUIR indicating the tribal members support her position.

Contrary to Ms. Geer’s assertion, the CTUIR was heavily involved in review of Idaho Power’s ASC, including the proposed route alternatives in Union County, and Idaho Power worked with the CTUIR extensively to address their concerns.⁴⁸⁶ Idaho Power proposed both the Mill Creek Alternative and the Morgan Lake Alternative in the Company’s ASC.⁴⁸⁷ The Company’s ASC was distributed to all “reviewing agencies” for review, which included the CTUIR.⁴⁸⁸ The CTUIR also had opportunity to comment on ODOE’s Draft Proposed Order and Proposed Order, both of which recommended approval of the Mill Creek Alternative and the Morgan Lake Alternative.⁴⁸⁹ Following that review, the CTUIR submitted a letter stating:

⁴⁸³ Idaho Power/600, Colburn/36.

⁴⁸⁴ Susan Geer’s Opening Brief at 25.

⁴⁸⁵ Susan Geer’s Opening Brief at 25.

⁴⁸⁶ See Final Order at 508-13 of 10603 (summarizing Idaho Power’s cooperation with the CTUIR regarding cultural resources).

⁴⁸⁷ Final Order at 54 n.34 of 10603.

⁴⁸⁸ Final Order at 13 of 10603.

⁴⁸⁹ Final Order at 15 of 10603

The CTUIR is pleased to inform the ODOE and the federal agencies that the CTUIR's concerns have been addressed and will be mitigated by Idaho Power pursuant to a confidential mitigation agreement between the CTUIR and Idaho Power.⁴⁹⁰

Based on this extensive coordination and the CTUIR's conclusion that Idaho Power had addressed all their concerns, Ms. Geer's statement that the CTUIR did not have an opportunity to comment, and her unsupported assertion that the CTUIR would agree with her position regarding the Glass Hill Alternative, are contrary to the record evidence, unsupported, and without merit.

Similarly, STOP B2H asserts that "the tribes preferred the Mill Creek route over the Morgan Lake Alternative."⁴⁹¹ However, STOP has not cited any evidence to support this assertion. Instead, as discussed above, Idaho Power worked closely with the CTUIR to address all concerns relating to *both* route options.

Finally, Ms. Geer argues that "Idaho Power created confusion around names and locations of routes" because the Company erroneously referred to the Mill Creek Route as BLM's preferred alternative in its Supplemental Siting Study and Application for Site Certificate and uses the nomenclature "Glass Hill Route" when referring to the route that the Company previously proposed in the National Environmental Policy Act ("NEPA") process instead of calling it the "Proposed Route."⁴⁹²

Ms. Geer's assertion should be given no weight for two reasons. First, Idaho Power acknowledged this typographical error in the EFSC proceedings in July 2021 and has not held the Mill Creek Alternative out as the Agency-Preferred Alternative.⁴⁹³ Second, this error has no relevance to these CPCN proceedings because Idaho Power does not seek a CPCN for the Mill

⁴⁹⁰ Final Order at 511 of 10603.

⁴⁹¹ STOP B2H's Opening Brief at 20.

⁴⁹² Susan Geer's Opening Brief at 20-21.

⁴⁹³ Idaho Power/607, Colburn/29 (Ruling and Order on Motions for Summary Determination on Contested Case Issues FW-13, R-2, and SP-2); Idaho Power/608, Colburn/23-24, 29-30 (Idaho Power's Reply to Michael McAllister's Response to Idaho Power's Motion for Summary Determination of Contested Case Issues SP-2 and FW13 (July 23, 2021)).

Creek Route.⁴⁹⁴

As to Ms. Geer's suggestion that Idaho Power should have referred to the Glass Hill Route as the "Proposed Route," Idaho Power strongly disagrees. Doing so would have been inappropriate, because it would have been more confusing to label a route the "Proposed Route" when the Company did not, in fact, propose that route.

Ms. Geer similarly argues that Mr. Colburn "inaccurately" called the Morgan Lake Alternative a "variation" of the Glass Hill Route when "the name Morgan Lake Alternative had not been used yet."⁴⁹⁵ As Mr. Colburn explained in his Surrebuttal Testimony:

[T]he Morgan Lake Alternative follows a similar corridor as the Glass Hill Route for much of Union County, and of the routes considered the Morgan Lake Alternative is the most geographically similar to the Glass Hill Route. For these reasons, the Morgan Lake Alternative is also accurately described as a variation of the Glass Hill Route.⁴⁹⁶

Moreover, Mr. Colburn's statement is consistent with BLM's determination that the routes analyzed in the Final EIS, including the Mill Creek Route and Morgan Lake Alternative, were "route variations . . . within the spectrum of alternatives already analyzed" in the Draft EIS,⁴⁹⁷ which included the Glass Hill Route.⁴⁹⁸

Finally, Ms. Geer argues that the Mill Creek Route left "no real choice for local governmental entities" such that "they had to say Morgan Lake Alternative."⁴⁹⁹ Similarly, STOP B2H argues that Idaho Power's decision to offer only "the binary choice of a route and an alternative route" was "deceptive."⁵⁰⁰ However, Ms. Geer's suggestion that the Mill Creek Route was proposed solely to ensure local governments would support the Morgan Lake Alternative ignores the comments in the record requesting that the Project be sited near the existing 230-kV

⁴⁹⁴ Idaho Power's Petition for CPCN at 15 ("The route depicted in Attachment 2 represents the Company's final route choice among the alternatives approved by EFSC, which include the proposed route as modified by the Morgan Lake Alternative and the West of Bombing Range Alternative 1 routes.").

⁴⁹⁵ Susan Geer's Opening Brief at 23.

⁴⁹⁶ Idaho Power/1800, Colburn/14.

⁴⁹⁷ *STOP B2H Coal. v. Bureau of Land Mgmt.*, 552 F Supp 3d 1101, 1143 (D Or 2021).

⁴⁹⁸ Idaho Power/600, Colburn/37.

⁴⁹⁹ Susan Geer's Opening Brief at 26.

⁵⁰⁰ STOP B2H's Opening Brief at 20.

transmission line. Throughout the siting process, multiple commenters—including Union County,⁵⁰¹ the Glass Hill Coalition,⁵⁰² and even Mr. McAllister⁵⁰³—requested that the route be sited near the 230-kV transmission line. The Mill Creek Route was developed in response to these comments.⁵⁰⁴

Moreover, EFSC determined that the Mill Creek Route complied with EFSC’s standards and with all other Oregon statutes and administrative rules identified as applicable to the issuance of a site certificate.⁵⁰⁵ Given this support from commenters and approval from EFSC, it is clear that the Mill Creek Route was a viable route segment that Idaho Power properly considered.

(d) The EFSC and NEPA Review of Route Segments in Union County Was Sufficient.

Ms. Geer argues that “Idaho Power failed to include either the NEPA route (Glass Hill alternative) or their original Proposed route (Glass Hill route) in their Application for Site Certificate, without explanation,”⁵⁰⁶ and similarly, STOP B2H argues that EFSC “never evaluated all available alternative routes per ORS 469.370(13)[.]”⁵⁰⁷ Ms. Geer also asserts that the Union County Boardman to Hemingway Advisory Committee “recommended that the BLM initiate a Supplemental” EIS on the basis that it was “needed because there are transmission route segments on two routes in Union County that have not yet been analyzed by the BLM through the Draft EIS process.”⁵⁰⁸

However, as explained in Idaho Power’s Opening Brief,⁵⁰⁹ the Oregon Supreme Court rejected the argument that ORS 469.370(13) required Idaho Power to propose the Glass Hill Alternative in its ASC and the federal District of Oregon court determined that a Supplemental

⁵⁰¹ Idaho Power/601, Colburn/14 (Idaho Power Response to Staff Data Request No. 60 and Referenced Attachments).

⁵⁰² Susan Geer Rebuttal Testimony, Exhibit 1 at 2 (Glass Hill Coalition Handout (Feb. 28, 2015)).

⁵⁰³ Susan Geer/200, Geer/25.

⁵⁰⁴ Idaho Power/600, Colburn/38.

⁵⁰⁵ Final Order at 736 of 10603.

⁵⁰⁶ Susan Geer’s Opening Brief at 23.

⁵⁰⁷ STOP B2H’s Opening Brief at 20.

⁵⁰⁸ Susan Geer’s Opening Brief at 26; Susan Geer/122, Geer/5.

⁵⁰⁹ Idaho Power’s Opening Brief at 73-76.

EIS was not required.⁵¹⁰ Because the courts have already rejected these legal arguments, the Commission should give these arguments no weight.

(e) Idaho Power Has Demonstrated Compliance with All Standards Applicable to the Rice Glass Hill Natural Area.

