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April 7, 2023

VIA ELECTRONIC FILING

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

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

Attention Filing Center:

Attached for filing in the above-referenced docket is Idaho Power Company's Surrebuttal Testimony and Exhibits of Mark Bastasch (Idaho Power/2000-2003).

Please contact this office with any questions.

Thank you,

Suzanne Prinsen
Legal Assistant

Attachments

DOCKET PCN 5 - CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2023 Idaho Power Company's Surrebuttal Testimony of Mark Bastasch 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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DATED: April 7, 2023

/s/ Suzanne Prinsen

Suzanne Prinsen
Legal Assistant

Exhibit List

- Idaho Power/2001 – Excerpt from Idaho Power Response to Larkin DR 19 – Attachment 2, EFSC Proposed Order on ASC (July 2, 2020)
- Idaho Power/2002 – OAR 340-035-0035 – Table 9
- Idaho Power/2003 – EFSC Exceptions Hearing – Day 3 (Aug. 31, 2022)

1 **I. INTRODUCTION AND SUMMARY**

2 **Q. Please state your name, your place of employment, and your position.**

3 A. My name is Mark Bastasch. I am employed as Principal Acoustical Engineer with the
4 consulting firm, Jacobs Engineering Group Inc. (“Jacobs”). I was previously employed by
5 CH2M until that company was acquired by Jacobs in 2017. My business address is 2020
6 SW 4th Avenue, Suite 300, Portland, OR 97201.

7 **Q. Are you the same Mark Bastasch that previously filed Reply Testimony in this
8 matter?**¹

9 A. Yes.

10 **Q. What is the scope and purpose of your Surrebuttal Testimony?**

11 A. The purpose of my Surrebuttal Testimony is to respond to the STOP B2H Coalition’s
12 (“STOP B2H”) arguments relevant to my Reply Testimony.

13 **II. RESPONSES TO THE REBUTTAL TESTIMONY OF STOP B2H**

14 **Q. Please describe STOP B2H’s concern, as expressed in its Rebuttal Testimony,
15 regarding the Energy Facility Siting Council’s (“EFSC”) decision to grant the
16 Boardman to Hemingway Transmission Line Project (“B2H” or the “Project”) an
17 exception to, and variance from, the Oregon Department of Environmental Quality’s
18 (“ODEQ”) ambient antidegradation standard.**

19 A. STOP B2H makes two arguments regarding EFSC’s issuance of an exception to and
20 variance from the ambient antidegradation standard for B2H. First, STOP B2H takes issue
21 with the fact that EFSC granted one overall exception to, and variance from, the ambient
22 antidegradation standard for the B2H transmission line as a whole, instead of granting an
23 exception and variance for every individual noise sensitive receptor (“NSR”).² And

¹ Idaho Power/1100-1115 (Feb. 21, 2023).

² STOP B2H’s Rebuttal Testimony and Exhibits of Jim Kreider (STOP B2H/200, Kreider/19-20) (Mar. 20, 2023).

1 second, STOP B2H argues that EFSC erred in granting B2H an exception³ to the ambient
2 antidegradation standard based on the percentage of total hours of the year when foul
3 weather occurred rather than relying on Table X-8 of Exhibit X to the Application for Site
4 Certificate (“ASC”)—concerning the percentage of days with one hour or more of foul
5 weather—which STOP B2H argues is the most accurate measurement of frequency of
6 foul weather.⁴

7 **Q. How do you respond to STOP B2H’s first argument regarding EFSC’s grant of an**
8 **exception to and variance from the ambient antidegradation standard for the entire**
9 **B2H transmission line?**

10 A. To the extent the argument is a legal one, Idaho Power Company’s (“Idaho Power” or the
11 “Company”) lawyers will respond to it in briefing. However, I can say that I am aware that
12 EFSC specifically addressed this issue in the Final Order and found that it was appropriate
13 to issue one exception and variance for the line as a whole.⁵

14 **Q. What is your response to STOP B2H’s argument about the frequency of foul weather**
15 **that is expected to cause exceedances?**

16 A. First, I disagree with STOP B2H’s argument that ODEQ’s Noise Rules require EFSC and
17 Idaho Power to estimate the frequency of potential exceedances of the ambient
18 antidegradation standard using the percentage of days with one hour or more of foul
19 weather, as opposed to considering the percentage of the total number of hours in a year
20 when foul weather is expected to occur. In making its argument, STOP B2H relies on the
21 Noise Rules’ definition of the term “any one hour” in OAR 340-035-0015(7), which means

³ STOP B2H actually states that it is objecting to EFSC’s grant of a variance for B2H, and not an exception, on this basis, but the context makes clear that STOP B2H is referring to EFSC’s grant of an exception. Frequency of foul weather was not used by EFSC to determine the appropriateness of granting a variance from the ambient antidegradation standard, but rather for determining whether to grant an exception to the ambient antidegradation standard under OAR 340-035-0035(6)(a) for “[u]nusual and/or infrequent events.” See Idaho Power’s Supplement to Petition for CPCN, Attachment 1 (Final Order) at 688-89 of 10603 (Oct. 7, 2022) [hereinafter, “Final Order”].

⁴ STOP B2H/200, Kreider/20-22.

⁵ Final Order at 687 of 10603.

1 “any period of 60 consecutive minutes during the 24-hour day.”⁶ STOP B2H seems to
2 believe this term is relevant to the concept of “frequency” for the purposes of considering
3 an exception to ODEQ’s Noise Rules. However, the term “any one hour,” as it appears in
4 the rules, is not related to the determination of the frequency of exceedances for the
5 purpose of evaluating whether an exception is warranted under OAR 340-035-0035(6)(a),
6 but rather applies to the determination of the occurrence of an exceedance of the ambient
7 antidegradation standard at an NSR during monitoring under
8 OAR 340-035-0035(1)(b)(B)(i). Moreover, it is worth noting that the Oregon Supreme
9 Court found no legal error in EFSC’s determination that exceedances of the ambient
10 antidegradation standard would be unusual or infrequent based on evaluating the
11 percentage of total hours in a year when foul weather was expected to occur.⁷

12 Perhaps more importantly, I disagree that a sole focus on the number of days when
13 an exceedance might occur provides a fair or full understanding of the frequency of
14 exceedances for the purposes of considering noise impacts. Doing so erroneously
15 suggests that a potential exceedance lasting one hour is equivalent to an exceedance
16 which lasts 24 hours.

17 **Q. STOP B2H also asserts that your reliance on the Bonneville Power Administration’s**
18 **(“BPA”) interpretation of frequency as support for EFSC’s grant of an exception for**
19 **B2H to ODEQ’s Noise Rules was flawed as BPA is a federal agency that is not**
20 **subject to Oregon’s ambient antidegradation standard.⁸ Is this correct?**

21 A. No. While it is true that BPA is a federal agency, Executive Order No. 12088 requires that

⁶ STOP B2H/200, Kreider/21.

⁷ *STOP B2H Coalition v. Or. Dep’t of Energy (In re Site Certificate)*, 370 Or 792 at 807-08, 2023 Ore. LEXIS 133 at *21-22 (Mar. 9, 2023) (“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.”).

⁸ STOP B2H /200, Kreider/21-22.

1 all federal agencies comply with state and local noise control regulations, including
2 ODEQ's Noise Rules.⁹ BPA operated under temporary noise guidelines until the early
3 1980s when it worked with ODEQ to adopt interpretations of ODEQ's Noise Rules.¹⁰
4 BPA's memorandum dated May 26, 1982 specifically states that "BPA will meet State and
5 local noise control regulations" and explains that BPA and ODEQ reached an
6 interpretation of the Noise Rules that concluded that given BPA's meteorological
7 assessment of weather east of the Cascades, corona noise caused by foul weather
8 conditions east of the Cascades would be by definition "infrequent," and therefore,
9 transmission lines in that region would be eligible for an exception to the Noise Rules.¹¹

10 **Q. STOP B2H also argues that even if BPA's 1982 memorandum interpreting frequency**
11 **was applicable, B2H would not meet BPA's criteria for an exception because the**
12 **memorandum's interpretation was based on meteorological data that showed a rain**
13 **rate from 0.8 to 5.0 millimeters per hour will occur less than one percent of the time**
14 **during the year east of the Cascades, and notes that exceedances are expected "48**
15 **days per year."**¹² **How do you respond?**

16 **A.** I disagree with STOP B2H's argument for several reasons. First, characterizing the days
17 per year an exceedance may occur treats an exceedance of one hour the same as an
18 exceedance of 24 hours. BPA's 1982 memorandum does not refer to a days per year
19 metric, rather it refers to the "percent of time during the year" when foul weather is
20 present.¹³ Second, the meteorological analysis in BPA's 1982 memorandum applies
21 broadly to areas "east of the Cascades," and does not identify that additional

⁹ Idaho Power/1113, Bastasch/1.

¹⁰ See Idaho Power/1113, Bastasch/1.

¹¹ Idaho Power/1113, Bastasch/1 ("Based on a meteorological analysis of the frequency of these rain rates (0.8–5 mm/hr), [alternating current] transmission lines east of the Cascades will meet this criteria.").

¹² STOP B2H/200, Kreider/21-22; see also Idaho Power/1113, Bastasch/1-2.

¹³ Idaho Power/1113, Bastasch/1.

1 meteorological analysis is required between the macro (i.e., all areas east of the
2 Cascades) and micro (e.g., the B2H Project area). Thus, the framework presented in
3 BPA's 1982 memorandum is consistent with EFSC's findings, supporting the granting of
4 an exception for B2H in this case.¹⁴

5 **Q. STOP B2H argues that it is incorrect for Idaho Power to claim that its noise**
6 **monitoring methodology and analysis is conservative because, in a number of**
7 **respects, Idaho Power was just complying with ODEQ's Sound Measurement**
8 **Procedure Manual (NPCS-1) ("Sound Manual"). In particular, STOP B2H points out**
9 **that ODEQ's Sound Manual requires Idaho Power to conduct its monitoring**
10 **outdoors instead of indoors, to exclude measurements during high winds and when**
11 **precipitation will affect results, and to use late-night measurements.¹⁵ How do you**
12 **respond?**

13 A. I agree that Idaho Power's noise monitoring methodology and analysis was designed to be
14 generally consistent with ODEQ's Sound Manual and was approved by the Oregon
15 Department of Energy ("ODOE"). However, many of the requirements of the ODEQ Sound
16 Manual are in and of themselves conservative. For instance, while the ODEQ Sound
17 Manual dictates that periods of high winds be excluded from ambient sound level
18 calculations, these elevated sound levels nonetheless persist during these wind events.¹⁶
19 As a result, the calculated ambient sound level will reflect only periods of relative calm,
20 which may be uncharacteristically low. This is also the case during precipitation events.
21 Moreover, the requirement that late-night data be used was intended to result in an ambient
22 background sound level reflecting the quietest period of the day. And I would note that,
23 contrary to STOP B2H's statement, basing ambient background sound levels on late-night

¹⁴ Final Order at 688-89 of 10603.

¹⁵ STOP B2H/200, Kreider/22-24.

¹⁶ Idaho Power/1108, Bastasch/5-6 ("Higher wind speeds produce higher sound levels.").

1 data is not required by ODEQ's Sound Manual but rather was a requirement imposed by
2 ODOE that rendered Idaho Power's analysis even more conservative than that required by
3 ODEQ.

