

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

LC 50

In the Matter of  
IDAHO POWER COMPANY  
2009 Integrated Resource Plan.

RULING

DISPOSITION: MOTION FOR CONTESTED CASE HEARING DENIED

As part of its preferred portfolio in its 2009 integrated resource plan (IRP), Idaho Power Company includes a transmission line through eastern Oregon, referred to as the Boardman to Hemingway (B2H) transmission line. The IRP does not include proposed routes for the B2H line, and the Public Utility Commission of Oregon (Commission) does not have jurisdiction over the route. The Energy Facility Siting Council (EFSC) is responsible for reviewing and approving the route for the B2H line. For a nongenerating facility, such as a transmission line, the EFSC must find that an applicant has demonstrated a need for the facility.<sup>1</sup> Under the EFSC's administrative rules, an applicant can meet the need standard by showing that "the proposed facility or a facility substantially similar to the proposed facility \* \* \* is identified for acquisition" in an IRP that has been acknowledged by this Commission.<sup>2</sup> In this case, if the Commission acknowledges Idaho Power's IRP, then Idaho Power will use the acknowledgment to meet the need standard at the EFSC.

On March 2, 2010, Nancy Peyron and Move Idaho Power (collectively MIP) moved for a contested case hearing addressing the B2H line, including the opportunity to conduct discovery, submit testimony, and conduct cross-examination of witnesses. MIP argues that contested case proceedings are warranted because the EFSC is required to conduct energy facility siting proceedings as contested cases. Because of the EFSC's rules regarding the effect of Commission-acknowledged IRPs, the EFSC will not conduct a contested case to determine whether the applicant has demonstrated a need for B2H. Instead, the EFSC will rely on the Commission's acknowledgement to conclude that the need standard has been met. Thus, according to MIP, this Commission should conduct a contested case to determine the "need" for

<sup>1</sup> OAR 345-023-0005.

<sup>2</sup> OAR 345-023-0020.

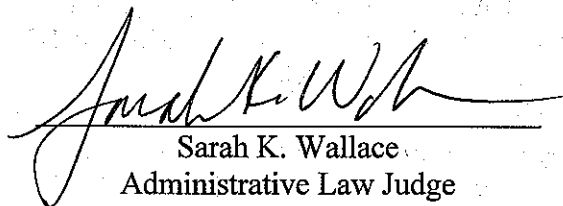
the B2H transmission line to ensure that opponents of the line are not deprived of “the contested case process guaranteed by law.”<sup>3</sup>

On March 16, 2010, Idaho Power, the Citizens’ Utility Board of Oregon, PacifiCorp, dba Pacific Power, and Portland General Electric Company filed responses urging denial of MIP’s motion for a contested case hearing. Also on March 16, Stop Idaho Power filed a memorandum in support of MIP’s motion.

The Commission’s role in reviewing an IRP is to determine whether the IRP meets the substantive and procedural guidelines in Order Nos. 89-507 and 07-002. The Commission generally does not address the need for specific resources, but rather determines whether the utility has proposed a portfolio of resources to meet its energy demand that presents the best combination of cost and risk.<sup>4</sup> Commission acknowledgement of an IRP means only that the Commission finds that the utility’s preferred portfolio is reasonable at the time of acknowledgement.<sup>5</sup> Because the Commission does not finally determine the individual rights, duties, or privileges of any party during the IRP process, IRP dockets are not considered “contested cases” under the Oregon Administrative Procedures Act,<sup>6</sup> and the Commission does not use contested case procedures. An acknowledgement order is not a final order subject to judicial review because it does not “preclude further agency consideration of the subject matter” of the order.<sup>7</sup>

MIP’s sole argument in support of its request for a contest case hearing is the potential affect of the Commission’s acknowledgement at the EFSC. MIP argues that this Commission should provide the legal process that the EFSC is “circumventing” by relying on the Commission’s acknowledgment order to determine need. The legislature delegated the authority to determine the need for the proposed transmission line to the EFSC, not to this Commission. The Commission would be exceeding its legislatively delegated authority if it attempted to determine whether the EFSC’s need standard has been met. If MIP believes that EFSC’s process is deficient, then MIP should raise the issue at the EFSC. It is not this Commission’s role to compensate for alleged deficiencies in another agency’s processes. MIP’s motion for a contested case hearing is denied.

Dated this 17th day of May, 2010, at Salem, Oregon.

  
Sarah K. Wallace  
Administrative Law Judge

<sup>3</sup> Motion for Contested Case Hearing at 1 (Mar 2, 2010).

<sup>4</sup> See Order No. 07-002 at 25.

<sup>5</sup> See *id.* at 16.

<sup>6</sup> ORS 183.310(2)(a)(A).

<sup>7</sup> ORS 183.310(6)(a)(B).