In her Opening Brief, Ms. Geer raises several arguments relating to the Rice Glass Hill State Natural Area, many of which she previously raised in her testimony in this docket and at the EFSC proceedings. For the reasons discussed below, Ms. Geer's arguments should be rejected.

First, Ms. Geer argues that EFSC erred in interpreting its own Protected Areas Standard when it concluded that Idaho Power was not required to analyze the Rice Glass Hill Natural Area as a "protected area."⁵¹¹ Ms. Geer asserts that the Protected Areas Standard was "worded in a very confusing way" but should have applied to Rice Glass Hill State Natural Area.⁵¹² As an initial matter, Ms. Geer's argument is outside the scope of this CPCN proceeding. When reviewing a petition for a CPCN, the Commission's charge is to apply its own criteria, and not to second guess EFSC's application of the criteria governing issuance of a site certificate. Moreover, contrary to Ms. Geer's assertion, the Protected Areas Standard as applied to Idaho Power's ASC clearly did not include Rice Glass Hill State Natural Area as a "protected area."⁵¹³ For protected areas designated under state programs, such as the Natural Areas Program, the Protected Areas Standard applied only to "designations in effect as of May 11, 2007[.]"⁵¹⁴ Rice Glass Hill was not designated as a State Natural Area until 2019, and therefore the Hearing Officer properly concluded that under the plain language of the rule Idaho Power was not required to analyze it as a protected area.⁵¹⁵ However, as explained in the Company's Opening Brief, Idaho Power

⁵¹⁰ *STOP B2H Coal. v. Bureau of Land Mgmt.*, 552 F Supp 3d at 1117, 1122; *STOP B2H Coal.*, 370 Or at 815.

⁵¹¹ Susan Geer's Opening Brief at 3-4.

⁵¹² Susan Geer's Opening Brief at 3.

⁵¹³ *See former* OAR 345-022-0040(1). The Protected Areas Standard was recently revised. The version of the standard that EFSC applied in its analysis of the Project can be found in the Final Order at 294-96 of 10603.

⁵¹⁴ Final Order at 294 of 10603.

⁵¹⁵ Final Order, Attachment 6 at 8678 of 10603.

analyzed other potential impacts to Rice Glass Hill, including impacts to habitat.⁵¹⁶

Relatedly, Ms. Geer argues that, “[b]y impacting a State Natural Area, Morgan Lake route impacts an area important to all Oregonians.”⁵¹⁷ However, as explained in Idaho Power’s Opening Brief,⁵¹⁸ the designation of that property does not create any regulatory prohibition on constructing the Project through Rice Glass Hill. Indeed, the agency that administers the Natural Areas Program, Oregon Parks and Recreation Department, confirmed in a letter that the program, as applied to private lands, is entirely voluntary and, as a result, “[t]here are no regulatory requirements or limitations imposed on the use of the property by this program’s rules as a result of the designation.”⁵¹⁹

Second, Ms. Geer raises concerns regarding potential impacts to a specific area within the Rice Glass Hill State Natural Area known as Winn Meadow.⁵²⁰ As Idaho Power explained in its Opening Brief, no Project feature is proposed within the delineated wetland in Winn Meadow, and therefore the Project will not directly impact habitat there.⁵²¹ Nevertheless Ms. Geer asserts that Idaho Power did not adequately consider potential indirect impacts.⁵²² Ms. Geer specifically raises concerns relating to Idaho Power’s improvement of an existing road near Sheep Creek—an intermittent stream connecting to Winn Meadow⁵²³—which Ms. Geer asserts could change the hydrology of that area, introduce invasive species, and attract trespassers seeking to go “mudding” on that road.⁵²⁴ Ms. Geer also argues that removing forests for the transmission line right-of-way near Winn Meadow would indirectly impact Winn Meadow through the “barrier effect”

⁵¹⁶ Idaho Power’s Opening Brief at 76-77; see also Idaho Power/600, Colburn/76 (stating that, even though Idaho Power was not required to analyze Rice Glass Hill under EFSC’s Protected Areas Standard, “Idaho Power analyzed impacts to the Glass Hill area under all other applicable EFSC standards, including the Fish and Wildlife Habitat Standard”).

⁵¹⁷ Susan Geer’s Opening Brief at 15.

⁵¹⁸ Idaho Power’s Opening Brief at 76.

⁵¹⁹ Staff/401, Pal/21 (Letter from Oregon Parks and Recreation Department to Idaho Power (Mar. 13, 2023)).

⁵²⁰ Susan Geer’s Opening Brief at 5.

⁵²¹ Idaho Power’s Opening Brief at 73.

⁵²² Susan Geer’s Opening Brief at 5.

⁵²³ Idaho Power/2400, Ottenlips/10.

⁵²⁴ Susan Geer’s Opening Brief at 5.

and cause a shift in the plant community.⁵²⁵

However, Ms. Geer has not cited any studies to support her assertion that modifying an existing road near an intermittent creek could change the hydrology of Winn Meadow or the surrounding area—instead, her assertions are pure speculation. As to invasive species, Idaho Power’s Noxious Weed Plan includes thorough descriptions of how the Company will control all noxious weeds located within the Project rights-of-way resulting from Project-related construction or operation-related, surface-disturbing activities.⁵²⁶ As Idaho Power explained in its Opening Brief,⁵²⁷ the Noxious Weed Plan was thoroughly litigated at EFSC, and EFSC adopted the Hearing Officer’s conclusion that the plan is adequate to set out “the measures the Company will take to control noxious weed species and prevent the introduction of these species during construction and operation of the project.”⁵²⁸ This Noxious Weed Plan applies to the improvements of the existing road near Sheep Creek,⁵²⁹ and the Company is required to implement these actions to address Project-related noxious weeds.⁵³⁰

Regarding Ms. Geer’s concern about trespassers, Idaho Power has promulgated its Road Classification Guide and Access Control Plan, in which the Company commits to implement access control, such as gates, “where agencies and landowners have concern about increased or unauthorized access to lands.”⁵³¹

Moreover, as Mr. Ottenlips, explained in his Surrebuttal Testimony, Idaho Power analyzed both direct and indirect impacts in its ASC.⁵³² After reviewing the Company’s analysis, EFSC

⁵²⁵ Susan Geer’s Opening Brief at 5.

⁵²⁶ See *generally* Final Order, Attachment P1-5, Updated Revised Draft Noxious Weed Plan at 10026 of 10603.

⁵²⁷ Idaho Power’s Opening Brief at 96-98.

⁵²⁸ Final Order, Attachment 6 at 8806 of 10603; see *also* Final Order at 27 of 10603 (adopting Hearing Officer’s conclusion).

⁵²⁹ Final Order at 10051 of 10603 (stating that the steps Idaho Power will take to prevent noxious weeds apply in “areas involving ground-disturbing construction and/or improvement” for the improvement of existing roads).

⁵³⁰ See Final Order at 361 of 10603 (“**Fish and Wildlife Condition 3:** . . . During operation, the certificate holder shall conduct all work in compliance with the final Noxious Weed Plan[.]”).

⁵³¹ Final Order, Attachment B-5, Road Classification Guide and Access Control Plan at 9015 of 10603.

⁵³² Idaho Power/2400, Ottenlips/2-3.

concluded that Idaho Power had demonstrated compliance with EFSC's Fish and Wildlife Habitat Standard,⁵³³ which in turn requires demonstrating compliance with ODFW's fish and wildlife habitat mitigation goals and standards.⁵³⁴ Based on these conclusions, Idaho Power has adequately analyzed and addressed potential indirect impacts from the Project.

iii. The Project Route Segment in Baker County Is Justified in the Public Interest.

Several intervenors object that the route for B2H will be within the viewshed of the NHOTIC. As this concern was newly raised in briefing, some background on this issue (which was fully vetted at EFSC), may be helpful to the Commission's understanding.

The NHOTIC is a 509 acre parcel that BLM manages as an Area of Critical Environmental Concern ("ACEC").⁵³⁵ The NHOTIC is one of the largest of the Oregon Trail ACEC parcels, and includes an interpretive center as well as adjacent land with walking trails and viewpoints surrounding the center.⁵³⁶ An existing 230-kV transmission line is located to the west, the same direction as the Project, and Oregon Highway 86 is visible beyond the NHOTIC property, particularly from the trail system to the east.⁵³⁷ Agricultural and residential development within the Baker Valley to the west is also visible from the NHOTIC parcel.⁵³⁸ There is a significant amount of sage-grouse habitat to the north, east, and south of the NHOTIC parcel, as well.⁵³⁹

The preferred Project route in the vicinity of the NHOTIC was modified multiple times throughout the B2H permitting process. In 2009, Idaho Power identified a route option east of the NHOTIC that would avoid visual impacts to the NHOTIC.⁵⁴⁰ However, the route to the east of the NHOTIC would impact sage-grouse habitat, which required avoidance of impacts via a 2-mile buffer around the sage-grouse leks (mating habitat) in that area based on the ODFW policy in

⁵³³ Final Order at 409 of 10603.