4 **Q. STOP B2H also seems confused as to why Idaho Power's assumption that the**
5 **transmission line is operating at 550 kilovolts ("kV") is conservative.¹⁷ Can you**
6 **please explain how Idaho Power's assumption regarding voltage was conservative?**

7 A. Yes. As I stated in my Reply Testimony,¹⁸ Idaho Power modeled sound levels from the
8 transmission line assuming that B2H would be operating at the maximum voltage level of
9 550-kV, which is the voltage at which corona sounds would be at their loudest.¹⁹ However,
10 in fact, the Company expects that B2H will operate at maximum voltage only 0.01 percent
11 of the time, with a normal operating voltage of 525 kV approximately 50 percent of the
12 time.²⁰ Importantly, normal operating conditions at 525 kV will yield approximately 2 dBA
13 less sound than the 550 kV voltage level that was used in the sound modeling.²¹ **Thus,**
14 ***under normal operating conditions, over half of the modeled exceedances in the***
15 ***Attachment X-4 of the Final Order will likely not occur.***²²

16 **Q. STOP B2H also argues that your statement that Idaho Power was conservative in**
17 **selecting representative baseline monitoring positions ("MPs") because the**
18 **Company erred on the side of selecting the quietest MP where there were several**
19 **options is incorrect because MP 11—which the Company selected to represent**
20 **NSRs in the Morgan Lake area—was located near a railroad.²³ How do you respond?**

¹⁷ STOP B2H/200, Kreider/23.

¹⁸ Idaho Power/1100, Bastasch/18-19.

¹⁹ Idaho Power/1103, Bastasch/11 (Idaho Power's Response to Staff Data Request 26, Attachment 5, ASC, Exhibit X).

²⁰ Final Order at 682 of 10603.

²¹ Final Order at 682 of 10603.

²² Idaho Power's Supplement to Petition for CPCN, Attachment 1 (Final Order, Attachment X-4, Revised Tabulated Summary of Acoustic Modeling Results by Receptor Location) at 10553-58 of 10603 (Oct. 7, 2022) [hereinafter, "Final Order, Attachment X-4"].

²³ STOP B2H/200, Kreider/23.

1 A. I disagree with STOP B2H's argument for several reasons. First, MP 11 is no longer
2 relevant as Idaho Power's supplemental monitoring at four locations replaced MP 11 (see
3 Attachment X-4 to the Final Order).²⁴ Second, Idaho Power's supplemental monitoring
4 produced very similar results to the original monitoring in the Morgan Lake area. For
5 example, Idaho Power selected MP 100 to represent NSRs closest to Morgan Lark Park
6 as MP 100 was located on private property on the parcel immediately adjacent to Morgan
7 Lake Park and was in a very similar setting as the park. The ambient baseline sound level
8 at MP 100 was 31 dBA, which was very similar to the 32 dBA ambient sound level at
9 MP 11. The remaining three supplemental MPs used to represent the Morgan Lake area
10 (MP 101 and MP 102) and the La Grande valley near I-84 (MP 103) produced ambient
11 sound levels equal to or higher than that measured at MP 11. Accordingly, EFSC found
12 that Idaho Power's supplemental monitoring confirmed that MP 11 was reasonably
13 representative.²⁵

14 **Q. STOP B2H argues that Idaho Power underestimated the number of NSRs that would**
15 **likely experience exceedances by not including NSRs that are 1 or 2 dBA below the**
16 **ambient antidegradation standard threshold of 10 dBA.²⁶ Does the ambient**
17 **antidegradation standard envision a margin of error?**

18 A. To the extent that STOP B2H's argument raises a legal question, it is my understanding
19 that Idaho Power's lawyers will respond in briefing. However, I am aware that under
20 OAR 340-035-0035(1)(b)(B)(i), an exceedance of the ambient antidegradation standard

²⁴ Final Order, Attachment X-4 at 10553-58 of 10603.

²⁵ Final Order at 679 n. 740 of 10603 ("In this supplemental monitoring, the mean L50 was 31 dBA at MP 100; 36 dBA at MP 101; 32 dBA at MP 102; and 43 dBA at MP 103. The one decibel difference between MP 100 and MP 11 (31 dBA vs 32 dBA) is so subtle that it is not perceivable by the human ear. Consequently, the sound levels measured at MP 100 do not invalidate the applicant's initial selection of MP 11 as representative of the area, nor do the supplemental monitoring results impact or alter the Council's evaluation of the facility's compliance with the Noise Rules.").

²⁶ STOP B2H/200, Kreider/24.

1 **only** occurs when the predicted noise from the Project is more than 10 dBA above ambient
2 sound levels.

3 **Q. STOP B2H also points to BPA’s 1982 memorandum as supporting a margin of**
4 **tolerance of +/- 2 dBA for assessing exceedances of the ambient antidegradation**
5 **standard.²⁷ Does BPA’s 1982 memorandum support a 2 dBA margin of error for**
6 **determining an exceedance under the ambient antidegradation standard?**

7 A. No, BPA’s 1982 memorandum does not support a 2 dBA margin of error for determining
8 an exceedance of the ambient antidegradation standard at an NSR. Rather, the
9 memorandum establishes a design standard at the edge of the right-of-way—which is to
10 “be determined within a [+/-] 2 dB(a) tolerance.”²⁸

11 **Q. STOP B2H asserts that Idaho Power’s supplemental monitoring during the EFSC**
12 **contested case proceeding was not conservative because the monitoring was**
13 **inconsistent with the protocols in ODEQ’s Sound Manual.²⁹ Is STOP B2H correct**
14 **that Idaho Power’s supplemental monitoring was not generally consistent with**
15 **ODEQ’s Sound Manual?**

16 A. No, STOP B2H is incorrect. As I discussed in my Reply Testimony,³⁰ Idaho Power’s
17 supplemental monitoring from October 10 to November 1, 2021 used the same
18 methodology and conservative assumptions to measure and calculate the mean ambient
19 noise levels that were approved by ODOE and its noise consultants for the Company’s
20 initial noise monitoring, which were generally consistent with ODEQ’s Sound Manual.³¹

²⁷ STOP B2H/200, Kreider/25.

²⁸ Idaho Power/1113, Bastasch/1-2.

²⁹ STOP B2H/200, Kreider/26.

³⁰ Idaho Power/1100, Bastasch/13.

³¹ Final Order at 679 n. 740 of 10603 (“During the contested case, the applicant provided supplemental monitoring at MP 100, MP 101, MP 102 and MP 103, to represent NSRs nearer to Morgan Lake and, for MP 103, in the La Grande valley closer to I-84. The applicant applied the same methodologies used in its initial monitoring, and established the baseline noise levels based on the quiet late-night period of midnight to 5:00 a.m. with calm winds.”).

1 **Q. STOP B2H also argues that Idaho Power underestimated the number of NSRs that**
2 **are likely to experience exceedances because Idaho Power used representative**
3 **MPs for clusters of NSRs and points to “spot check” noise monitoring performed**
4 **by Kerrie Standlee at Greg Larkin’s property as supporting this argument.³² How**
5 **do you respond?**

6 A. I disagree with STOP B2H’s argument for several reasons. As an initial matter, ODOE
7 and its noise consultants—Golder Associates and Standlee and Associates (the same)—
8 approved the use of representative MPs.³³ Second, EFSC, in adopting the Contested
9 Case Order, found that Kerrie Standlee’s monitoring at Mr. Larkin’s property was not
10 persuasive evidence because Mr. Standlee conceded when discussing his less than four-
11 hour monitoring event that “the results from one night of measurements at the residence
12 should not be used to determine representative ambient noise levels for the residence.”³⁴

13 **Q. STOP B2H also argues that Idaho Power underestimated the number of NSRs that**
14 **are likely to experience exceedances because the analysis area for assessing noise**
15 **impacts under Exhibit X was set at a half-mile instead of one mile.³⁵ How do you**
16 **respond?**

17 A. I disagree. As STOP B2H concedes, in response to comments to the Draft Proposed
18 Order, Idaho Power performed a secondary review using the same methodologies and
19 assumptions out to one mile in areas assigned to MPs with low late-night baseline sound
20 levels (i.e., areas most likely to experience an exceedance).³⁶ This secondary analysis

³² STOP B2H/200, Kreider/24-25.

³³ Final Order at 669-78 of 10603.

³⁴ Idaho Power’s Supplement to Petition for CPCN, Attachment 1 (Final Order, Attachment 6, Contested Case Order at Amended By Council) at 8860 of 10603 (Oct. 7, 2022).

³⁵ STOP B2H/200, Kreider/25.

³⁶ Idaho Power/2001, Bastasch/2-3 n. 674 (Excerpt from Idaho Power Response to Larkin DR 19 – Attachment 2, EFSC Proposed Order on ASC (July 2, 2020)) (“The applicant performed this broader review of potentially affected NSRs beyond one-half mile and out to 1 mile for five areas assigned to monitoring points with low late-night baseline sound levels (MP06, MP11, MP15, MP34, and MP35), and identified NSRs beyond the one-half mile analysis area in Exhibit X. In response to comments on the DPO,

1 resulted in only one potential additional exceedance at an NSR, not five as STOP B2H
2 asserts.³⁷

3 **Q. STOP B2H also argues that there are a number of predicted exceedances in Malheur**
4 **County and that Idaho Power’s noise analysis emphasizing dry conditions east of**
5 **the Cascades overlooks these impacts.³⁸ Is STOP B2H correct?**

6 A. For the most part, no. While STOP B2H is correct that there are a number of ambient
7 antidegradation standard exceedances predicted in Malheur County,³⁹ the sound levels
8 during foul weather at these locations are less than the most restrictive Table 8 sound
9 level standard of 50 dBA,⁴⁰ and even less than the most restrictive sound level standard
10 for “Quiet Areas”⁴¹ of 45 dBA.⁴² STOP B2H also seems to be conflating BPA’s 1982
11 memorandum detailing a default exception to the Noise Rules for transmission lines east
12 of the Cascades based on the meteorological data in that region showing that foul weather
13 was “infrequent” with the conservative nature of Idaho Power’s noise analysis in
14 determining whether an exceedance may be present at an NSR. For example, as
15 discussed above, Idaho Power’s noise analysis for predicting exceedances is
16 conservative in part because the Company assumed that the transmission line was
17 operating at 550 kV, and under normal operating conditions at 525 kV, actual sound levels

the applicant performed a secondary review using the same methodologies and assumptions, which resulted in the identification of one potential additional exceedance at an NSR that was not previously addressed in Exhibit X.”).

³⁷ Idaho Power/2001, Bastasch/2-3 n. 674 (Excerpt from Idaho Power Response to Larkin DR 19 – Attachment 2, EFSC Proposed Order on ASC (July 2, 2020)).

³⁸ STOP B2H/200, Kreider/25.

³⁹ Final Order, Attachment X-4 at 10555-56 of 10603.

⁴⁰ OAR 340-035-0035(1)(b)(B)(i) (Table 8 sound level standards); Idaho Power/1104 (OAR 340-035-0035 – Table 8).

⁴¹ “Quiet Area” means “any land or facility designated by the [Environmental Quality Commission (“EQC”)] as an appropriate area where the qualities of serenity, tranquility, and quiet are of extraordinary significance and serve an important public need, such as, without being limited to, a wilderness area, national park, state park, game reserve, wildlife breeding area, or amphitheater. [ODEQ] shall submit areas suggested by the public as quiet areas, to the [EQC], with the [ODEQ’s] recommendation.” OAR 340-035-0015(50).

⁴² OAR 340-035-0035(1)(c) (Table 9 sound level standards for Quiet Areas); see also Idaho Power/2002 (OAR 340-035-0035 – Table 9).

1 will be approximately 2 dBA less than modeled at 550 kV. Accordingly, under normal
2 operating conditions for the transmission line (i.e., operating at 525 kV), over half of the
3 modeled exceedances in Malheur County would not occur.⁴³ The fact that Idaho Power's
4 modeling assumptions are likely overestimating the number of NSR exceedances in
5 Malheur County is separate and apart from past precedent regarding BPA's and ODEQ's
6 interpretation of "infrequent" for the purpose of granting an exception to ODEQ's Noise
7 Rules.

