

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

<b>IN THE MATTER OF IDAHO POWER COMPANY'S  PETITION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY</b>	<b>Docket: PCN 5  Reply Brief  Intervenor: SUSAN GEER representing Whitetail Forest LLC and Glass Hill State Natural Area</b>
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**Date: May 30, 2023**

**Susan Geer, Intervenor**

**Glass Hill Route and Glass Hill Alternative are both preferable to Morgan Lake Alternative.**

**Morgan Lake Alternative is the *least* preferable route in Union County.**

Note that all arguments, references, and Exhibits are found in Susan Geer's Opening Testimony and Susan Geer's Surrebuttal.

**1. Idaho Power's stated reasons for choosing Morgan Lake alternative are fictional.**

"Pushback to route options on Glass Hill" and "stakeholder comments preferring the Morgan Lake over Mill Creek alternative" both obfuscate the facts.

Idaho Power states in their Brief they "selected (their) route based on "pushback to Route options on Glass Hill" and "stakeholder comments preferring the Morgan Lake to Mill Creek alternative".

With regards to "route options on Glass Hill", Glass Hill Alternative, Glass Hill Route, and the Morgan Lake Alternative are all in the Glass Hill area; in fact, it is the Morgan Lake alternative that comes closest to Glass Hill proper.

- a. The Glass Hill Coalition formed to keep the B2H entirely off Glass Hill and proposed to collocate it with the existing 230 kV line.

In Testimony, Idaho Power's Colburn and Ottenlips mention "pushback" from the Glass Hill Coalition. At the time (2016), the Morgan Lake Alternative was unknown. Ms. Geer and Mr. McAllister (Testimonies) demonstrate that the Glass Hill Coalition was originally a group of landowners and land users who signed a petition because they did not want the B2H on Glass Hill. These included landowners and land users with interests in all parts of Glass Hill area, including parts along the (then unknown) Morgan Lake alternative, united in their quest to keep the B2H off Glass Hill. Among the signers of the petition were both Dr. Joel Rice and Mr. Michael McAllister. At the time that they met (June 2016) they

reasoned that putting the line on the existing 230 kV line would be the least impactful and would keep the line entirely off Glass Hill.

Mr. McAllister presented evidence that the “pushback” was in fact primarily from a single landowner, Brad Allen, and that unbeknownst to the Glass Hill Coalition when they met and agreed to support the collocation with the 230kV line, Mr. Allen had already presented the Morgan Lake alternative to Idaho Power.

- b. The Morgan Lake Alternative was proposed by one landowner, specifically to keep the B2H from bisecting his land, and was not supported by the Glass Hill Coalition (McAllister Testimony).

Although later letters were signed as “Glass Hill Coalition”, and mentioned by Idaho Power’s Mr. Colburn, Mr. McAllister testifies that only the author of the letter is represented; no one else in the Glass Hill Coalition group was informed.

- c. Because keeping B2H off Glass Hill would include keeping it off the Morgan Lake alternative, in the eyes of the original Glass Hill Coalition members, Idaho Power’s argument that Morgan Lake alternative was chosen due to “pushback to route options on Glass Hill” is without merit.
- d. With regards to Idaho Power’s “stakeholder comments preferring Morgan Lake to Mill Creek alternative”, when given only the two choices, City and County officials were forced to choose Morgan Lake alternative because Mill Creek was such an incredibly poor route choice affecting the maximum number of people, living in La Grande. Officials begged Idaho Power to include the Glass Hill Alternative, aka the NEPA route.

Although it sounded good on paper to collocate the B2H with the 230 kV line, the reality was the resulting Mill Creek route was an incredibly poor choice that would affect the maximum number of people. Because of this, Morgan Lake alternative was “preferred” to Mill Creek by City and County

officials. It was not preferred to Glass Hill Route or to Glass Hill Alternative, but those choices, or any other, were not offered.

On page 70 of their Brief, IPC says of Glass Hill Route and Glass Hill Alternative “multiple stakeholders, including Union County—opposed these routes and requested Idaho Power instead site the Project along the existing 230 kV line”

This statement is misleading since the “multiple stakeholders” were Glass Hill Coalition and Union County B2H Siting Committee. As already discussed, Glass Hill Coalition, after that first meeting, was essentially Brad Allen and two Turleys using the name Glass Hill Coalition without the knowledge or agreement from the “over 100 members” mentioned by Idaho Power in their Brief. Brad Allen was also a very vocal member of the Union County Siting Committee.