⁵³⁴ OAR 345-022-0060(1).

⁵³⁵ Final Order at 317 of 10603.

⁵³⁶ Final Order at 317 of 10603.

⁵³⁷ Final Order at 317 of 10603.

⁵³⁸ Final Order at 317 of 10603.

⁵³⁹ Idaho Power/603, Colburn/25 (2012 Supplemental Siting Study).

⁵⁴⁰ Idaho Power/602, Colburn/65 (2010 Siting Study).

effect at that time.⁵⁴¹ Due to these habitat impacts, both BLM and ODFW opposed that route option, notwithstanding continued public support for it.⁵⁴² As a result, the route was moved to the west of the NHOTIC—which was supported by BLM as a sage-grouse avoidance alternative.⁵⁴³ Subsequently, to reduce impacts to agricultural lands in the area, the route was moved slightly to the east, placing it approximately 130 feet from the western perimeter of the NHOTIC and within one mile from the NHOTIC interpretive center.⁵⁴⁴ The highest magnitude visual impacts from the Project, which were assessed as “medium,” would occur from the hiking trails located in the western portion of the parcel rather than at the visitor center.⁵⁴⁵ Although the Project route is close to the NHOTIC, it is important to note that BLM, which manages the NHOTIC, supported and authorized the Project in this location.⁵⁴⁶

Additionally, in response to concerns about visual impacts to the NHOTIC, Idaho Power analyzed various mitigation options and prepared visual simulations, and ultimately determined that using H-frame towers with a weathered steel finish and reduced tower heights for the Project segment that may be visible from the NHOTIC would be the best mitigation option to reduce the

⁵⁴¹ Idaho Power/602, Colburn/65 (2010 Siting Study). The ODFW Sage-Grouse Policy was subsequently updated in 2015. Final Order at 391 of 10603.

⁵⁴² Idaho Power/603, Colburn/29 (2012 Supplemental Siting Study).

⁵⁴³ The Final Order details the challenges associated with siting in this area in light of the changes to state and federal policies concerning sage-grouse habitat protection: “The applicant explains that, in 2010, ODFW called for avoiding all areas within two miles of a lek. In 2012, ODFW changed its approach to address ‘core areas’ based on the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon: A Plan to Maintain and Enhance Populations and Habitat (ODFW 2011) (the “2011 Strategy”). Applying the 2011 Strategy, ODFW designated “core areas” of sage-grouse habitat and recommended that all mapped core areas be considered Category 1 habitat, subject to site-specific analysis. The proposed facility route in the applicant’s 2013 pASC avoided most, but not all, Category 1 sage-grouse habitat. For remaining Category 1 impacts, the applicant worked with ODFW and the Department to determine the extent of Category 1 sage-grouse habitat within the Site Boundary, to minimize disturbance to Category 1 habitat through micro-siting. If this policy was still in place, the ODFW mitigation policy for Category 1 habitat is ‘no impact.’ However, as described in this section, this policy is no longer applicable to sage-grouse habitat. Concurrent with the applicant’s siting efforts, BLM developed alternative routes designed to avoid sage-grouse habitat (see Exhibit B, Attachment B-4, 2015 Supplemental Siting Study), and those alternative routes became part of the agency’s preferred alternative. To align with the BLM, the applicant incorporated BLM’s preferred sage-grouse avoidance alternatives into the route proposed to EFSC.” Final Order at 394 n.413 of 10603 .

⁵⁴⁴ Final Order at 317 of 10603.

⁵⁴⁵ Final Order at 317 of 10603.

⁵⁴⁶ Final Order at 321 of 10603.

visual impacts associated with the Project.⁵⁴⁷ Idaho Power proposed this mitigation, and it is required under the Project's Site Certificate.⁵⁴⁸ After this issue was litigated as part of the contested case proceeding, and considering the robust record that was developed on this issue, including expert witness testimony and additional photo simulations and video animations, as well as engagement from Council members at the Exceptions Hearing, EFSC concluded that, taking into account this mitigation, impacts to the NHOTIC will be less than significant.⁵⁴⁹

Turning to the issues raised in this docket, Mr. Larkin asserts that the proximity of B2H to the NHOTIC will cause a reduction in tourism and result in negative economic impact to Baker County.⁵⁵⁰ Mr. Larkin provides an exhibit detailing the NHOTIC historical visitation numbers, but no analysis suggesting that the presence of the Project will have any impact on visits. Moreover, from a review of Mr. Larkin's exhibit, it appears that tourism to the NHOTIC has been steadily decreasing for decades, irrespective of potential impacts from the Project.⁵⁵¹ Conversely, as discussed above, BLM approved the route segment near the NHOTIC and EFSC determined that, taking into account mitigation, impacts to the NHOTIC will be less than significant. The Commission should give greater weight to BLM's and EFSC's conclusions than to Mr. Larkin's unsupported assertion.

Additionally, STOP B2H and Susan Geer both argue that the West-Wide Energy corridors could serve as an alternative to Idaho Power's selected route.⁵⁵² In the Project study area, the West-Wide Energy corridors are non-contiguous U.S. Department of Energy-designated federal utility corridors located along the existing Summer Lake to Midpoint 500-kV transmission line and

⁵⁴⁷ Final Order at 566 of 10603.

⁵⁴⁸ Final Order at 458-59 of 10603 (Scenic Resources Condition 3).

⁵⁴⁹ Final Order at 567 of 10603.

⁵⁵⁰ Greg Larkin's Opening Brief at 53 of 67.

⁵⁵¹ Greg Larkin/501, Larkin/1-2. While the center drew over 347,000 visitors in 1993, those numbers have steadily declined to only a little over 38,000 in 2019.

⁵⁵² STOP B2H's Opening Brief at 22; Susan Geer's Opening Brief at 12. The West-wide Energy Corridor is also referred to as a "368 Corridor." STOP B2H refers to this corridor using both names and Ms. Geer refers to it as the "Central Oregon [right-of-way]." For consistency with Idaho Power's testimony, the Company uses the nomenclature West-wide Energy Corridor.

in the vicinity of Interstate 84 in Baker and Malheur Counties.⁵⁵³ STOP B2H asserts that BLM recommended the route segment in Baker County, placing the line in the viewshed of the NHOTIC, because the federal West-wide Energy Corridor “was not ready” at the time.⁵⁵⁴

As an initial matter, STOP B2H’s assertion that the West-wide Energy corridors were “not ready” is inconsistent with the evidence in the record, which shows that Idaho Power and BLM considered various segments of the West-wide Energy corridors throughout the siting process—and as early as 2010.⁵⁵⁵ However, contrary to STOP B2H’s assertion, the West-wide Energy Corridor does not provide an alternative that would avoid visual impacts to the NHOTIC, because no segment of West-wide Energy corridors is located near the NHOTIC. The NHOTIC is located in Baker County northeast of Baker City.⁵⁵⁶ While one segment of the West-wide Energy Corridors is located in Baker County, that segment is southeast of Baker City.⁵⁵⁷ In fact, it should be noted that segments of the Project route are located within the West-wide Energy Corridor in Baker County.⁵⁵⁸ However, although Idaho Power was able to utilize segments of the West-wide Energy corridor, this corridor did not provide an alternative that would avoid impacts to the NHOTIC.

iv. The Project Route Segment in Malheur County Is Justified in the Public Interest.

Similar to their argument regarding the Project route in Baker County, STOP B2H argues that the Project route should utilize the West-wide Energy Corridor in Malheur County as well.

⁵⁵³ Idaho Power/603, Colburn/34 (2012 Supplemental Siting Study).

⁵⁵⁴ STOP B2H’s Opening Brief at 22.

⁵⁵⁵ See, e.g., Idaho Power/602, Colburn/16 (2010 Siting Study) (identifying the West-Wide Energy Corridor as a siting opportunity as early as 2010); Idaho Power/611, Colburn/76 (Final Environmental Impact Statement, Chapter 2) (“Early in the project, land-use plans and other documents relevant to the B2H Project were reviewed to identify best management practices and other measures that mitigate potential impacts and were compiled from the multiple sources into a comprehensive list. Sources include . . . the interagency operating procedures from the West-wide Energy Corridor EIS ([U.S. Department of Energy] and BLM 2008), and [Records of Decision] (BLM 2009; USFS 2009)[.]”).

⁵⁵⁶ Final Order at 457 of 10603.