8 **Q. STOP B2H also argues that Idaho Power's noise analysis was not conservative and**
9 **that the Company likely underestimated the number of NSRs likely to experience**
10 **exceedances because the Company did not use the default ambient sound level of**
11 **26 dBA allowed for wind energy facilities under OAR 340-035-0035(1)(b)(B)(iii)(I).⁴⁴**

12 **How do you respond?**

13 A. The default ambient sound level of 26 dBA is only allowed to be used for wind energy
14 facilities, thus such an option was not available to Idaho Power and a monitoring protocol
15 was developed in consultation with ODOE. The subsequent noise analysis utilized the
16 measured data, some of which was less than 26 dBA and some of which was above
17 26 dBA.

18 **Q. STOP B2H asserts that your statement that "Idaho Power has conservatively**
19 **assumed that the entire Project is being sited on land that has not previously been**
20 **used for commercial or industrial purposes" is incorrect because no assumption**
21 **was necessary, and Idaho Power simply applied the law.⁴⁵ Is this correct?**

22 A. No, STOP B2H's assertion is incorrect, and an assumption was necessary. As EFSC
23 detailed in the Final Order:

⁴³ Fifteen of the 27 modeled exceedances in Malheur County are at or below +12 dBA. See Final Order, Attachment X-4 at 10555-56 of 10603.

⁴⁴ STOP B2H/200, Kreider/26.

⁴⁵ STOP B2H/200, Kreider/22.

1 The applicant assumed the facility would be a new industrial or commercial
2 noise source located on previously unused industrial or commercial sites.
3 The standards for noise sources proposed to be located on previously
4 unused industrial or commercial sites are more restrictive than on sites of
5 previous industrial or commercial use. ***While historic use was not***
6 ***evaluated for the entire analysis area, based on land use zoning***
7 ***designations presented in ASC Exhibit K and the applicant's***
8 ***application of the more restrictive noise standards, the Council***
9 ***evaluates the facility under OAR 340-035-0035(b)(B) as a new noise***
10 ***source located on a previously unused industrial or commercial***
11 ***site.***⁴⁶

12
13 **Q. STOP B2H further argues that because the mitigation required by Recreation**
14 **Condition 1 of the site certificate requires shorter H-frame towers near Morgan Lake**
15 **Park, and therefore will necessarily increase the number of towers near the park,**
16 **campsites in Morgan Lake Park noted in Attachment X-4 of the Final Order will likely**
17 **become NSRs.⁴⁷ How do you respond?**

18 A. There may be some confusion on this point. To be clear, the increased sound level
19 associated with the H-frame towers required by Recreation Condition 1 near Morgan Lake
20 Park were included in the supplemental modeling.

21 **Q. Finally, STOP B2H asserts that “[r]ecreation sites (as well as scenic and protected**
22 **areas), also have noise standards that must be complied with” and Attachment X-4**
23 **of the Final Order shows that there are several modeled exceedances of**
24 **recreational day-use areas in Morgan Lake Park.⁴⁸ How do you respond?**

25 A. To the extent STOP B2H's argument raises a legal question, it is my understanding that
26 Idaho Power's lawyers will respond to this issue in briefing. However, while I am not a
27 lawyer, I am aware that the noise level standards for “Quiet Areas”⁴⁹—which STOP B2H
28 is seemingly referencing in its Rebuttal Testimony—are not applicable to the recreational

⁴⁶ Final Order at 666 of 10603 (emphasis added).

⁴⁷ STOP B2H/200, Kreider/26.

⁴⁸ STOP B2H/200, Kreider/27.

⁴⁹ OAR 340-035-0015(50) (definition of Quiet Areas); see also OAR 340-035-0035(1)(c) (Table 9 sound level standards for Quiet Areas).

1 day-use areas in Morgan Lark Park as Quiet Areas are officially designated as such by
2 the Oregon Environmental Quality Commission (“EQC”) and there is no indication that
3 there are designated Quiet Areas within the site boundary or within the vicinity of the
4 Project.⁵⁰ Moreover, with respect to day-use recreational areas at Morgan Lake Park, I
5 am aware that EFSC found that such areas are not subject to ODEQ’s Noise Rules.⁵¹

6 **Q. STOP B2H argues that Noise Control Condition 3 should be revised to require the**
7 **transmission line to undergo upgrades for “new masking technologies” as they**
8 **become available, and that regular transmission line inspections and maintenance**
9 **should be incorporated into the condition.⁵² Do you find that such changes to Noise**
10 **Control Condition 3 are reasonable and necessary?**

11 A. It is my understanding that Idaho Power will address this issue in briefing. However, I am
12 aware that EFSC explicitly rejected these same changes to Noise Control Condition 3 as
13 unnecessary at the Exceptions Hearing.⁵³

14 **Q. STOP B2H argues that Noise Control Condition 2 is insufficient because the site**
15 **certificate condition places the burden on landowners to bear the cost of employing**
16 **an acoustical engineer to prove there is an exceedance at properties that were not**
17 **previously determined to be NSRs under Noise Control Condition 1.⁵⁴ Do you find**
18 **that STOP B2H’s proposed changes to Noise Control Condition 2 are reasonable**
19 **and necessary?**

⁵⁰ See Idaho Power/1100, Bastasch/5.

⁵¹ Final Order at 555 of 10603 (“The applicant evaluates potential noise impacts from operation of the proposed transmission line at campsites, as potential noise-sensitive receptor locations, at Hilgard State Park and Morgan Lake Park for the evaluation under the [ODEQ] noise rules. At these locations, the applicant provides updated noise modeling using the 17 H-frame tower structures for the Morgan Lake alternative and identified campsites as noise sensitive receptors (NSRs); 142, 143, 147, and 148 at Morgan Lake Park. **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 [ODEQ] noise rules.**”) (internal emphasis added).

⁵² STOP B2H/200, Kreider/27-28.

⁵³ Idaho Power/2003, Bastasch/130-39 (EFSC Exceptions Hearing – Day 3 (Aug. 31, 2022)).

⁵⁴ STOP B2H/200, Kreider/29.

1 A. It is my understanding that Idaho Power will address this issue in briefing. However, I am
2 aware that EFSC explicitly rejected these same changes to Noise Control Condition 2 as
3 unnecessary at the Exceptions Hearing.⁵⁵ Moreover, I am aware that under Noise Control
4 Condition 2, a landowner need only provide in their complaint the following:

5 the date the certificate holder [Idaho Power] received the complaint, the
6 nature of the complaint, weather conditions of the date for which the
7 complaint is based (such as wind speed, temperature, relative humidity,
8 and precipitation), duration of perceived noise issue, the complainant's
9 contact information, and the location of the affected property.⁵⁶

10
11 Furthermore, where a complainant's property or properties were not included as
12 NSRs, Noise Control Condition 2 places the burden on Idaho Power to model the sound
13 level increases using the methods set in Exhibit X to the ASC **unless** the complainant
14 voluntarily provides alternative noise data.⁵⁷ If the complainant voluntarily provides
15 alternative noise data, the complaint will be verified through site-specific sound monitoring
16 conducted by an Oregon registered Professional Engineer, Board Certified by the Institute
17 of Noise Control Engineering noise specialist, employed or contracted by Idaho Power.⁵⁸

18 **Q. Does this conclude your Surrebuttal Testimony?**

19 A. Yes.

⁵⁵ Idaho Power/2003, Bastasch/109-15 (EFSC Exceptions Hearing – Day 3 (Aug. 31, 2022)).

⁵⁶ Idaho Power's Supplement to Petition for CPCN, Attachment 1 (Final Order, Attachment 1, Site Certificate) at 786-87 of 10603 (Noise Control Condition 2) [hereinafter, "Final Order, Attachment 1"].

⁵⁷ Final Order, Attachment 1 at 788 of 10603 ("If the complainant's NSR property or properties are not included in Attachment X-5 of the Final Order on the ASC, the certificate holder [Idaho Power] shall model the sound level increases using the methods set forth in ASC Exhibit X, unless the complainant voluntarily provides alternative noise data.").

⁵⁸ Final Order, Attachment 1 at 788 of 10603 ("If the complainant voluntarily provides alternative noise data and the data suggests an exceedance that had not previously been identified and mitigated, and/or an exceedance not otherwise allowed under Noise Control Condition 4 or Noise Control Condition 5, the complaint shall be verified through site specific sound monitoring conducted by an Oregon registered Professional Engineer, Board Certified by the Institute of Noise Control Engineering noise specialist, employed or contracted by the certificate holder [Idaho Power], in accordance with NPCS-1 unless otherwise approved by the [ODOE]. If site specific sound monitoring is not authorized by the complainant, the certificate holder's modeling results may be relied upon to determine compliance.").

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

Docket PCN 5

In the Matter of

IDAHO POWER COMPANY'S
PETITION FOR CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY

Surrebuttal Testimony of Mark Bastasch

Exhibit 2001

Excerpt from Idaho Power's Response to Larkin DR 19 -
Attachment 2, EFSC Proposed Order on ASC
(July 2, 2020)

April 7, 2023

**BEFORE THE
ENERGY FACILITY SITING COUNCIL
OF THE STATE OF OREGON**

In the Matter of the Application for Site Certificate)
for the Boardman to Hemingway Transmission Line)
PROPOSED ORDER ON)
APPLICATION FOR SITE)
CERTIFICATE)

July 2, 2020

1 10, 2012, and the supplemental measurement period commenced March 11, 2013 and ended
2 on June 12, 2013.

3
4 The Department relied upon its third-party consultant, Golder Associates, to review the
5 protocol. Based on review, Golder Associates confirmed that the sound measurement
6 procedures and baseline noise measurements were technically accurate.⁶⁷¹ Based on the
7 Department's third-party consultant recommendations and review, and review of facts
8 represented in ASC Exhibit X, the Department recommends Council approve the applicant's
9 sound monitoring points and measurement procedures, as allowed under OAR 340-035-
10 0035(3)(a) and (b).

11
12 As provided in ASC Exhibit X Section 3.2.1, the methods of the acoustic (modeling) analysis are
13 summarized below (Steps 1-6). To evaluate compliance with the ambient antidegradation
14 standard, the applicant evaluates compliance with the L50 noise standard, versus the L10 noise
15 standard, because it is more restrictive.

16
17 Step 1:⁶⁷² NSRs, including properties normally used for sleeping, schools, churches, hospitals
18 public libraries, and campsites were identified within the one-half mile analysis area based
19 on aerial imagery, GIS analysis, property records databases, and visual verification. The
20 applicant questions if seasonally used campsites (particularly if the campsite is not open for
21 more than half of the year) should be considered property normally used for sleeping under
22 the DEQ noise rules, nonetheless, the applicant provided a supplemental analysis evaluating
23 the campsites at Morgan Lake and Hilgard State Park, discussed in this section and Section
24 IV.L., Recreation and Section IV.F., Protected Areas, respectively, of this order.⁶⁷³ On a case-
25 by-case basis, in areas where the late-night baseline sound level was unusually low (e.g.,
26 less than 26 dBA), noise sensitive properties within one mile were identified and included in
27 the analysis.⁶⁷⁴

⁶⁷¹ B2HAPPDoc ApASC Golder Noise Memo 1788390 B2H Exhibit X 2017-12-19.

⁶⁷² Where it was unclear if a structure was noise sensitive (e.g., residence, school, campground) vs. non-noise sensitive (e.g., barn, garage), the applicant attempted to visually verify from public right-of-way (ROW) the use of each structure. B2HAPPDoc3-41 ASC 24 Exhibit X Noise ASC 2018-09-28, Section 3.2.1.