IPC’s Brief continues page 70:

*In response, through the BLM NEPA process, two new routes were developed—the Mill Creek Alternative and the Morgan Lake Alternative. The Mill Creek Alternative was proposed as an option to site the Project near the existing 230-kV transmission line, as Union County had requested. Idaho Power developed the Morgan Lake Alternative in response to the substantial opposition to the Glass Hill Route and Glass Hill Alternative from landowners in the area—including the Confederated Tribes of the Umatilla Indian Reservation’s (“CTUIR”)...*

Everything about this statement is misleading. The “two new routes” were not developed “through the BLM NEPA process”. As documented extensively in Testimony by Mr. McAllister and Ms. Geer, they were hurriedly interjected at the very end of the process and not fully considered. Mr. McAllister’s testimony explains how County Planner Scott Hartell was tasked with creating the Mill Creek alternative’s route, when it became apparent that placing the B2H right on the 230 kV line was not possible. At that point the whole bad idea should have been dropped.

Stating that “Idaho Power developed Morgan Lake alternative” is not true. The route was provided to Idaho Power by landowner Brad Allen. Idaho Power says, “developed the Morgan Lake Alternative in response to the substantial opposition to the Glass Hill Route and Glass Hill Alternative from landowners in the area”.

IPC implies that Morgan Lake alternative faces less opposition, when in fact the opposite is true. Many of the same parties who oppose Glass Hill Route and Glass Hill alternative also oppose Morgan Lake alternative because it is also in the Glass Hill area. In addition, Glass Hill Route and Alternative intersect 6 and 7 landowners, while Morgan Lake alternative intersects 13. Furthermore, Morgan Lake alternative is closer to town and many more people are more directly affected by Morgan Lake alternative, since the City Park is very popular and well-loved, and Joel Rice’s land, a State Natural Area, is also open to non-motorized nature-oriented recreation.

IPC mentions the “CTUIR opposition to the Glass Hill Alternative”, yet they do not mention that at the time the only other route was Glass Hill Route, so it is unknown how CTUIR would have responded to the Mill Creek or Morgan Lake alternative if given a choice.

In an incredibly twisted statement, IPC says (page 71) “because all three routes were likely capable of being permitted, the input from stakeholders—including input from the CTUIR and local governments—was the primary factor in determining which routes to pursue”. As just stated, CTUIR was not even considering the Morgan Lake or Mill Creek alternatives when they made a statement of preference. The City and County officials wanted the Glass Hill alternative, not the Mill Creek or Morgan Lake. They only preferred Morgan Lake in comparison to Mill Creek.

It cannot be stated strongly enough what a duplicitous set of statements Idaho Power has presented.

Page 71 the following statement also is misleading:

*To that end, Idaho Power took into account the comments stakeholders had provided opposing the Glass Hill Route and the Glass Hill Alternative, and comments from government entities stating a preference for the Morgan Lake Alternative over the Mill Creek Route.*

Again, IPC does not disclose that Morgan Lake and Mill Creek alternatives were not even on the table when the “stakeholders” were commenting on Glass Hill Route and Alternative, or that “comments from government entities” were begging for Glass Hill Alternative as opposed to Mill Creek and Morgan Lake alternatives.

The next statement on page 71 is also incredibly false.

*the Morgan Lake Alternative balances the myriad interests in siting the Project and incorporates preferences from local governments. These stakeholder preferences for the Morgan Lake Alternative compared to alternative routes further justify construction of the Project.*

Idaho Power continues to hammer away at the same falsehoods already overstated. “Myriad interests” in fact boil down to one large landowner with a large voice and pocketbook, and a couple of neighbors. “Stakeholder preferences compared to alternative routes” is only local government desperation because they were not offered any choice except for Mill Creek, an ill-conceived mistake which should never have made it out of the bus station.

No mention at all is made of the fact that Morgan Lake and Mill Creek alternatives were only in the BLM FEIS and therefore there is no way to gage how much more opposition they would garner than either Glass Hill Route or Alternative. By virtue of that timing, Idaho Power -- again and again-- makes false and misleading claims about stakeholder and local government preferences.

**2. The potential environmental impacts from Morgan Lake alternative are in fact greater than those from Glass Hill Alternative or Glass Hill Route.**

Idaho Power says (page 73) that a “desktop analysis” by Tetra-tech (consultant) showing similar numbers of forested acres and wetland acres between Morgan Lake alternative and Glass Hill alternative means “the extent of habitat along the two is comparable.”

Pointing to an office GIS exercise done by a consultant who only visited the area for one day, has little meaning.