⁵⁵⁷ Idaho Power/203, Barretto/1841 (DR 15 - Attachment 8 – Exhibit K to Idaho Power’s Application for Site Certificate).

⁵⁵⁸ Idaho Power/600, Colburn/60.

STOP B2H raises specific concerns about recreational impacts resulting from the Project's crossing of the Owyhee River canyonlands.⁵⁵⁹ However, as explained in Idaho Power's Opening Brief,⁵⁶⁰ Idaho Power utilized existing federal corridors for approximately 20.7 miles in Malheur County,⁵⁶¹ but, at BLM's direction, the crossing of the Owyhee River was sited outside of the existing corridor in order to avoid impacts to a BLM ACEC and a portion of the river that was being considered for designation as a Wild and Scenic River.⁵⁶² Therefore, siting in this area involved a balance between maximizing use of the West-wide Energy Corridor and avoiding or minimizing impacts to the ACEC and the potential Wild and Scenic River designation.

Moreover, the public land in question is owned by BLM, and to build the Project on BLM land, Idaho Power must first secure a right-of-way authorization from BLM.⁵⁶³ If BLM will not grant the right-of-way authorization on public land, Idaho Power cannot unilaterally reroute the Project to use that corridor located on that public land.⁵⁶⁴ For these reasons, STOP B2H's assertion that Idaho Power should have utilized greater lengths of the West-wide Energy Corridor should be given little weight.

c. *B2H Will Benefit Oregon Customers.*

Mr. Larkin asserts that B2H "does not serve Oregonians, but rather is for the primary purpose of moving electricity out of the state and into another market."⁵⁶⁵ To the contrary, B2H will benefit Idaho Power's customers in Oregon, as well as BPA and PacifiCorp's customers in Oregon. As Mr. Ellsworth explained, the 2021 IRP Preferred Portfolio including B2H provides a clear benefit over the next best portfolio without B2H and will provide reliability benefits to the entire Idaho Power grid, including the Company's Oregon customers.⁵⁶⁶ Moreover, B2H will

⁵⁵⁹ STOP B2H's Opening Brief at 21.

⁵⁶⁰ Idaho Power's Opening Brief at 77-78.

⁵⁶¹ Idaho Power/600, Colburn/60.

⁵⁶² Idaho Power/600, Colburn/59-60, 61-62, 65-68.

⁵⁶³ Idaho Power/600, Colburn/69-70.

⁵⁶⁴ Idaho Power/600, Colburn/69-70.

⁵⁶⁵ Greg Larkin's Opening Brief at 50 of 67.

⁵⁶⁶ Idaho Power/1700, Ellsworth/10.

provide millions of dollars of benefits to BPA and PacifiCorp customers.⁵⁶⁷ Thus, the evidentiary record shows that customers in Oregon, Washington, and Idaho will all benefit from B2H.

d. *Cost-Shifting and Risk-Shifting at the Expense of Oregon Citizens Will Not Occur.*

Mr. Larkin argues that B2H will result in cost-shifting to Oregonians, citing as an example the bond approach approved by EFSC.⁵⁶⁸ Mr. Larkin is incorrect. As an initial matter, Mr. Larkin's authorized representative, Ms. Gilbert, raised this same precise issue during the EFSC contested case proceeding, and that argument was rejected by the Hearing Officer and EFSC.⁵⁶⁹ In addition, as background, the purpose of a bond/letter of credit is to ensure that decommissioning/site restoration costs are planned for in the event a site certificate holder has insufficient funds to comply with its decommissioning obligations.⁵⁷⁰ To maintain a bond/letter of credit, the issuing financial institution charges a carrying cost to the holder.⁵⁷¹ The cost for the life of the Project—approximately \$141 million—would result in carrying costs of approximately \$880,000 annually.⁵⁷² Given the unlikelihood that B2H will be retired before the end of its useful life, and given the unlikelihood that Idaho Power would be incapable of bearing the decommissioning costs, EFSC properly found that it would be unreasonable for Oregon customers to bear these carrying costs and that the bond amount for the first 50 years of operation of \$1 is satisfactory under EFSC's standards.⁵⁷³

Importantly, EFSC retains the authority to adjust the bond or letter of credit amount up to the full amount (i.e., approximately \$141 million in 3rd Quarter 2016 dollars adjusted to present

⁵⁶⁷ Idaho Power/1700, Ellsworth/19.

⁵⁶⁸ Greg Larkin's Opening Brief at 48-50 of 67 ("Failing to maintain a bond transfers the responsibility for site restoration if not completed by the company to ratepayers, landowners and the State of Oregon residents.").

⁵⁶⁹ Final Order at 339-46 of 10603; see also Final Order, Attachment 6 at 8906-11 of 10603.

⁵⁷⁰ Final Order at 337 of 10603 ("A bond or letter of credit provides a site restoration remedy to protect the state of Oregon and its citizens if the certificate holder fails to perform its obligation to restore the site or abandons the proposed facility.").

⁵⁷¹ Final Order, Attachment 6 at 8775 of 10603.

⁵⁷² Final Order at 337-38 of 10603; Final Order, Attachment 6 at 8908, 8908 n.325 of 10603.

⁵⁷³ Final Order at 339-46 of 10603.

day) at any time under Retirement and Financial Assurance Conditions 4 and 5 of the Site Certificate.⁵⁷⁴ Furthermore, under Retirement and Financial Assurance Condition 5, Idaho Power is required to submit a periodic report to EFSC detailing: (1) the physical condition of the facility; (2) any evolving transmission or electrical technologies that could impact the continued viability of the facility; (3) the facility's performance in the context of the larger power grid; and (4) Idaho Power's general financial condition, including the Company's credit rating and current financial statements for that five-year reporting period.⁵⁷⁵ ODOE must review that report, and EFSC will consider whether Idaho Power should be required to post a bond or letter of credit that varies from the value set in the Site Certificate.⁵⁷⁶ For the above reasons, the protections afforded by the Site Certificate recognize that that decommissioning of B2H is very unlikely, but also ensure that decommissioning and remediation costs are not inappropriately shifted to Oregonians.

Mr. Larkin also claims that Idaho Power inappropriately shifts wildfire response costs to local communities in Oregon.⁵⁷⁷ Mr. Larkin is incorrect. As discussed in Idaho Power's Opening Brief, the probability of a Project-related fire ignition is small,⁵⁷⁸ and the Company's mitigation plans will further decrease that probability.⁵⁷⁹ In particular, Idaho Power's Draft Fire Prevention and Suppression Plan and Vegetation Management Plan will require ongoing monitoring to reduce the probability of fire ignition.⁵⁸⁰ While the Draft Fire Prevention and Suppression Plan does not identify specific resources for distribution to fire departments, Idaho Power consulted with local fire response organizations and the majority indicated that B2H would not result in a significant adverse impact to their ability to provide fire protection services.⁵⁸¹ For the above

⁵⁷⁴ Final Order, Attachment 1 at 796-97, 808-810 of 10603 (Retirement and Financial Assurance Conditions 4 and 5).

⁵⁷⁵ Final Order, Attachment 1 at 808-09 (Retirement and Financial Assurance Condition 5).

⁵⁷⁶ Final Order, Attachment 1 at 809 (Retirement and Financial Assurance Condition 5).

⁵⁷⁷ Greg Larkin's Opening Brief at 53 of 67.

⁵⁷⁸ Idaho Power's Opening Brief at 30.

⁵⁷⁹ Idaho Power's Opening Brief at 34-36.

⁵⁸⁰ See Final Order, Attachment U-3 at 10532-10533 of 10603 (summarizing vegetation management surveys); Final Order, Attachment P1-4, Draft Vegetation Management Plan Appendix A at 9984 of 10603 (detailing protocols for vegetation inspections).

⁵⁸¹ Final Order at 617 of 10603.

reasons, Idaho Power does not anticipate that landowners will assume additional costs associated with fire suppression.

e. *The Public Interest in Historic, Cultural, and Archaeological Resources Will Be Sufficiently Protected.*

Intervenor John Williams raises several arguments regarding cultural resources on his property, including that Idaho Power's Petition for a CPCN is premature because surveys for cultural resources are not complete and final mitigation and monitoring plans are not finalized. For the reasons detailed below, Mr. Williams' arguments are without basis and should be rejected by the Commission.

i. *Idaho Power Has Appropriately Surveyed and Made NRHP Recommendations for the Cultural Resources on Mr. Williams' Property, and the Commission Can Be Assured That the Federal Section 106 Process Will Provide for Appropriate Findings and Mitigation.*

Mr. Williams argues that while Idaho Power has identified 13 cultural resources on his property within the Area of Potential Effects ("APE") at this time,⁵⁸² Idaho Power's Petition for a CPCN is premature as: (1) reporting for Idaho Power's 2022 fieldwork on his property is not complete; (2) Idaho Power's 2023 fieldwork and related findings and recommendations are not complete;⁵⁸³ (3) additional Enhanced Archaeological Surveys (i.e., Subsurface Investigations) are not complete and Idaho Power has not applied for related permits; (4) data recovery research designs, sampling strategy, and reporting are not complete;⁵⁸⁴ and (5) mitigation and monitoring

⁵⁸² John Williams' Opening Brief at 4.