⁶⁷³ The applicant explains that Hilgard Junction State Park provides seasonal camping from April 18 – October 15, approximately half the calendar year. Nonetheless, the applicant analyzed potential noise impacts at the park by comparing it to the nearby School/Correctional Facility identified as NSR 29 in the ASC. The modeling for NSR 29 showed a foul weather increase of 6 dBA. However, the park is farther from the proposed transmission line than NSR 29, which means the expected noise increase at the park would be less than at NSR 29, because noise attenuation increases with distance from the noise source. Because the increase at NSR 29 was less than 10 dBA, the increase at the park would similarly be less than 10 dBA and therefore compliant with the ambient antidegradation standard.

⁶⁷⁴ Based on the applicant's acoustic modeling analysis, foul weather sound level at an elevation of 4,000 feet and a distance of one-half mile is 36 dBA. At an elevation of 1,500 feet and a distance of one-half mile the modeled sound level is 34 dBA. The applicant notes that while the vast majority of NSRs are at elevations less than 4,000 feet, the modeled level of 36 dBA is supportive of a one-half mile distance when using 26 dBA as a proxy for a quiet rural ambient baseline. On a case-by-case basis, in areas where the late-night baseline sound level was unusually low (e.g., less than 26

1 Step 2: Sound source characteristics for noise modeling of the transmission line during foul
2 weather conditions were determined. The highest audible noise levels occur in conditions of
3 foul weather, therefore, to the applicant compared the maximum corona sound level
4 expected during meteorological conditions conducive to corona generation background and
5 sound levels must be presented as a function of meteorological conditions. Principal
6 contributors to the existing acoustic environment included motor vehicle traffic, railroad
7 traffic, streams and rivers, mobile farming equipment and activities, farming irrigation
8 equipment, ATVs, periodic aircraft flyovers, residential yard sounds (i.e., people and pets),
9 ranch animals, and natural sounds such as birds, insects, and wind interaction with
10 vegetation and/or terrain.

11 Step 3: Initial screening-level modeling results of the transmission line were calculated
12 based on the foul weather conditions, and an assessment was completed to determine the
13 likely maximum received sound at NSRs within the monitoring analysis area. As a first-level
14 screening review for NSRs, the applicant then conservatively assumed and Department
15 recommended an ambient hourly L50 noise level of 20 dBA.⁶⁷⁵ Because ambient L50 noise
16 levels at any NSR cannot increase by more than 10 dBA in one hour, the associated
17 “threshold” to establish if there would be an exceedance to the ambient antidegradation
18 standard is 30 dBA.

19 Step 4: For NSRs that showed a potential exceedance based on the assumed 20 dBA
20 ambient hourly L50 noise level (30 dBA threshold) requested by the Department,
21 representative baseline sound measurements were conducted at or near 17 locations. As
22 discussed above, a sound monitoring protocol was developed in consultation with the
23 Department. Measurements were conducted over a period of 2 to 4 weeks at preselected
24 and approved monitoring positions in targeted areas.

25 Step 5: From the baseline measurements, the representative existing L50 sound levels were
26 calculated and new compliance thresholds were defined to assess conformance with the
27 ambient antidegradation standard. The representative existing L50 sound levels were
28 calculated by taking the average of the measured L50 sound levels for the late nighttime
29 period (12:00 a.m. to 5:00 a.m.). This late nighttime period demonstrates the quietest time
30 period and is conservatively assumed to be present at all times of the day. Atypical sources
31 of extraneous sound, such as sound produced by field crews setting up or calibrating the

dB(A), noise sensitive properties further than one-half mile were identified and included in the analysis. The applicant
performed this broader review of potentially affected NSRs beyond one-half mile and out to 1 mile for five areas
assigned to monitoring points with low late-night baseline sound levels (MP06, MP11, MP15, MP34, and MP35), and
identified NSRs beyond the one-half mile analysis area in Exhibit X. In response to comments on the DPO, the applicant
performed a secondary review using the same methodologies and assumptions, which resulted in the identification of
one potential additional exceedance at an NSR that was not previously addressed in Exhibit X.

⁶⁷⁵ The Department requested the applicant use 20 dBA as an assumed ambient sound level for the applicant to filter NSRs
in its initial screening level analysis, because 20 dBA is near silence thus a highly conservative assumption. B2HAPPDoc13
DPO IPC Responses to Select DPO Comments Rec'd by 2019-11-07; B2HAPP DPO IPC Responses - StopB2H - 4. Noise - 1st
Supplemental Response 2019-11-05.

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

Docket PCN 5

In the Matter of

IDAHO POWER COMPANY'S
PETITION FOR CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY

Surrebuttal Testimony of Mark Bastasch

Exhibit 2002

OAR 340-035-0035
Table 9

April 7, 2023



OAR 340-035-0035
Table 9
Industrial and Commercial Noise Source
Standards for Quiet Areas
Allowable Statistical Noise Levels in Any One Hour

	7:00 a.m. – 10:00 p.m.	10:00 p.m. – 7:00 a.m.
L ₅₀	50 dBA	45 dBA
L ₁₀	55 dBA	50dBA
L ₁	60 dBA	55dBA

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

Docket PCN 5

In the Matter of

IDAHO POWER COMPANY'S
PETITION FOR CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY

Surrebuttal Testimony of Mark Bastasch

Exhibit 2003

EFSC Exceptions Hearing – Day 3
(Aug. 31, 2022)

April 7, 2023

Hearing - Day 3

Council Review of Boardman to Hemingway Transmission Line

August 31, 2022



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OREGON DEPARTMENT OF ENERGY
ENERGY FACILITY SITE COUNCIL MEETING

Council Review of the Proposed Order/Proposed Contested
Case Order for the
Boardman to Hemingway Transmission Line

August 31, 2022

Day 3 of 3

8:00 a.m.

REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR 2121,
Oregon CCR 22-0002

1 A P P E A R A N C E S

2
3 OREGON DEPARTMENT OF ENERGY COUNCILMEMBERS:

4 KENT HOWE, Vice Chair
HANLEY JENKINS II
5 PERRY CHOCKTOOT
JORDAN TRUITT
6 CINDY CONDON
ANN BEIER
7 TODD CORNETT, Secretary

8 OREGON DEPARTMENT OF ENERGY STAFF:
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Senior Energy Facility Siting Analyst

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17 LAW OFFICE OF KARL G. ANUTA
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22
23 Also Present:

24 Irene Gilbert
25 Joe Horst
 Sam Myers

1 LA GRANDE, OREGON; AUGUST 31, 2022

2 8:00 a.m.

3 -o0o-

4
5 VICE CHAIR HOWE: Good morning, everyone.
6 Welcome back. The time is now eight o'clock in the
7 morning. And I would like to call the August 29th,
8 30th, and 31th, 2022 meeting of the Energy Facility
9 Siting Council to order.

10 Mr. Secretary, please call the roll.

11 SECRETARY CORNETT: Kent Howe.

12 VICE CHAIR HOWE: Here.

13 SECRETARY CORNETT: Hanley Jenkins.

14 COUNCILMEMBER JENKINS: Here.

15 SECRETARY CORNETT: Jordan Truitt.

16 COUNCILMEMBER TRUITT: Here.

17 SECRETARY CORNETT: Cindy Condon.

18 COUNCILMEMBER CONDON: Here.

19 SECRETARY CORNETT: Perry Chocktoot.

20 COUNCILMEMBER CHOCKTOOT: Here.

21 SECRETARY CORNETT: Ann Beier.

22 COUNCILMEMBER BEIER: Here.

23 SECRETARY CORNETT: You have a quorum,
24 Mr. Vice Chair.

25 VICE CHAIR HOWE: Okay. Are there any

1 agenda modifications?

2 SECRETARY CORNETT: Mr. Vice Chair, just as
3 a reminder, at the end of the meeting today, we will go
4 back to the meeting minutes from June and July. And
5 then there was, at least thus far, one item that was
6 pushed to the end of the meeting today, which was the
7 notification related to the blasting plan. So that's
8 the one remaining issue from all of the standards and
9 issues that the Council has heard thus far. So that's
10 the one that we will return to.

11 And we do have a proposal for Council, so
12 thank you to Christopher Clark. He did some research on
13 that and has provided that. And Sarah is working up a
14 proposal that we will have for Council on that one.

15 VICE CHAIR HOWE: Okay. Thank you.

16 So I have the following announcements.
17 Please silence your cell phones. Those participating
18 via phone or webinar, please mute your phone. And if
19 you receive a phone call, please hang up from this call
20 and dial back in after finishing your other call.

21 For those signed on to the webinar, please
22 do not broadcast your webcam. Reminder to Council and
23 anyone addressing the Council to please remember to
24 state your full name clearly and do not use the speaker
25 phone feature as it will create feedback.

1 For those testifying on B2H agenda item,
2 please use the "raise your hand" feature in Webex to
3 speak during the public comment period, or press star 3
4 to raise your hand if you are participating by
5 telephone.

6 You may sign up for email notices by
7 clicking the link on the agenda or on the Council web
8 page. You are also welcome to access the online mapping
9 tool and any documents by visiting our website.

10 Energy Facility Council meetings shall be
11 conducted in a respectful and courteous manner where
12 everyone is allowed to state their positions at the
13 appropriate times, consistent with Council rules and
14 procedures. Willful, accusatory, offensive, insulting,
15 threatening, insolent, or slanderous comments which
16 disrupt the Council meetings are not acceptable.

17 Pursuant to Oregon Administrative Rule
18 345.011.0080, any person who engages in unacceptable
19 conduct which disrupts the meeting may be expelled.

20 So today, we're continuing our review of the
21 proposed order and proposed contested case order and
22 exception hearing on the Boardman to Hemingway
23 Transmission Line.

24 We have Kellen Tardaewether, the Senior
25 Siting Analyst for the Oregon Department of Energy, and

1 Jesse Ratcliffe, Department of Justice Senior Assistant
2 Attorney General of the Natural Resources section.

3 So we are ready to move to the Noise Control
4 Regulation Standard. And we have issues NC11, -2, -3,
5 and -4. And so I'll turn it over to Ms. Tardaewether.

6 MS. TARDAEWETHER: Good morning. Thank you,
7 Vice Chair. Good morning, members of the Council.

8 For the record, my name is Kellen
9 Tardaewether, Senior Siting Analyst, Oregon Department
10 of Energy.

11 I'm going to do an introduction for Council
12 for noise. I'm going to deviate a little bit from what
13 my PowerPoint presentation had and we are all boarding
14 the train and we're leaving Council's standards and
15 we're headed to the realm of the other applicable
16 standards and rules.

17 So this is going to be exciting and we're
18 going to look at some rules. And I don't want
19 anybody -- there will be a lot, but I'm going to talk
20 you through what they are. And I think that's the best
21 way to set you up for the background for some of the --
22 the pretty technical information that you're going to be
23 hearing today regarding noise for the facility.

24 So we are in the realm of the noise control
25 regulations that are under the Department of

1 environmental qualities noise rules. And Council has
2 seen the noise rules before and we've talked about them.

3 But if the Council has wondered what are we
4 doing making decisions about DEQ's noise rules, I'm
5 going to show you why.

6 And while we're getting there, I'm going to
7 remind the Council that under the Council's general
8 standard of review, the, question is whether or not the
9 preponderance of evidence supports the conclusion that
10 the application for site certificate or the proposed
11 facility meets Council's standards, Council's statutes,
12 and then other applicable laws and statutes as
13 identify -- you know, in Oregon as identified in the
14 Second Amended Project Order. So that is where we're
15 going.

16 And so up here on my screen -- and there is
17 a little bit of delay. So this is in the proposed
18 order.

19 So this is -- this is why Council is making
20 decisions on the -- the DEQ noise rules, which is just
21 what I'm going to call them. They are noise
22 regulations. So the legislative assembly actually
23 withdrew funding.