Ms. Geer, botanist/ecologist with nearly 30 years’ experience in northeast Oregon described in Testimony how habitat along Morgan Lake alternative is more valuable for several reasons:

- a. A large stretch of Morgan Lake alternative, Glass Hill State Natural area/Rice property, has been in a Conservation Easement with RMEF since 2001, and it is designated as a State Natural Area. As the owner for over 25 years, Dr. Rice has made every effort to protect it from development, including no commercial logging or livestock grazing.
- b. Glass Hill State Natural Area (Rice property) has several plant associations designated as “priority plant associations” in Oregon’s Natural Areas Plan (2020). These are defined as plant associations otherwise unprotected in the state of Oregon.
- c. Three Federal Species of Concern –Douglas Clover, white-headed woodpecker, and Columbia spotted frog --are thus far known from Glass Hill State Natural Area, as well as additional State sensitive species and a new moth species.
- d. Morgan Lake alternative occurs right next to the unique high-quality wetlands of Twin lake and Winn meadows. These are known to be unique high-quality wetlands recognized throughout eastern Oregon including by the Natural Areas program since 2010, and the Wetlands

Conservancy. While it is true that wetlands occur along Glass Hill alternative, they are not recognized as high quality wetlands and they have no easements or protections.

- e. A new native plant species was discovered at Morgan Lake City Park last year, along the Morgan Lake alternative. This undescribed species of goldenweed (*Pyrrocoma*) is undoubtedly rare but unprotected.

Idaho Power continues to argue in their Brief, that “no Project feature is proposed within either Twin Lake or the delineated wetland within Winn Meadow, and therefore the Project will not directly impact habitat in either location”. With the Project mere feet away from these valuable wetlands, saying it will “not directly impact” is meaningless, as Ms. Geer explains in Testimony. Also, Idaho Power misleads by implying that it is only delineated wetlands that are valuable. Most of the priority plant associations recognized at Glass Hill State Natural Area are upland, and overall integrity of the area along with the intent of the landowner to protect the area for perpetuity with the best tools currently available (conservation easement and Natural Areas designation).

**3. The Project should not be constructed through a State Natural Area, or for that matter, right next to a City Park, using the Morgan Lake alternative.**

Idaho Power’s Brief is correct in the fact that the Natural Areas program is completely voluntary and that there is no law under that designation that prohibits construction. However, Idaho Power overlooks the facts that applicants for Natural Areas designation undergo a strict review process, and that they must contain not just generalized habitat but rare plant or animal species termed “element occurrences” and recognized plant associations on a “priority” list found in the Oregon Natural Areas Plan (2020), meaning that they are unprotected in the rest of the State.

Idaho Power also overlooks the fact that if not for a snafu in EFSC rules, the Natural Area would have been protected. Energy Facility Siting Council (EFSC) Rule OAR 345-022-0040 Protected Areas as of

2020, said, “References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007.” Clearly the rule was outdated by 35 years, and the intent was for all State Natural Areas to be protected. Lack of clarity in the existing rule set off a round of Protected Areas rulemaking, which, handily for Idaho Power, eventually resulted in Natural Areas designated after 2007, yet before the Protected Areas rulemaking, to be excluded from the rule. While not strictly illegal, routing the B2H through an area that should have been protected under EFSC rules, is not necessary.

Idaho Power claims (page 76 of Brief) that, “the Project has been routed to minimize impacts to habitat, including habitat located within the Rice Glass Hill Natural Area”. Other than not routing it directly through a delineated wetland, there does not appear to be any basis for the claim. The Project bisects the Natural Area with no attempt to avoid it.

Douglas clover (*Trifolium douglasii*) is Oregon Biodiversity Information Center (“ORBIC”) List 1 Species and Federal Species of Concern. Instead of using the ORBIC list, EFSC looks at the Oregon Department of Agriculture (ODA) rare plant list, which is the same as the federal T&E list of 1987 and has yet to be updated since its inception. In response to Ms. Geer’s inquiries (Testimony), ODA says that *Trifolium douglasii* “will be considered for the update”. Idaho Power (page 77 of Brief) responded to Ms. Geer’s concerns by saying “avoidance is not required” and “committing” to micro-siting the Project features outside the populations IF” the “landowner identifies discrete populations” --but only within the site boundary. This is very little concern or consideration for a species that needs all the protection it can get. The process for federal listing is highly political and can take decades, but the State of Oregon should protect this species.

#### **4. Conclusion**

Based on the compelling evidence in the record, the Commission should find that if a CPCN is granted, Morgan Lake alternative should be excluded from consideration as a part of the B2H Route.

Ms. Geer respectfully requests that the Commission consider the greatest benefit and least harm to the current and future citizens of Oregon and exclude the Morgan Lake alternative.

**DECLARATION**

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

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

/s/ Susan Geer

**Susan Geer**

**CERTIFICATE OF MAILING**

On May 30, 2023, I certify that I filed the above Reply Brief and Declaration with the Administrative Law Judge via the OPUC Filing Center, for the Docket # PCN-5; and the following:

John C. Williams  
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*/s/ Susan Geer*

Susan Geer  
Intervenor, PCN-5