⁵⁸³ Mr. Williams specifically states that "[t]here is a pending request for access to the property to do additional identification work that is scheduled for May 12-31st, 2023." John Williams' Opening Brief at 3.

⁵⁸⁴ Note that Mr. Williams argues that Idaho Power will have to enter into a Programmatic Agreement with BLM, the Idaho and Oregon State Historic Preservation Offices ("SHPO"), and other consulting parties consistent with the federal Section 106 process if data recovery is required for any of the cultural resources identified on his property. John Williams' Opening Brief at 5. Mr. Williams is mistaken. Consistent with 36 CFR 800.14(b), BLM, Idaho Power, the SHPOs, and other consulting parties entered into the Programmatic Agreement for the Project in late 2016/early 2017. Idaho Power/703, Ranzetta/18 (Idaho Power Response to Staff DR 15 - Attachment 1, Application for Site Certificate, Exhibit S). Therefore, Idaho Power understands Mr. Williams to rather be referring to the research design and sampling strategy for data recovery that will be finalized as part of the HPMP by BLM.

plans for the cultural resources on his property have not been finalized.⁵⁸⁵ This argument is without merit.

Mr. Williams is correct that Idaho Power has identified 13 cultural resources on his property within the Direct and/or Visual Assessment Analysis Areas/APEs at this time.⁵⁸⁶ While additional surveys may be necessary on Mr. Williams' Property, any such surveys should be complete by the end of May 2023,⁵⁸⁷ and no additional **significant** archaeological surveys for identification purposes are currently scheduled on Mr. Williams' property—i.e., Enhanced Archaeological Surveys requiring a state excavation permit.⁵⁸⁸ In addition, Idaho Power has provided its NRHP-eligibility recommendations and proposed mitigation measures for the cultural resources identified on Mr. Williams' property in the Class III Report and Visual Assessment of Historic Properties ("VAHP") Intensive Level Survey ("ILS") Report to BLM,⁵⁸⁹ and will update such reports as

⁵⁸⁵ John Williams' Opening Brief at 4. Mr. Williams also argues that the archaeological work on his property is incomplete because "the archaeological fieldwork [in 2022] was using...30 [percent] design plans for [B2H][.]" John Williams' Opening Brief at 4. However, as noted in Ms. Barretto's testimony, the 30 percent detailed design package provided engineering design criteria, the project alignment with structure locations based on LiDAR, and structure tower class development for all structures required for the line. Idaho Power/300, Barretto/2. Idaho Power has since received a 60 percent design package that "includes more site-specific constraints to meet height limitations, as well as right-of-way considerations. At this point, the transmission line structure locations are generally confirmed, structure types and class are finalized, and access roads are nearly finalized." Idaho Power/300, Barretto/3. Importantly, as Joseph Stippel noted in his testimony, Idaho Power cannot move the H-frame transmission tower located at MP 6.2A on Mr. Williams' property to avoid 8B2H-DM-52 (potential open campsite)—the only cultural resource on Mr. Williams' property now anticipated to be directly impacted by the placement of a transmission tower—and Idaho Power has agreed to move the access road further away from 8B2H-DM-47 (potential hunting blind) such that the access road follows directly underneath the transmission line. Idaho Power/1500, Stippel/7-8. Accordingly, with respect to the cultural resources on Mr. Williams' property, the design of the transmission tower itself is generally confirmed and the only anticipated change is to new access road UN-224 to move it further away from 8B2H-DM-47 (potential hunting blind). Idaho Power/800, Anderson/8, 10.
⁵⁸⁶ It is important to note that the majority of these resources are not within the Direct Analysis Area/APE, and only one resource will be directly impacted by the placement of a transmission tower. Idaho Power/800, Anderson/7-9 (noting only three cultural resources within the Direct Analysis Area/APE on Mr. Williams' property, and only one of those resources that will be directly impacted by the placement of transmission tower).

⁵⁸⁷ John Williams' Opening Brief at 3.

⁵⁸⁸ Idaho Power/2200, Anderson/6; *see also supra* note 44 (noting that no Enhanced Archaeological Surveys are currently planned on Mr. Williams' property).

⁵⁸⁹ Idaho Power/700, Ranzetta/9-10 ("BLM... is currently in the process of finalizing its HPMP as part of the federal Section 106 process, which will take into account NRHP-eligibility recommendations/determinations made in the Class III Report and [VAHP ILS Report], as well as recommended mitigation measures through implementation of property specific mitigation and monitoring plans.").

necessary. BLM is ultimately responsible for determining final NRHP designations, research design and sampling strategy for data recovery, and mitigation and monitoring plans for the cultural resources in the Historic Properties Management Plan (“HPMP”).⁵⁹⁰ Moreover, ODOE will also have the opportunity to review and approve the mitigation and monitoring plans for the sites on Mr. Williams’ property, in consultation with the Oregon State Historic Preservation Office (“SHPO”) and applicable Tribal governments.⁵⁹¹ As Idaho Power stated in its Opening Brief, with these protections in place, there is no reason for the Commission to delay issuance of the CPCN.⁵⁹²

ii. 36 CFR 800.1(c) Does Not Require That the Section 106 Process Be Complete before BLM May Authorize Nondestructive Project Activities.

Mr. Williams finally argues that the federal Section 106 process must be complete prior to BLM issuing any licenses.⁵⁹³ As an initial matter, Mr. Williams mischaracterizes 36 CFR 800.1(c) by asserting that the rule requires the agency official to initiate the federal Section 106 process early in the undertaking’s planning “so that a broad range of alternatives may be considered during the planning process for the undertaking.”⁵⁹⁴ This is not an accurate representation of 36 CFR 800.1(c). The rule provides in its entirety:

The agency official⁵⁹⁵ must complete the section 106 process “prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance

⁵⁹⁰ Idaho Power Company’s Surrebuttal Testimony of Kirk Ranzetta (Idaho Power/2100, Ranzetta/8) (Apr. 7, 2023); Idaho Power/703, Ranzetta/338 (Idaho Power Response to Staff DR 15 - Attachment 1, Application for Site Certificate, Exhibit S).

⁵⁹¹ Final Order, Attachment 1 at 780-81 of 10603 (Historic, Cultural and Archaeological Resources Condition 2).

⁵⁹² Idaho Power’s Opening Brief at 85-87.

⁵⁹³ John Williams’ Opening Brief at 2 (“36 CFR Part 800.1 (c) states, The agency official must complete the section 106 process ‘prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.’ This section goes on to state that, the agency official shall ensure that the section 106 process is initiated early in the undertaking’s planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.”). As Mr. Williams does not identify which specific licenses he views as incomplete for the purposes of this proceeding, Idaho Power assumes Mr. Williams is referring to BLM’s issuance of Notices to Proceed or NTPs.

⁵⁹⁴ John Williams’ Opening Brief at 2.

⁵⁹⁵ “The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance.” 30 CFR 800.2(a). In this case, BLM is the lead federal agency in the Section 106 process. Idaho Power/700, Ranzetta/9.

of any license.” ***This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking’s adverse effects on historic properties.***⁵⁹⁶

36 CFR 800.1(c) is reflected in the terms of the Programmatic Agreement, which explicitly allow BLM to issue partial NTPs for an individual construction segment where: (1) construction of the segment will not restrict re-routing of the right-of-way or affiliated ancillary features to avoid, minimize, or mitigate adverse effects on cultural resources; and (2) the permitting agencies, in consultation with the parties to the Programmatic Agreement, have determined that all surveys have been completed for the construction segment and no cultural resources have been identified through the Class III inventories within the APEs for the construction segment.⁵⁹⁷

Importantly, Idaho Power reiterates that the Company will not begin construction that impacts any particular cultural resource on Mr. Williams’ property or elsewhere until the HPMP is finalized and approved by BLM and ODOE, ***and*** site-specific mitigation and monitoring plans have also been finalized and approved.⁵⁹⁸ BLM is currently in the process of finalizing the HPMP.

D. Intervenor’s Other Arguments Do Not Bear on the Commission’s Consideration of Idaho Power’s Petition and Should be Rejected.