24 So DEQ doesn't actually fund, administer, or
25 generally mediate or provide input or interpretation for

1 their rules or implementation of their rules.

2 However, the DEQ noise rules are still rules
3 that are -- apply in Oregon. Therefore, they fall into
4 that bucket underneath the general standard of review
5 that the Council must find -- must evaluate and find
6 compliance with.

7 Oh, my sharing bar. Bear with me here.

8 Okay. So this is the rule-set. Let me see
9 if I can make it bigger here for folks.

10 Okay. Noise control regulations for
11 industry and commerce, so I'm going to kind of walk
12 through here. These are standards and regulations.
13 We're going to skip over one. Those are existing noise
14 sources.

15 What are we talking about?

16 We're talking about new noise sources. So
17 there's new noise sources and we're on previously
18 unused -- previously used sites and new sources located
19 on previously unused sites.

20 And in the proposed order, the applicant
21 provides information and representations that the site
22 for the proposed transmission line is an unused site,
23 predominantly using information from Exhibit K, which is
24 information about land use.

25 The facility crosses mostly EFU lands and

1 some forested lands. But, in general, one of the ways I
2 think about it is like a used site would be a brown
3 field or already developed or an industrial site and an
4 unused site would be, generally, an undeveloped site.

5 The rules that fall under an unused site are
6 more stringent than a used site. So it is a more
7 conservative set of rules that would apply to the
8 facility.

9 So we're looking at this big "B," little
10 "i," and then, you know, "ii," so we're just going to
11 kind of walk through this.

12 Now, also what are we talking about with
13 noise?

14 We know we have a transmission line. We're
15 going to be constructing and operating a transmission
16 line. So there's noise associated with construction,
17 which I'll talk about that. And then there's noise
18 associated with the operation of the proposed facility.
19 The vast majority of that noise is the corona noise
20 associated with operating a high voltage transmission
21 line.

22 Generally speaking, the higher the voltage,
23 the more corona noise you may have under certain
24 circumstances.

25 Corona noise is most apparent in conditions

1 that have, like, weather conditions that have light
2 moisture so, like, a light rain that is light enough
3 that where the moisture would amplify the corona noise,
4 but not heavy enough rain to where the sound of the rain
5 would actually drowned out the corona noise.

6 So those are kind of the conditions in which
7 corona -- the corona effect would be the most amplified.

8 So underneath here the "no person owning or
9 controlling," this is where we have your -- the two
10 noise standards. And we have this -- I'm going to stop
11 or start with -- okay.

12 So we have this -- so the noise source here,
13 transmission lines are not allowed to increase the
14 ambient statistical noise levels by more than 10
15 decibels, "dBA," in any one hour. Okay. So that is
16 one. This is one of the noise standards.

17 We call that the "ambient degradation
18 standard" or the "anti-ambient degradation standard."

19 So this is where in any one hour the noise
20 from the facility cannot exceed 10 dBA.

21 The other, the other noise standard is the
22 maximum noise standard and there's this table eight.

23 And I have it later in the presentation,
24 which I'll go over. So this is the maximum noise levels
25 that are represented in this table. So those are the

1 two that we look at.

2 Okay. I'm going to scroll down. There
3 are -- so Council will just see here. This doesn't
4 apply. But there are separate rules that would apply to
5 a wind energy facility. This is not a wind energy
6 facility, so we are applying the non-wind rules.

7 Okay. Okay.

8 This is an applicable portion of the rules.
9 This is some direction about measurement and where
10 measurement of a noise source or measurement points
11 for -- on gaining data to establish what the existing
12 ambient or baseline noise is. So these are rules
13 that -- that provide direction about the location and --
14 and how to go about measurement.

15 Okay. The sub (5) are exceptions. So there
16 are explicit exemptions for noise under the DEQ noise
17 rules. One of them that we -- and the proposed order
18 does talk about several exemptions.

19 The one that really -- that kind of Council
20 is the most familiar with and that we talk about in the
21 proposed order is the exemption for sounds that
22 originate from a construction site.

23 So noise associated with constructing a
24 facility is exempt from these noise rules. They
25 contemplate that construction may be noisy. However,

1 there is a lengthy explanation of noise associated with
2 construction in the proposed order because that's also
3 where we talk and we pull in the assessment under
4 recreation, protected areas, and scenic resources, we
5 point to that evaluation to give an idea of what the
6 noise associated with construction may be.

7 Okay. And then we have, under this sub (35)
8 of the noise control regulations, there are exceptions.

9 Just give me a moment. I'm going to check
10 with my notes to see if I need to go back to my
11 PowerPoint and see if I'm on target here with what I
12 want to say.

13 Okay. Very good.

14 Before I go into exceptions -- and I'll just
15 leave these here. But I wanted to talk about and to
16 give some background about ambient or baseline noise
17 levels.

18 So here, really, what we're doing -- and
19 these are for all of Council's facilities, what is
20 modeled is the worst-case noise that could potentially
21 come out of a proposed facility.

22 So with other types of facilities, we
23 generally talk about -- for example, with, like, a solar
24 facility, what is the noise-generating equipment?

25 And it is usually associated with the

1 transformers and any equipment associated with the
2 battery storage. And the applicant has to model the
3 most possible equipment that they are proposing and put
4 that into their noise assessment.

5 Here, part of the noise -- the noise -- the
6 maximum or worst-case noise that we're talking about is
7 the corona noise. So what the applicant has provided in
8 Exhibit X, which has information about the noise, is the
9 worst-case noise -- or a situation where corona would be
10 the worst. So that is kind of one bundle of assessment
11 that goes over here.

12 But then, because these are not existing
13 facilities, these are proposed facilities. So we're
14 projecting ahead and we're modeling. And part of that
15 modeling has to take into consideration the existing
16 noise levels at a site.

17 And that is the baseline or an ambient noise
18 level. Because -- and we can just run a scenario of --
19 say that we had a facility or this facility was
20 criss-crossing or right adjacent to I-84 as opposed to
21 maybe Hanley's house, which is rural and, you know,
22 nestled and it's very quiet and peaceful out there.

23 The ambient noise next to I-84 is going to
24 be louder. And so, therefore, any noise from the corona
25 noise from a transmission line, even in the worst-case

1 scenarios when it's the loudest, likely would not even
2 be heard because the ambient noise is so loud.

3 However, out at Hanley's house, it's rural
4 and it's quiet. Your ambient noise are the sounds of
5 maybe dogs barking in the distance and birds chirping
6 and maybe some back-traffic, far-away airplanes. These
7 are the ambient noise levels.

8 So this is what the applicants -- all
9 applicants have to establish. And so that there is
10 ambient noise monitoring, where the applicant goes out
11 into the field, positions monitoring devices and
12 measures during the day and during the night in time
13 spans and then -- and then takes the most -- again,
14 we're applying the most conservative assumptions.

15 So usually what's used is the ambient noise
16 level in, like, late, late night/early morning when it's
17 just the quietest and that is the ambient assumed for
18 that site all the time. So it's the most conservative.

19 And then we add that -- we take that ambient
20 and add on the projected maximum corona noise, and that
21 is what is applied to that ambient degradation standard
22 of the "no more than 10 dBA per hour" and the maximum
23 noise. So those are kind of a very high level summary
24 of those two.

25 So -- and we will get to this. And the

1 applicant has conducted that modeling. And there are
2 several areas where the applicant does not meet or
3 exceeds the anti-ambient degradation standard. So the
4 noise level in any hour would be more than 10.

5 So there are several instances in this. So
6 then the applicant in its application has requested
7 Council apply -- consider and apply an exception to the
8 noise rules. They also are requesting a variance to the
9 noise rules in these situations.

10 So I'm just going to -- that's what we're
11 going to look at these rules here, and these are -- this
12 is the findings that are provided in their proposed
13 order.

14 So for an exemption upon written request for
15 an owner, this would be the applicant. The Department
16 may authorize an exception to these noise rules, what
17 I've talked about, and then these are the
18 circumstances -- this A through E, the circumstances
19 under which an exemption may be granted.

20 The applicant is representing that the
21 corona noise would be an unusual and/or an infrequent
22 event and provides to support that representation.

23 So that's the exception. So -- and here it
24 tells -- tells us to point here. So go here. So we're
25 going to go there now. This is exciting.

1 Okay. So here we are. And so this is
2 what -- this is what the Department does.

3 We read rules and we see what an applicant
4 gets us and we draft findings.

5 So in establishing an exception, Department
6 shall consider protection of health and safety and
7 welfare of Oregon citizens.

8 And then we also consider feasibility and
9 cost of noise abatement; the past, present, and future
10 patterns of land use; relative timing of land use
11 changes, and other legal constraints.

12 For exceptions, the Department shall specify
13 times. So all of these items in here the Department has
14 evaluated in the proposed order and made -- made
15 recommendations. So each of these aspects is -- is
16 represented in the proposed order.

17 And then -- and -- and so the Council, as
18 the decision-maker for these rules, is -- has the
19 authority to do this evaluation and grant or deny these
20 exceptions and apply the noise rules.

21 The applicant is also requesting that
22 Council consider a variance to the noise rules. So the
23 Commission may grant -- may grant specific variances
24 from the particular requirements of any rule,
25 regulation, or order to -- for such specific noise

1 sources upon conditions as it may deem necessary to
2 protect the public health and welfare if it finds that
3 strict compliance with rule, regulation, or order is
4 inappropriate because of conditions beyond the control
5 of persons granted such variance. So we're going
6 to procedures for requesting.

7 So this is the second part in the proposed
8 order where there is an evaluation and recommendation
9 for Council's consideration.

10 Okay. Let me go back here. That was kind
11 of a lot of rules. And we can go back to that. And
12 maybe I'll just proceed.

13 But if Council has any questions about
14 those, we can do that now or at the end.

15 So just give me one minute. I'm almost
16 through here. Maybe.

17 Okay. I had these snippets of rules in my
18 PowerPoint and I thought it was better to actually just
19 look at them.

20 So under -- there is a table NC-4, which is
21 the summary of acoustic modeling results, comparison of
22 predicted facility sound levels to late night baseline.

23 It provides the results of the applicant's
24 noise modeling. So this is their establishment of the
25 baseline at representative locations. And then it

1 also -- and so it includes the baseline or ambient and
2 then their maximum modeled. And in that table, it does
3 include the result of the anti-ambient degradation
4 standard, so the increase of 10 dBA per hour, but it
5 also has the results of the maximum allowable.

6 And in that table, the maximum noise at
7 any -- and I forgot to give Council the background.
8 Council has heard it before.

9 In the DEQ noise rules, they call them
10 "noise sensitive properties."

11 In general, those -- Council can think of
12 those as -- they're properties normally used for
13 sleeping. That's part of the definition. But it's a
14 residence. That's what we're looking at.

15 They are called "noise sensitive
16 properties."

17 In the application and just in the
18 Department's vernacular, we commonly call it an "NSR" or
19 a "noise sensitive receptor."

20 So the NSR, or noise sensitive property,
21 that has the -- which would experience the loudest
22 noise, it would be at 47 dBA which is underneath the 50
23 dBA. Which this is that Table 8 that those noise rules
24 pointed to. This is just taken out of DEQ's noise
25 rules.

1 And again, we're kind of looking -- we're
2 going the most conservative, which is the 1-50. When
3 the Council sees the "1-50" is generally the statistical
4 noise level that is the quietest.

5 So everything is kind of the most
6 conservative application within these rules. So the --
7 and so when we talk about "maximum allowable," 50 dBA is
8 that threshold. Because in here it's the most
9 conservative. It is the lowest noise.