Several intervenors presented issues in their Opening Briefs that do not directly relate to any Commission standard for approval of Idaho Power’s Petition for CPCN. As they are not directly relevant to the legal standards in this proceeding, these arguments should be given little weight in the Commission’s ruling on Idaho Power’s application. However, Idaho Power nonetheless responds to each assertion.

⁵⁹⁶ 36 CFR 800.1(c) (emphasis added).

⁵⁹⁷ Idaho Power’s Opening Brief at 88; see also Idaho Power/2100, Ranzetta/12; Idaho Power/703, Ranzetta/348 (Idaho Power Response to Staff DR 15 - Attachment 1, Application for Site Certificate, Exhibit S).

⁵⁹⁸ See *supra* note 44 (noting that no Enhanced Archaeological Surveys are currently planned on Mr. Williams’ property).

1. PacifiCorp Is Not Required to File a Petition for CPCN in Oregon.

Mr. Larkin asserts that under ORS 758.015, PacifiCorp must file a petition for CPCN jointly with Idaho Power before the Commission may issue a ruling in this proceeding.⁵⁹⁹ Mr. Larkin is incorrect. ORS 758.015 provides that:

When any person, as defined in ORS 758.400, providing electric utility service, as defined in ORS 758.400, or any transmission company, **proposes to construct an overhead transmission line** which will **necessitate a condemnation of land** or an interest therein, it shall petition the Public Utility Commission for a certificate of public convenience and necessity[.]⁶⁰⁰

Under the plain language meaning of ORS 758.015, PacifiCorp is not required to request a CPCN in Oregon because it is Idaho Power (and not PacifiCorp) that is responsible for the construction and right-of-way acquisition for B2H, and thus for initiating condemnation proceedings in the State.⁶⁰¹ In any event, PacifiCorp has participated in this proceeding, responded to discovery requests, and provided evidence in the record establishing the company's need for the Project.⁶⁰² Indeed, Staff concluded that other regional electricity providers, including PacifiCorp, have provided sufficient evidence demonstrating needs on their system that will be met by B2H.⁶⁰³

Of note, PacifiCorp has requested CPCNs in Idaho and Wyoming. The Wyoming Public

⁵⁹⁹ Greg Larkin's Opening Brief at 27-28 of 67 (arguing that ORS 758.015 "does not allow the [Commission] to issue a Certificate of Public Convenience and Necessity until both Idaho Power and [PacifiCorp] have petitioned the [Commission] for a certificate, the required information has been provided and the [Commission] process has determined that the [CPCN] should be approved").

⁶⁰⁰ ORS 758.015(1) (emphasis added).

⁶⁰¹ Docket LC 68, Appendix D: B2H Supplement to the 2017 Integrated Resource Plan, Appendix D-3: B2H Permit Funding Agreement, Exhibit D at 98-100 of 175 (Dec. 8, 2017), *available at* <https://apps.puc.state.or.us/edockets/edocs.asp?FileType=HAQ&FileName=lc68haq155535.pdf&DocketID=20890&numSequence=89> ("The Funders hereby appoint Idaho Power, and Idaho Power hereby accepts appointment, to serve as Permitting Project Manager...The Permitting Project Manager shall administer and oversee the Permitting Project and shall be responsible for the day to day activities involved in advancing the Permitting Project to achieve the Project Permitting Objectives and Project Permitting Timetable, including the responsibility for obtaining all required Governmental Authorizations, siting, and Rights-of-Way acquisition relating to the Boardman to Hemingway Transmission Project.").

⁶⁰² Idaho Power's Opening Brief at 20-22; PacifiCorp's Rebuttal Testimony and Exhibits of Rick Link (PAC/200, Link/7-8) (Mar. 20, 2023); PAC/100, Link/4-5.

⁶⁰³ Staff/400, Pal/11-12 ("Staff believes that Idaho Power has demonstrated a need for additional transmission capacity that would be met by B2H. Additionally, other regional electricity providers including [PacifiCorp] and BPA have provided evidence of needs on their system that will be met by the B2H line. Economic analyses in IRPs...by Idaho Power and PacifiCorp have established B2H as a part of their least-cost least-risk portfolios.").

Service Commission approved a stipulation for PacifiCorp's non-situs CPCN on May 16, 2023 at their Public Meeting.⁶⁰⁴ The Idaho Public Utilities Commission ("Idaho PUC") is still in the process of reviewing both Idaho Power's (Case No. IPC-E-23-01) and PacifiCorp's (Case No. PAC-E-23-01) applications for a CPCN for the Project.⁶⁰⁵ The schedule for the Idaho PUC's review of Idaho Power's Petition for a CPCN set a May 23, 2023, comment deadline for Idaho PUC Staff and intervenors, and a June 6, 2023, reply comment deadline for the Company.⁶⁰⁶ Notably, in their May 23, 2023 comments, Idaho PUC Staff found that "the Company's proposed B2H project is a least-cost [least-risk] solution that will resolve the 2026 capacity deficit."⁶⁰⁷ Therefore, Idaho PUC Staff recommended that the Idaho PUC grant a CPCN for Idaho Power to construct the B2H transmission line.⁶⁰⁸

In addition, the Idaho PUC adopted a schedule in PacifiCorp's case setting a May 25, 2023, comment deadline for Idaho PUC Staff, the public, and intervenors, and a June 8, 2023, reply comment deadline for PacifiCorp.⁶⁰⁹ In their May 25, 2023 comments, Idaho PUC Staff

⁶⁰⁴ Wyoming Public Service Commission, Open Public Meeting at 43:02 – 49:00 (May 16, 2023), available at https://drive.google.com/file/d/1xlf_cWmYSAAdmZQv6tBDIYqBcGTbXa-rO/view?usp=share_link; see also Wyoming Public Service Commission, *In re the Application of Rocky Mountain Power for a Waiver of the Non-Situs Certificate of Pub. Convenience and Necessity for Gateway Segment H, the Boardman to Hemingway Transmission Project*, Docket No. 20000-631-EN-23 (Record No. 17236).

⁶⁰⁵ Idaho Power/1600, Barretto/30. Idaho Public Utilities Commission, *In re PacifiCorp – Application for a CPCN Authorizing Construction of Boardman-to-Hemingway 500-kV Transmission Line Project*, Case No. PAC-E-23-01, available at <https://puc.idaho.gov/Case/Details/6980> (last visited May 23, 2023); Idaho Public Utilities Commission, *In re Idaho Public Utilities Commission, Idaho Power – Application for CPCN for the Boardman to the Hemingway 500-kV Transmission Line*, Case No. IPC-E-23-01, available at <https://puc.idaho.gov/case/Details/6975> (last visited May 23, 2023).

⁶⁰⁶ Idaho Power/1600, Barretto/30; Idaho Public Utilities Commission, *In re Idaho Public Utilities Commission, Idaho Power – Application for CPCN for the Boardman to the Hemingway 500-kV Transmission Line*, Case No. IPC-E-23-01, Decision Memo (Mar. 28, 2023), available at <https://puc.idaho.gov/Fileroom/PublicFiles/ELEC/IPC/IPCE2301/Staff/20230328Decision%20Memo.pdf>.

⁶⁰⁷ Idaho Public Utilities Commission, *In re Idaho Public Utilities Commission, Idaho Power – Application for CPCN for the Boardman to the Hemingway 500-kV Transmission Line*, Case No. IPC-E-23-01, Comments of the Commission Staff at 3 (May 23, 2023), available at <https://puc.idaho.gov/Fileroom/PublicFiles/ELEC/IPC/IPCE2301/Staff/20230523Comments.pdf> [hereinafter, "Idaho PUC Staff May 23, 2023 Comments"].

⁶⁰⁸ Idaho PUC Staff May 23, 2023 Comments at 3.

⁶⁰⁹ Idaho Power/1600, Barretto/30; Idaho Public Utilities Commission, *In re PacifiCorp – Application for a CPCN Authorizing Construction of Boardman-to-Hemingway 500-kV Transmission Line Project*, Case No. PAC-E-23-01, Decision Memo (Mar. 28, 2023), available at https://puc.idaho.gov/Fileroom/PublicFiles/EL_EC/PAC/PACE2301/Staff/20230328Decision%20Memo.pdf.

recommended that the Idaho PUC grant PacifiCorp a CPCN for B2H because Idaho PUC Staff found that PacifiCorp “needs to increase the capacity of its transmission system to enable it to meet loads across its east and west balancing areas” and B2H “is the least-cost least-risk solution.”⁶¹⁰

Idaho Power anticipates the schedules adopted by the Idaho PUC will allow final orders to be issued by June 30, 2023.⁶¹¹

2. Idaho Power Will Continue to Attempt to Negotiate Easements in Good Faith.

STOP B2H argues—without basis—that in negotiations Idaho Power will present “low ball” offers to landowners, and granting the CPCN will change the dynamics of negotiations with landowners such that Idaho Power will no longer have an incentive to negotiate in good faith.⁶¹² Similarly, Mr. Larkin argues, without evidence, that “Idaho Power is offering amounts that are not consistent with the highest and best use of the property.”⁶¹³ As Idaho Power explained in discovery and in testimony in this proceeding, Idaho Power seeks to negotiate with landowners based on the results of appraisals.⁶¹⁴ These parcel-specific appraisals take into account the manner in which the landowner uses the parcel.⁶¹⁵

Idaho Power has continued negotiating easement options with landowners during the pendency of this docket,⁶¹⁶ and the Company will continue to negotiate with landowners in good faith after obtaining the CPCN. Idaho Power prefers to reach negotiated agreements with landowners when possible—however, negotiated agreements are not always possible, and indeed Idaho Power has contemplated that condemnation proceedings may be necessary, which

⁶¹⁰ Idaho Public Utilities Commission, *In re PacifiCorp – Application for a CPCN Authorizing Construction of Boardman-to-Hemingway 500-kV Transmission Line Project*, Case No. PAC-E-23-01, Comments of the Commission Staff at 2-3 (May 25, 2023), available at <https://puc.idaho.gov/Fileroom/PublicFiles/ELEC/PAC/PACE2301/Staff/20230525Comments.pdf>.

⁶¹¹ Idaho Power/1600, Barretto/30.

⁶¹² STOP B2H's Opening Brief at 6, 11-12.

⁶¹³ Greg Larkin's Opening Brief at 51-52 of 67.

⁶¹⁴ Idaho Power/400, Barretto/29.

⁶¹⁵ Idaho Power/400, Barretto/29.

⁶¹⁶ Idaho Power/1600, Barretto/32-33.

is why Idaho Power filed the Petition.⁶¹⁷

3. The Compensation Paid to Landowners Is Outside the Commission's Authority in CPCN Proceedings.

Mr. Larkin asserts that the Commission “is required to determine the amount of compensation the developer plans to provide and has the authority to require reasonable compensation since this is not addressed in the site certificate.”⁶¹⁸ Relatedly, Mr. Larkin argues that Idaho Power’s “payments to landowners fails to comply with the requirements of the Oregon Constitution Art. I [§] 18 requiring that Private property shall not be taken for public use, nor the particular services of any man be demanded without just compensation.”⁶¹⁹ Finally, Mr. Larkin argues that the Commission must not issue a CPCN “absent assuring that the payments to be made to property owners comply with the Oregon Constitution and court decisions regarding what constitutes ‘just compensation[.]’”⁶²⁰

Mr. Larkin's statements are entirely incorrect. In this proceeding, the Commission is charged with determining whether Idaho Power has demonstrated “the necessity, safety, practicability and justification in the public interest for the” Project.⁶²¹ Nothing in the Commission’s governing statutes authorizes the Commission to assess or determine the compensation to be paid to landowners.⁶²² To the contrary, the authority to determine the compensation paid to landowners—if not determined through a negotiated agreement—is provided to the courts, and

⁶¹⁷ See Idaho Power/600, Colburn/8 (“Although the Company has not been able to obtain complete support from every member of the community, it bears noting that a CPCN proceeding is required only in circumstances where condemnation is necessary, and thus if there were landowner consensus regarding the project location, there would not likely be a need for a CPCN proceeding, because there would be no need for condemnation.”).

⁶¹⁸ Greg Larkin’s Opening Brief at 26 of 67.

⁶¹⁹ Greg Larkin’s Opening Brief at 51 of 67.

⁶²⁰ Greg Larkin’s Opening Brief at 52 of 67.

⁶²¹ ORS 758.015(2); see also ORS 183.482(8)(b)(A) (authorizing courts to reverse an agency order if the order is “[o]utside the range of discretion delegated to the agency by law”).

⁶²² See Order No. 11-366 at 8-9 (“[W]e emphasize that our inquiry and analysis in this case are limited. . . . ORS 758.015 provides this Commission with the authority to issue a CPCN to facilitate the condemnation of land necessary for the construction of transmission lines. Thus, our decision here is akin to a governmental resolution of necessity to condemn private land. *We are granting condemnation authority only.*”) (emphasis added).

is determined through a condemnation proceeding in accordance with ORS Chapter 35.⁶²³

The Commission has no legal authority to determine the compensation that will be paid to landowners.

4. Idaho Power Will Compensate Forest Land Owners for Forest Impacts and the Company Accurately Identified Forest Lands.

Based on the faulty premise that the Final Order prescribes land compensation or mitigation values for forest land, Mr. Larkin argues that Idaho Power “projects that the total cost to purchase right of ways for the B2h Project will be millions of dollars less than the actual loss to landowners and the state.”⁶²⁴ Mr. Larkin cites an EFSC estimate, which he asserts indicates that “[f]or Union County alone, the value of the forest land that will be incorporated into the transmission line right of way is, according to EFSC figures \$21.3 million dollars.”⁶²⁵ Mr. Larkin further argues that, to comply with ORS 772.210(4), “[t]his figure is a portion of the amount that forest landowners must be awarded in the event that Idaho Power condemns forest land to build the transmission line[.]”⁶²⁶ Mr. Larkin’s arguments are incorrect.

As an initial matter, as discussed above, compensation to landowners resulting from Idaho Power’s acquisition of property interests through condemnation is outside the scope of the Commission’s consideration in these CPCN proceedings—and the Commission does not have authority to make such determinations. Moreover, as Idaho Power explained in its in Opening Brief,⁶²⁷ Mr. Larkin misapplies the figures in EFSC’s Final Order. Contrary to Mr. Larkin’s claims, the Final Order did not establish the “loss” that “landowners would experience.”⁶²⁸ Instead, the estimates that Mr. Larkin cites provide context for the total impacts resulting from the Project but

⁶²³ See ORS 35.346(7)(a) (“If the amount of just compensation *assessed by the verdict in the trial* exceeds the highest written offer in settlement submitted by condemner before the filing of the action to those defendants appearing in the action . . .”) (emphasis added).

⁶²⁴ Greg Larkin’s Opening Brief at 51 of 67.

⁶²⁵ Greg Larkin’s Opening Brief at 51 of 67.

⁶²⁶ Greg Larkin’s Opening Brief at 51 of 67.

⁶²⁷ Idaho Power’s Opening Brief at 101.

⁶²⁸ Greg Larkin’s Opening Brief at 27 of 67.

are not related to the actual values that the Company will pay for easements through impacted forestlands.⁶²⁹ Consistent with EFSC’s statement that “the actual value of a particular landowner’s timber would be valued based on a timber appraisal completed at the time of land acquisition,”⁶³⁰ Idaho Power will not rely on the broader county-based economic estimates when valuing just compensation for the use of specific forest parcels and will instead rely on parcel-specific appraisals.⁶³¹

As to Mr. Larkin’s argument regarding compliance with ORS 772.210(4), that statute simply requires that when a utility condemns land for power lines, the award to landowners must include “damages for destruction of forest growth, premature cutting of timber and diminution in value to remaining timber caused by increased harvesting costs.” Compensation for these damages—if relevant for a particular parcel—will be determined in negotiated agreements with landowners or condemnation proceedings, and nothing in ORS 772.210(4) would require that these damages be determined in the EFSC proceeding or this docket, much less that they would be captured by the general economic estimates included in EFSC’s Final Order or the CPCN order.

Relatedly, Mr. Larkin argues that “[f]orest growth is used to determine what is ‘forest land’ and is defined by Statute to be the amount of timber that can be produced given the soil classification in terms of ‘cubic feet of timber per acre per year[.]’”⁶³² However, as Idaho Power explained in the Company’s Opening Brief,⁶³³ in accordance with the local zoning ordinance in Union County, Idaho Power assessed the soil maps of parcels in the county’s hybrid “Timber-Grazing zone” to determine predominant use *based on the soil types* in those parcels.⁶³⁴ This issue was litigated thoroughly in the EFSC contested case, and EFSC adopted the Hearing

⁶²⁹ Final Order at 272-73 of 10603.

⁶³⁰ Final Order at 273 of 10603.

⁶³¹ Idaho Power/400, Barretto/29-30.

⁶³² Greg Larkin’s Opening Brief at 52 of 67.

⁶³³ Idaho Power’s Opening Brief at 100-01.

⁶³⁴ Final Order, Attachment 6 at 8832-8834 of 10603.