10 And -- in that table, NSR it would be 47.
11 So we're recommending the maximum allowable noise
12 standard is met.

13 And that concludes my portion.

14 MR. RATCLIFFE: Thanks, Kellen.

15 So we have four issues that are part of the
16 contested case that exceptions were filed on related to
17 the noise standard.

18 We're gonna take those issues one by one.
19 So our first issue is NC-1. The limited party here is
20 Stop B2H.

21 The issue is whether the Department
22 improperly modified, slash, reduced the noise analysis
23 area in Exhibit X from one mile of the proposed site
24 boundary to one-half mile of the proposed site boundary,
25 and whether one of the Department's application rules.

1 So one of the application materials rules in Division 21
2 requires notification to all owners of noise-sensitive
3 property within one mile.

4 So the proposed contested case order
5 opinion, the hearing officer found that the Department's
6 application rule does require that an applicant identify
7 and address -- and include addresses for noise sensitive
8 receptors within a mile of the site boundary.

9 A separate Council rule allows for the
10 Department to modify the information to be required in
11 an application for site certificate if that modification
12 is reflected in the Department's project order.

13 We've heard about the project order a few
14 times. And, again, that is the document that is
15 intended to provide the roadmap to the applicant for the
16 standards that are going to be required to be met in the
17 application process.

18 The -- in this case, the project order was
19 amended a couple of times. So in the Second Amended
20 Project Order the Department modified the requirements
21 of the application -- the application requirements to
22 accommodate the linear nature of the proposed facility
23 and established that the extent of the names and
24 addresses that must be identified for noise-sensitive
25 properties extend to a half-mile from the site boundary

1 rather than a mile.

2 So one of the issues raised by Stop B2H was
3 whether or not the Department's authority to modify
4 these application requirements are limited to a
5 situation where the applicant has made a written request
6 to waive requirements.

7 The hearing officer found that while that
8 provision does authorize the Department to modify
9 requirements upon the applicant's written request, it
10 does not preclude the Department from otherwise
11 establishing on its own the applicable application
12 requirements in the project order.

13 Separately -- and we're, you know, getting a
14 little technical here, but the -- the rule that refers
15 to the -- the mile boundary, the hearing officer found
16 that that's not a requirement for issuing public notice.

17 Public notice and entities that must receive
18 notice are addressed in a separate Department -- or
19 Council rules.

20 And that, further, the -- the rule at issue
21 here does not establish or define the noise analysis
22 area.

23 So the Hearing Officer's ultimate conclusion
24 here was that separately from modifying the information
25 requirements in the application, the Department acted

1 within its authority and established the noise analysis
2 area in the Second Amended Project Order as the area
3 within and extending one-half mile from the site
4 boundary.

5 So, again, that's the summary of the hearing
6 officer's proposed contested case order opinion. And
7 we'll now here oral argument from Stop B2H on this
8 issue.

9 MR. ANUTA: Good morning, members of the
10 Commission. My name is Karl Anuta. I'm representing
11 Stop B2H.

12 First, let me point something out to make
13 sure that we're all clear. Stop did not accept on the
14 issue of notice. Stop only accepted on the issue of the
15 modification in the project order of the pre-existing
16 rule.

17 And this is an interesting legal issue.
18 Hopefully, the Council has thought through this. The
19 basic problem here is that you have an existing rule
20 that says one mile is what is required for the list.

21 The Department's position is that you have
22 another rule that allows you to modify that rule in a
23 project order. And the problem for you is the Oregon
24 Administrative Procedures Act or "APA," is what governs
25 rule-making and it does not provide for having a rule

1 that lets you modify a rule in an order. It has very
2 strict prescriptions. You have to go through a
3 rule-making process that publishes notice and does all
4 the things that the APA requires. There's no dispute
5 that didn't happen here.

6 So the really simple direct issue is can
7 ODOE pass a rule giving itself an exemption from the
8 Administrative Procedures Act rulemaking or rule
9 modification requirements.

10 Stop's position is straightforward. No.
11 Every agency is bound by the APA. If you want to change
12 a rule, you have to go through rulemaking. You can do
13 that on a temporary or emergency basis, if you find that
14 there's an emergency. Not sure how you could find there
15 would be an emergency because a power company wants to
16 make a lot of money building a line, but -- maybe that
17 would -- they could try to argue that. But here there
18 was no effort to get an emergency rule passed. There
19 was no amended rule that you could apply in a project
20 order. You had the existing rules. And instead, the
21 Department modified the rule to say something that it
22 didn't say.

23 So our position is very straightforward.
24 You don't have the authority to do that.

25 You, the Council, should tell the

1 Department -- make them go back and do it correctly.

2 And why does that matter?

3 Because that list that they create is the
4 noise -- is -- provides the public, or you, the ability
5 to look at what noise-sensitive receptors are out there
6 and what might be covered by the project boundary or the
7 project one-mile radius.

8 And that's something that the public should
9 know. That's why your rules require that notice within
10 a half mile.

11 You now have a whole group of people that
12 were between a half mile and a mile that could never
13 figure out because the list wasn't accurately done.
14 Whether they were on the list or off the list.

15 And that's what happens if you change rules
16 in the middle of a proceeding without going through the
17 APA.

18 I'd be happy to answer questions, if you
19 have any.

20 VICE CHAIR HOWE: Thank you, Mr. Anuta.
21 Any questions from Council?

22 Thank you.

23 MS. RACKNER: Mr. Anuta is asking you to
24 look at one portion of your rules. And to -- and to --
25 excuse me. I seem to have some sound going on here.

1 Could I pause my time?

2 Thank you. I seem to have made all kinds of
3 mistakes.

4 Okay. I think that's better. All right.
5 And again, for the record, I'm Lisa Rackner.

6 So Mr. Anuta wants you to look at one
7 portion of your rules which are the requirement lists
8 for Exhibit X, to read that all by itself and say you
9 can't change that rule except to do so under the APA.

10 But that's not the way you look at a set of
11 rules. Basic principles of statutory construction
12 require you to look at all of the rules and construe
13 them together.

14 And if you do that, you will see that ODOE
15 definitely had the authority to make changes in the
16 project order to the analysis area for noise.

17 And I hate quoting noise -- excuse me,
18 quoting rules by number, but I think it's helpful to do
19 so.

20 OAR Chapter 345-21-0004, that section
21 provides that ODOE may waive or modify any of the
22 application content requirements listed in Chapter 21
23 that ODOE determines are not applicable to the proposed
24 facility.

25 Similarly, 345-21-0010(1) states that the

1 project order identifies the provisions of this rule
2 applicable to the application for the proposed facility,
3 including any appropriate modifications to application
4 of the rule.

5 So, clearly, within your rules itself, ODOE
6 had the authority to make a revision to the analysis
7 area in the project order and that is exactly what they
8 did.

9 There is no reason for rulemaking. There is
10 no error that was committed on a procedural basis here.

11 I also want to point out that while ODOE --
12 excuse me, while Stop B2H is stating that they are
13 concerned that people on that list going out to a mile
14 may not have had proper notice.

15 At the same time they've said -- and this is
16 true in their exceptions -- they didn't raise a notice
17 argument. So I think that's a red herring.

18 And the final thing I just want to emphasize
19 is while ODOE did reduce the analysis area at the
20 outset, Idaho Power did analyze for noise effects only
21 out to a half a mile.

22 Ultimately, in response to concerns -- and
23 this is a familiar refrain you'll hear -- Idaho Power
24 heard concerns. Idaho Power ultimately expanded its
25 analysis area out to one mile.

1 And as a result, found one additional
2 exceedance going out to one mile. So in the end, the
3 analysis area was out to one mile.

4 And finally, in the site conditions that
5 were adopted by the hearing officer, ultimately, Idaho
6 Power is going to have to update the list of landowners
7 going out to a mile, provide them all with notice of the
8 conditions that are adopted in the site certificate so
9 that everybody going out to one mile was going to
10 understand what the rules are around noise, what
11 mitigation they might be entitled to, and what the
12 process is for compliance.

13 And I see I've gone over. I apologize.

14 VICE CHAIR HOWE: Thank you, Ms. Rackner.

15 Are there any questions from Council?

16 Guess not.

17 Counsel Rowe.

18 MR. ROWE: Patrick Rowe, Department of
19 Justice for the Oregon Department of Energy.

20 I've said this before, I think at least
21 internally, this is an issue that only an administrative
22 law professor could love.

23 I don't have much to add to what Mr. Rackner
24 said, but I will -- always good to hear things a couple
25 times to make sure you're following.

1 The rule at issue seeks only a list of names
2 and addresses of noise-sensitive receptors within one
3 mile of the proposed facility.

4 It doesn't establish a public notice hearing
5 requirement and it doesn't establish an analysis area.

6 That rule doesn't say you have to analyze
7 noise within one mile. It says give us a list of the
8 NSR properties within one mile.

9 Council rules don't specify an analysis area
10 to determining compliance with the noise control
11 regulations. There are statute, as well as rules, that
12 provide authority for the Department to establish
13 application requirements in the project order.

14 Okay. So this -- what was done here isn't
15 being done just pursuant to a rule. It is also being
16 done pursuant to a statute, which says in the project
17 order, the Department shall establish what statutes,
18 rules, Council standards apply to the application.

19 Consistent with that authority in the
20 project order, the Department set the noise analysis
21 area at a half mile of the site boundary.

22 Even if the Division 21 rule at issue
23 required analysis within one mile, which it does not,
24 the Department would have authority to modify that
25 provision consistent with the statute as well as the

1 rules that Ms. Rackner just mentioned.

2 Also as Ms. Rackner mentioned, all of this
3 is essentially moot. Because even though in the project
4 order the Department said analyze within half a mile,
5 Idaho Power ended up evaluating noise-sensitive
6 receptors and potential noise impacts extending out to
7 one mile in response to public comment and concern about
8 this issue.

9 VICE CHAIR HOWE: Thank you, Counsel Rowe.

10 Any questions from the Council?

11 Okay. Do we want to continue our practice
12 of taking on each issue and resolving with the straw
13 poll for the proposed contested case order one at a
14 time?

15 Yeah, Council Condon.

16 COUNCILMEMBER CONDON: Cindy Condon.

17 Just a question for the Department.

18 What was the reason for the half mile? Just
19 general reasoning for half mile.

20 MS. TARDAEWETHER: For the record, Kellen
21 Tardaewether.

22 That was established prior -- prior to Sarah
23 and I being here.

24 After the establishment of the analysis
25 areas, happens after the "notice of intent" phase where

1 there is a comment period. And we ask reviewing
2 agencies to comment on if they have any feedback about
3 analysis areas. You know, agencies generally don't
4 comment on noise. But just for Council to take into
5 consideration that we take that information and then
6 that's the basis that we modify analysis areas and then
7 your rules tell us to establish that in the project
8 order, which happens after the notice of intent phase.

9 The intent is just that it is a longer
10 linear facility and to have kind of -- it's kind of like
11 a reasonable factor. And this is just in conversations
12 in our understanding with the people that did establish
13 that, because it happened prior to Sarah and I being
14 here.

15 But that -- that because it is this long,
16 you know, 274 mile linear facility, that a reasonable
17 analysis area that basically going out a mile would just
18 be a really big and maybe unnecessary analysis.

19 This is -- and this is just from my
20 understanding. We don't actually have anything in the
21 record that has a basis or a reason for it.

22 VICE CHAIR HOWE: Okay. Secretary Cornett,
23 I believe we're ready for the straw poll.

24 SECRETARY CORNETT: Okay. This would be to
25 agree with the finding of -- for the record, Todd

1 Cornett.

2 "Agree with the findings of fact,
3 conclusions of law, and conditions of approval in the
4 proposed contested case order pertaining to issue NC-1."