Officer's conclusion that Idaho Power "properly used [Soil Survey Geographic Database] soil classification data in determining the predominant use of hybrid-zoned land in Union County."⁶³⁵ Moreover, compensation provided to landowners will be based on an appraisal rather than zoning for the parcel.⁶³⁶

5. Idaho Power Provides for Sufficient Avoidance and Mitigation of Impacts to Riparian Areas and Habitats.

Without making a specific argument, Mr. Larkin references several portions of the Final Environmental Impact Statement ("FEIS") for B2H related to riparian protection standards.⁶³⁷ Mr. Larkin asserts that the riparian protection standards will not apply to private lands. This statement misrepresents these standards in the FEIS. The design features referenced by Mr. Larkin "are applied to all lands, regardless of jurisdiction or ownership, where appropriate."⁶³⁸ As such, it is incorrect to state that they will not apply to private lands.

Mr. Larkin additionally states that "there is no general statement of avoidance and mitigation" within the riparian protection standards.⁶³⁹ In fact, both the FEIS and the EFSC Fish and Wildlife Habitat Mitigation Plan address avoidance and mitigation. The FEIS establishes that plans for B2H "were reviewed to identify best management practices and other measures that mitigate potential impacts"⁶⁴⁰ The Fish and Wildlife Habitat Mitigation Plan notes that Idaho Power's "initial siting process avoided sensitive resource areas to the extent practical, including . . . waterbodies (including wetlands, wild and scenic rivers, streams that support special status species)"⁶⁴¹ Further, the Plan ensures that "mitigation measures will be implemented and completed either prior to or concurrent with the Project."⁶⁴² These statements establish that the

⁶³⁵ Final Order at 34 of 10603.

⁶³⁶ See Idaho Power/400, Barretto/29-30.

⁶³⁷ Greg Larkin's Opening Brief at 56 of 67.

⁶³⁸ Idaho Power/611, Colburn/76 (Final Environmental Impact Statement, Chapter 2).

⁶³⁹ Greg Larkin's Opening Brief at 56 of 67.

⁶⁴⁰ Idaho Power/611, Colburn/76 (Final Environmental Impact Statement, Chapter 2).

⁶⁴¹ Final Order, Attachment P1-6, Draft Fish and Wildlife Habitat Mitigation Plan at 10081 of 10603 [hereinafter "Final Order, Attachment P1-6].

⁶⁴² Final Order, Attachment P1-6 at 10081 of 10603.

FEIS and Fish and Wildlife Habitat Mitigation Plan provide for avoidance and mitigation of potential impacts to habitat and riparian areas.

Mr. Larkin asserts that within the FEIS there are “counties where a 25 foot setback from water sources is all that is required.”⁶⁴³ Mr. Larkin misinterprets the record. It is accurate to state that some counties impose lower setback requirements. For example, in Umatilla County, Idaho Power is required to leave a setback for structures and roads for B2H of 25-feet or one-half the stream width, whichever is greater.⁶⁴⁴ The FEIS applies to all lands, regardless of ownership. Further, as Mr. Larkin does not present any legal or factual argument regarding the county-specific setbacks, this assertion should not be given any weight.

Finally, Mr. Larkin notes that intervenor “Irene Gilbert was denied a contested case” related to riparian mitigation issues.⁶⁴⁵ As an initial matter, this CPCN proceeding is not the appropriate place to relitigate the EFSC contested case proceeding. Moreover, Mr. Larkin’s assertion is false. As noted in the Contested Case Order, Ms. Gilbert was granted standing on the riparian area setbacks issue but waived her opportunity to submit witness testimony or additional evidence and thus the hearing officer limited her arguments to evidence already in the evidentiary record.⁶⁴⁶ As such, Ms. Gilbert’s concerns were heard to the extent she was willing and able to litigate them.

6. Idaho Power Provides for Sufficient Mitigation of Impacts to Wildlife, and Any Loss of Value to Residents May Be Addressed in Condemnation Hearings.

Mr. Larkin asserts that residents who rely on hunting and fishing for their livelihoods will not receive compensation for any loss of revenue.⁶⁴⁷ However, Idaho Power has analyzed the temporary and permanent impacts of B2H on the habitat of elk and other fish and wildlife species,

⁶⁴³ Greg Larkin’s Opening Brief at 56 of 67.

⁶⁴⁴ Final Order at 193 of 10603.

⁶⁴⁵ Greg Larkin’s Opening Brief at 56 of 67.

⁶⁴⁶ Final Order, Attachment 6 at 8807-09 of 10603.

⁶⁴⁷ Greg Larkin’s Opening Brief at 58 of 67.

and established mitigation measures where appropriate.⁶⁴⁸ Thus, to the extent Mr. Larkin is concerned with impacts to hunting and fishing habitat, Idaho Power has appropriately planned for the mitigation of these impacts. Moreover, compensation for loss of any hunting or fishing lease revenue a landowner may experience is subject to negotiation between the landowner and Idaho Power during right-of-way negotiations and may be litigated in the condemnation proceedings. However, landowner compensation is not an issue to be decided in this docket.

Mr. Larkin further asserts that “[f]or farmland, there is no requirement for mitigation of habitat damages.”⁶⁴⁹ This statement misinterprets the mitigation standards. For farmlands, Idaho Power was required by ORS 215.275(5) to assess and mitigate potential impacts to accepted farm practices.⁶⁵⁰ At EFSC, the hearing officer determined that Idaho Power had satisfied this standard.⁶⁵¹ In addition, the Agricultural Lands Assessment specifically contemplates mitigation of habitat damages on agricultural lands.⁶⁵² Thus, Idaho Power has adequately assessed and provided mitigation for impacts to habitat on agricultural lands.

7. Idaho Power’s Mitigation Disturbance Area Calculations Are Appropriate.

Mr. Larkin appears to assert that Idaho Power is underestimating the mitigation disturbance area during construction and operation. Mr. Larkin states that it is unreasonable to believe that the Company “can build any 230 kV transmission line for just under a mile in length and only disturb a total of temporary and permanent habitat amounting to 1 acre.”⁶⁵³ As an initial matter, it is unclear to what portion of the evidentiary record Mr. Larkin is referring here, or what information may have formed the basis for his assertion. To be clear, B2H is primarily a 500-kV

⁶⁴⁸ Final Order at 364-71 of 10603.

⁶⁴⁹ Greg Larkin’s Opening Brief at 59 of 67.

⁶⁵⁰ Final Order, Attachment 6 at 8841 of 10603.

⁶⁵¹ Final Order, Attachment 6 at 8841 of 10603.

⁶⁵² Final Order, Attachment K-1 at 9641 of 10603 (“To the maximum extent practical, IPC will reasonably restore the land to its former condition or compensate each landowner, as appropriate, for damages and/or impacts to agricultural operations caused as a result of Project construction, and as outlined in this plan.”). The Agricultural Lands Assessment specifically contemplates that for organic agricultural lands, Idaho Power will provide for “restoration and replacement of beneficial bird and insect habitat.” *Id.* at 9651.

⁶⁵³ Greg Larkin’s Opening Brief at 59 of 67.

transmission line with a small number of related 230, 138, and 69-kV structures.⁶⁵⁴ The overhead conductor for the transmission lines themselves will not have any temporary or permanent disturbance, while the towers have a specified amount of disturbance noted in Table 5-7 of the Agricultural Lands Assessment, depending on tower type.⁶⁵⁵ The majority of the towers on B2H will be 500-kV Lattice towers which have an average temporary (construction) disturbance of 250 by 250 feet (1.4 acres) and a permanent (operations) disturbance of 50 by 50 feet (0.06 acres).⁶⁵⁶ Mr. Larkin provides no evidence to support this assertion that Idaho Power's estimates are inaccurate. Ms. Gilbert presented a similar argument at EFSC, and the hearing officer determined that Idaho Power properly estimated the amount of temporary and permanent impacts by structure type.⁶⁵⁷

III. CONCLUSION

Idaho Power and the parties have developed a robust record in this proceeding, and based on the weight of the evidence, the Commission can find that Idaho Power has met the legal requirements under ORS 758.015, OAR 860-025-0035(1), and OAR 860-025-0040(7) for granting a CPCN. Idaho Power respectfully requests that the Commission grant its Petition for a CPCN.

⁶⁵⁴ Final Order, Attachment K-1 at 9623 of 10603.

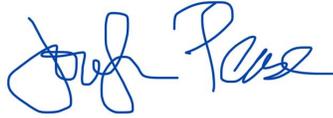
⁶⁵⁵ Final Order, Attachment K-1 at 9623 of 10603.

⁶⁵⁶ Final Order, Attachment K-1 at 9623 of 10603.

⁶⁵⁷ Final Order, Attachment 6 at 8840-41 of 10603.

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I hereby certify that I served a true and correct copy of the confidential pages of Idaho Power Company’s Reply Brief on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

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I also hereby certify that on May 30, 2023 the redacted version of Idaho Power Company’s Reply Brief 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:

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