5 VICE CHAIR HOWE: Sounds right.

6 SECRETARY CORNETT: Kent Howe.

7 VICE CHAIR HOWE: Yes.

8 SECRETARY CORNETT: Ann Beier.

9 COUNCILMEMBER BEIER: Yes.

10 SECRETARY CORNETT: Hanley Jenkins.

11 COUNCILMEMBER JENKINS: Yes.

12 SECRETARY CORNETT: Jordan Truitt.

13 COUNCILMEMBER TRUITT: Yes.

14 SECRETARY CORNETT: Perry Chocktoot.

15 COUNCILMEMBER CHOCKTOOT: Yes.

16 SECRETARY CORNETT: Cindy Condon.

17 COUNCILMEMBER CONDON: Yes.

18 SECRETARY CORNETT: Thank you,

19 Councilmembers.

20 MR. RATCLIFFE: The next issue is NC-2. We
21 have several limited parties associated with this issue,
22 Stop B2H, Gilbert, and Horst, all three of these limited
23 parties filed exceptions.

24 The issue is whether the Department erred in
25 recommending that the Council grant a variance/exception

1 from the Oregon DEQ's noise rules, OAR 340-035-0035, and
2 whether the variance/exception is inconsistent with
3 ORS 467.010.

4 So the Hearing Officer's opinion on this
5 issue first notes one of the Council's statutes
6 ORS 469.370 sub (7), which establishes that the Council
7 must determine whether the proposed facility complies
8 with any additional statutes, rules, or ordinances
9 determined to be applicable to the facility by the
10 project order as amended.

11 So again, this is setting the stage that
12 these noise rules come from another source of law and
13 not the Council's own rules in the first instance, but
14 the DEQ noise rules.

15 ORS 469.401 establishes the Council's
16 authority in consolidating other permits or permit
17 requirements into the site certificate.

18 Based on these statutes taken together, the
19 Council has the jurisdiction and authority to determine
20 whether the proposed facility meets DEQ's noise control
21 regulation requirements for an exception and/or a
22 variance from the ambient anti-degradation standard.

23 And that standard is a limit not to exceed
24 more than 10 dBA above the baseline ambient noise levels
25 in any one hour.

1 And further, that the Council is not
2 required to consult with the Environmental Quality
3 Commission or DEQ in making its determination.

4 The hearing officer found that 30 years ago
5 the Environment Quality Commission and DEQ suspended
6 their responsibility for administrating the noise
7 program.

8 And, essentially, this places the Council as
9 the sole authority to make findings and rules on an
10 applicant's request for variance and exception, just as
11 it does to the Council's authority to make decisions
12 with respect to any aspect of the noise rules that may
13 apply here.

14 The hearing officer found that limited
15 parties presented no persuasive evidence that the
16 Department's recommendation that the Council grant a
17 variance or exception was an error.

18 The hearing officer found that exceedances
19 of the ambient degradation standard met the criteria for
20 being unusual or infrequent, because it would occur less
21 than 2 percent of the time. Only during foul weather,
22 where foul weather is infrequent in the project area and
23 at times of low ambient noise levels and when the
24 transmission line is operating at full capacity.

25 ORS 467.010, which is the legislative policy

1 behind the noise control rules states that it's to
2 provide protection of the health, safety, and welfare of
3 Oregon citizens from the hazards and deterioration of
4 the quality of life imposed by excessive noise
5 emissions.

6 The hearing officer found that the proposed
7 facility will not present a threat to the environmental
8 quality of life in this State. The Department --
9 further that the Department appropriately considered the
10 factors under OAR 340-35-0010(2).

11 The hearing officer also noted the noise
12 conditions that have been imposed here.

13 Noise condition one, which is a pre --
14 preconstruction requirement to work with known NSRs
15 where exceedances would occur and agree and implement
16 noise impact-related mitigation.

17 And second, a post-construction requirement
18 to evaluate any noise complaints and implement noise
19 impact-related mitigation if the complaint is deemed
20 valid.

21 This includes a Council review component if
22 any disputes on the level of mitigation end up being
23 unresolved.

24 That with these conditions that are included
25 in the proposed contested case order that this would

1 result in the protection of health, safety, and welfare
2 of Oregon citizens.

3 So that is the summary.

4 So again, we have three parties who filed
5 exceptions on this issue and they can present oral
6 argument in the order that they choose.

7 MS. GILBERT: Good morning. Irene Gilbert
8 here.

9 Knowing you are going to deny my request for
10 exception on this, based on -- and you've also denied
11 all procedural arguments, I'm going to kind of focus
12 some on the procedural issues that relate to this
13 particular case.

14 This is one of many issues when the
15 Administrative Law Judge used procedures to hamstring
16 the public participation in contested cases.

17 My contested case in regard -- is in regard
18 to whether it's appropriate for Council to authorize an
19 exception in variance to the DEQ's rules. And this is
20 one example because, obviously, in order to decide if
21 you are going to be able to issue an exception, you have
22 to know what the noise effects are.

23 And I was denied any arguments regarding the
24 methodology or the establishment of what the actual
25 noise impacts are going to be, which makes it very

1 difficult to justify an exception. And they -- if you
2 look at the noise issue, it is -- it's one issue and yet
3 you see four -- actually, there were a couple other
4 noise issues, if you will, which were really just pieces
5 of the noise problem.

6 So anyway, when you -- there are a couple of
7 court decisions. One is DLCD v. Tillamook County which
8 says divisions -- decisions stating -- stating
9 petitioners need not have raised individual arguments
10 regarding my issue.

11 So what -- what that court decision said was
12 you don't have to give all the details. All you have to
13 do is raise the broad issue.

14 And another one here says that -- this is
15 with League of Women Voters, says that individual
16 arguments regarding issue on appeal cannot be limited.

17 So the fact that they have thrown out
18 everything in my contested case on the exception or
19 variance that had to do with what the actual noise
20 levels are and whether or not that was correctly
21 identified is not going to hold water in appeal.

22 The -- let's see. I wanted to also state
23 that I might insert, anyway, the fact that there's no
24 deference to an agency when it comes to interpreting
25 another agency's rules or statutes.

1 And actually, the statute specifically says
2 that the rules -- how the rules are supposed to be
3 established by DEQ and the DEQ rules have to cover
4 specific items and that they are, in effect, the
5 statute.

6 Because the statute is so clear that it says
7 you will determine how you're going -- how you're going
8 to measure it. How you're going to interpret it. It's
9 that specific.

10 The -- the other thing -- so I was going to
11 talk about unusual and infrequent.

12 ODOE re-interpreted the idea about what --
13 how much noise level the exceedance there is.

14 In the rules it clearly says that when the
15 corona noise is exceeding the ambient degradation
16 standard, they are talking about how many days. And it
17 specifically says any -- within a 24-hour period if
18 there's an exceedance, there's an exceedance of this
19 standard.

20 So in Union County, that means that 365 days
21 out of every year, we could expect the weather to
22 be such that -- (audio disruption) -- instead of looking
23 at it that way. What the developer did is they said,
24 well, if we look at the amount of days -- or not the
25 amount of days, but the -- look at it as a block of

1 time. So if we were to have this -- this weather
2 pattern for four days in a row, then it would be just a
3 minor event in a 365-day year.

4 That's not what the rules say. The rules
5 say one hour within any 24-hour period if there's an
6 exceedance, there's an exceedance. That is not
7 infrequent. Thank you.

8 VICE CHAIR HOWE: Any questions from
9 Council?

10 Ready for the next.

11 MR. ANUTA: Karl Anuta on behalf of Stop.

12 You have several issues embedded in this
13 particular one. One of them is the legal question of
14 can the Department -- or the Council take over the
15 authority of DEQ and EQC to grant a variance.

16 Our position is very simple.

17 You could go to them, or the applicant could
18 go to them and say "Will you let us do this because
19 you're no longer administering the program?"

20 And if they say, heck, yeah. We're no
21 longer doing anything, then you have authority.

22 If you don't do that, you can't just usurp
23 the authority of another agency and say, hey, we're
24 going to do that stuff because we don't think they will.

25 So that's pretty much a straightforward

1 legal question. We don't think you have that authority.

2 ODOE argues that you do.

3 I think we'll ultimately end up having to
4 see how an appellate court views that. We don't think
5 the grant of authority is that broad.

6 The secondary issues you have here is does
7 the applicant's materials and the Department's analysis
8 actually meet the requirements for a variance? And --
9 or an exception. And if there is one, should it be for
10 the entire line or should it be based on individual NSRs
11 where the actual high levels of noise will occur?

12 Our position on the latter is very
13 straightforward. You shouldn't be granting anybody an
14 exception for an entire facility that goes for almost
15 300 miles. It should be focused on the NSRs where there
16 are actually exceedances.

17 As to whether they meet the standard, they
18 don't. As Ms. Gilbert just noted that there isn't an
19 infrequent issue here because it's 48 days if you're in
20 Union County. That's not infrequent. There's also no
21 special circumstances here that render compliance
22 impractical. There are other routes where there
23 wouldn't be this problem. One of them would be the NEPA
24 route. But the other routes would make this perfectly
25 feasible.

1 There's also an exception allowed if
2 substantial compliance would result in substantial
3 curtailment or closing down of the business.

4 Well, the business doesn't exist right now.
5 It wouldn't be closing anything down. And if the
6 applicant can't comply with the noise standards, then
7 they shouldn't be building the line. You shouldn't be
8 approving things because -- simply because the applicant
9 can't meet your standard. You should be saying meet the
10 standards or your certificate is denied. That's how
11 that it is supposed to work.

12 And then one of the other points to think
13 about is, you are obligated, if you are actually
14 applying the DEQ noise rules to balance the equities
15 here, and that wasn't done.

16 If you look at the order, the public health,
17 welfare, and safety on noise issues were not balanced
18 against IPCs. The only thing that was balanced was the
19 cost and the difficulty for IPC of building a line that
20 actually complied with the standards.

21 VICE CHAIR HOWE: Thank you, Mr. Anuta.

22 Are there any questions from Council?

23 Okay. Thank you.

24 The next is Mr. Horst.

25 MR. HORST: Excuse me. My name is Joe

1 Horst. Just regards to contested case NC-2. OAR
2 340-035-0010 regarding exceptions reads specifically, in
3 establishing exceptions, the Department shall consider
4 the protection of health, safety, and welfare of Oregon
5 citizens.

6 This does not do that. You know, there
7 might be an argument made that this might be for the
8 greater good of the northwest, but the OAR specifically
9 says health, safety, and welfare of Oregon citizens, not
10 Idaho citizens.

11 OAR 340-035-0100 regarding variances reads,
12 specifically, conditions for granting. The Commission
13 may grant specific variances from the particular
14 requirements of any title, regulation, or order to a
15 specific person or class of persons shall specific noise
16 upon such conditions as it may deem necessary to protect
17 the public health and welfare.

18 This actually does the opposite of that. It
19 does not protect the public health and welfare. So
20 that -- therefore, that does not apply.

21 The Oregon legislature has made it very
22 clear, ORS 467.010 reads: The legislative assembly
23 finds that the increasing incidents of noise emissions
24 in this State at unreasonable levels is as much of a
25 threat to the environmental quality of life in this

1 state and the health of safety and welfare of the people
2 of the state as is pollution of the air and waters of
3 this state.

4 The Oregon legislature takes noise pollution
5 very seriously. While the Oregon Department of
6 Quality (sic) no longer does the variances or exception,
7 they did set the standards to what maximum noise levels
8 should be.

9 If a company wanted to pollute a river and
10 their guess is going to be 10 to 20 percent over what
11 the maximum allowed is, or if a company wanted to put
12 smoke in the air, you know, just saying -- it might be
13 10, might be 20. We really don't know that for sure.
14 Over the maximum allowed, I'm sure they would be
15 rejected.

16 There -- there -- there -- the Department
17 is and Idaho Power is asking for exceptions that would
18 be determined over the maximum level that the ODEQ has
19 already made maximum level should be.

20 So I'm asking that the -- the -- that you
21 guys reject the -- their exceptions or variances at all.

22 I'm just going to make a quick comment.
23 From what I've seen of this process so far, yesterday I
24 made a comment that on this -- that the La Grande City
25 Council does not want this route to be used. There's

1 many citizens who don't want it to be used. You guys
2 aren't listening to us. You're not listening to us at
3 all.

4 Mr. White came in and he was concerned about
5 the -- the blasting -- you know, he lives on the bottom
6 of a huge, steep hillside, and he's concerned about his
7 house.

8 And you guys say, well, we're going to give
9 you a week's notice, you know, so you can get out of
10 your house so if the rocks come down, you're not in it.
11 It's just wrong. You're not listening to what we're
12 trying to say. He didn't care about the notice. He
13 doesn't want his house flattened.

14 You know, while that road -- my road might
15 be 15 to 20 percent, it goes at an angle, that -- if you
16 ever look at that hillside right at the bottom of those
17 houses, it's big and it's steep. If a car -- if a
18 cement truck is coming down that road and there is
19 another car coming the other way, just a blind corner,
20 either the two are going to hit or one -- that cement
21 truck is going to go off the road. If it does, it is
22 going to land right on a couple of houses. There's no
23 way it can't.

24 VICE CHAIR HOWE: Thank you, Mr. Horst.

25 MR. HORST: Yeah. Okay. I apologize.

1 Thank you.

2 VICE CHAIR HOWE: Any questions of
3 Mr. Horst?

4 Okay.

5 MS. RACKNER: Good morning. Lisa Rackner,
6 again, for the record.

7 The argument that the parties have made on
8 this issue are far-ranging, and I will try to just
9 briefly touch on as many as I can in the time that I
10 have.

11 First, as Mr. Ratcliffe explained, EFSC does
12 have expressed jurisdiction to assess an application for
13 a site certificate to make sure that it complies with
14 state statutes and rules that are normally administered
15 by and enforced by others, including ODEQ's noise rules.

16 In EFSC's findings regarding compliance with
17 such statutes and rules, it is binding on those
18 agencies.

19 Accordingly, the Council does have
20 jurisdiction to issue a variance or exception in this
21 case. And as we explained in our briefing, the
22 legislature, when it adopted the noise statute, it
23 clearly didn't intend that it would be inflexibly
24 applied in each case because it allowed for variances
25 and exceptions.

1 Now, neither EQC or DEQ are currently
2 enforcing their noise statutes and rules. So in order
3 to give effect to the legislature's intent, EFSC is the
4 only agency that can consider a variance or an exception
5 in this case.

6 So you have the ability to do so. And as a
7 matter of policy, you should do so.

8 And with respect to Mr. Anuta's suggestion
9 that the applicant or ODOE should have consulted with
10 DEQ or ODOE, I can tell you there's an affidavit in the
11 record here that on another issue related to noise, the
12 applicant did contact DEQ to try to get some advice and
13 were told very clearly, we don't have staff to even talk
14 to you about this issue. That was on a different issue,
15 not the variance or exception issue.

16 But to give you a sense, there is evidence
17 in the record that there is no one to talk to there
18 about noise.

19 So second, based upon Idaho Power's noise
20 modeling analysis, the corona noise exceedances caused
21 by foul weather events are, in fact, infrequent and
22 unusual, therefore, warranting an exception to DEQ's
23 anti-degradation standard.

24 Idaho Power has demonstrated that on average
25 in applying conservative assumptions the project will be

1 in compliance with the noise rules approximately 98.7
2 percent of the time. And when you specifically look at
3 the La Grande area, which was the subject of some
4 controversy here, B2H will be in compliance
5 approximately 97.3 percent of the time.

6 Now, both Stop B2H and Ms. Gilbert have
7 focused on the fact that Idaho Power's analysis does
8 show that if you look at that data on a daily basis,
9 there will be 48 days in a year or 13 percent of the
10 days where there will be an exceedance.

11 But we think the sole focus on that data
12 point is -- it's misleading, because it treats a day in
13 which there is a -- an exceedance in one hour the same
14 as a day where there was an exceedance in every hour.

15 And so while that is an interesting data
16 point, we're not ignoring it. We think much more
17 salient is to think about how many total hours of the
18 day is there going to be an exceedance, and it's a tiny
19 little fraction.

20 Finally, a variance is appropriate because
21 strict application of the noise rules, given the
22 numerous other constraints the company needs to avoid
23 would -- could render B2H unpermissible, which
24 would deprive the region of critical infrastructure
25 that's necessary to achieve a clean energy grid. And

1 it's been supported and prioritized by the state and the
2 nation.

3 And with respect to Mr. Anuta's claim that
4 if we -- that the NEPA route wouldn't have had any of
5 the same issues, there's absolutely no evidence in the
6 record to suggest that there would have been no
7 exceedances along the NEPA route.

8 And finally -- and thank you, the other
9 parties went a little long, so I will, if you'll indulge
10 me, just 30 more seconds.

11 Keep in mind, also, that health and welfare
12 is one of the bases, one of the things you have to
13 consider when you would grant an exception or a
14 variance.

15 Keep in mind that corona noise that is
16 predicted to occur will only be during foul weather and
17 it's most likely to cause an exceedance in nighttime
18 hours when it is particularly quiet. Under these
19 conditions, most residence will be in doors where sound
20 levels will be significantly attenuated. And under foul
21 weather conditions, where the rain is heavy, then corona
22 is frequently masked by the sound of the rain hitting
23 the foliage. So our prediction of exceedances is really
24 quite conservative.

25 As Idaho Power's acoustical expert, Mr. Mark

1 Bastasch, explained, the evidence confirms that B2H
2 won't cause exceedances of DEQ's maximum allowable sound
3 standards for industry sources the maximum amount. And
4 Oregonians can reasonably be expected to hear, sleep,
5 and go about their daily activities without
6 interruption. Therefore, the granting of a variance and
7 exception, together with the site conditions that we'll
8 talk about a little bit more in a few minutes, are fully
9 protective of Oregonians.

10 Thank you.

11 VICE CHAIR HOWE: Thank you, Ms. Rackner.

12 Are there any questions from Council?

13 Councillor Condon.

14 COUNCILMEMBER CONDON: So I can face you
15 without turning. Thank you. Cindy Condon.

16 One of the things that is concerning to me
17 is -- there's certainly reliance on modeling. I
18 certainly get that. And there are -- are certainly
19 comments made that people can reasonably expect this or
20 that.

21 So when the project is finished, if there
22 are exceedances, what's -- what's the consequence of
23 that?

24 Does the public just live -- in your mind,
25 does the public just live with that? You know, yep.

1 We've tried to protect health and welfare. Or is there
2 mitigation that can be done for that?

3 MS. RACKNER: Let me talk a little bit about
4 the mitigation and the complaint process.

5 And these are required in the proposed
6 conditions. And forgive me if I don't know which
7 condition number is which without checking my notes.

8 But first of all, prior to construction,
9 Idaho Power is going to meet with each and every
10 landowner where there is an exceedance that is predicted
11 and work with them to come up with a mitigation plan.

12 And Idaho Power proposed -- and the hearing
13 officer adopted some very specific kind of minimal
14 requirements that the company will -- will offer, for
15 instance, noise attenuating windows. They make really
16 good strong windows that are specifically made to
17 attenuate noise.

18 And what the company has committed to do and
19 what the hearing officer has requiring us to do is look
20 at what's the amount of the exceedance. And the higher
21 the exceedance, the stronger level of window that we
22 would propose to install.

23 For landowners who don't want -- maybe they
24 already have fantastic windows and they want something
25 else. There's things you can do by blowing insulation

1 into homes.

2 If people are more concerned about the
3 impact of noise, maybe they wouldn't be able to hear the
4 noise because they already have, like, a really strong
5 and tight house but they are more concerned about noise
6 in their front yard, there is -- we can plant trees. We
7 can put in foliage. So there is -- I use the term a lot
8 of tools in the tool kit. So there are a lot of tools
9 in the tool kit for addressing concerns.

10 So for those people for whom an exceedance
11 is expected or -- or under our analysis before
12 construction even occurs, we're going to go through that
13 whole process. And as -- I think Jesse explained that
14 if there's any disagreement about whether the mitigation
15 that we're proposing is adequate, then we come to the
16 Council and the Council can decide. This was good
17 enough or this wasn't good enough. Try something
18 different.

19 So there's a whole process and set of rights
20 that land owners will have under that condition.

21 Now, what about those people that we
22 don't -- we haven't predicted are going to have an
23 exceedance, but once the line is energized they think it
24 is noisy and they are concerned about it. Then there is
25 a complaint process.

1 And again, prior to construction -- there is
2 a lot of detail in the conditions, but prior to
3 construction the company has to provide ODOE with a
4 detailed complaint process that -- that will kind of lay
5 out what -- what the rules are. So people can come to
6 us. They can rely -- if they want to do their own
7 measurement they can do their own measurement;
8 otherwise, we can bring in -- we can bring in our own
9 measurement.

10 If there's a disagreement. Again, that type
11 of thing can be resolved by the Council.

12 But then we go -- but if we find that there
13 is actually an exceedance, that they are correct, this
14 is loud, and it's an exceedance then we go through the
15 whole mitigation process with -- with those folks, as
16 well.

17 So whether they are on our list where
18 there's an expected exceedance or whether an unexpected
19 exceedance is identified, there's a full suite of
20 mitigation that we can provide.

21 COUNCILMEMBER CONDON: Thank you.

22 And just to follow up. So the number of
23 people on your list are within the one mile -- I think
24 you said there was just one more exceedance from the
25 half mile to one mile.

1 MS. RACKNER: Yeah.

2 COUNCILMEMBER CONDON: But would it be the
3 NSRs within the mile that you're --

4 MS. RACKNER: Yes.

5 COUNCILMEMBER CONDON: -- assessing?

6 MS. RACKNER: And to go back to something I
7 said earlier. And again, there's a lot of detail and so
8 I hope that, Kellen, you'll correct me if I get any of
9 this detail wrong. I'm not looking at the site
10 condition itself.

11 But this was something that the company
12 agreed to do. It was really in response to some
13 concerns that Stop B2H was raising about notice that
14 what we agreed to do was that prior to the line being
15 energized we will provide notice.

16 We're going to update X-7, which was our
17 list of all landowners within a mile -- so we're going
18 to update that list because there could have been
19 changes. Then we're going to send out notice to all
20 those folks within the mile and tell them what their
21 rights are.

22 So not -- so we will have already mitigated
23 for the people we know about. But then before the line
24 is energized, we'll make sure that all landowners
25 understand that if they are hearing corona noise and

1 they are bothered by it, that they have rights under a
2 complaint process.

3 COUNCILMEMBER CONDON: Thank you.

4 VICE CHAIR HOWE: Yes, Councillor Beier.

5 COUNCILMEMBER BEIER: This is Councillor
6 Beier, for the record.

7 Variances and exceptions make me a little
8 queasy. And I want to make sure that the Department and
9 the Council are on great grounds in setting forth the
10 parameters for issuing this exception.

11 So that's for the Department.

12 Just to make sure we feel really
13 comfortable. Because any time you grant a variance or
14 an exception, you're kind of setting a precedent and it
15 just -- it just makes me queasy.

16 But also, Kellen, if we can, before we get
17 done with the noise discussion, dig in a bit to the
18 conditions because I think that would help us all be
19 more comfortable.

20 And thank you for going through that detail
21 of what kind of mitigation. That makes me a lot more
22 comfortable in terms of the overall process.

23 Also, if you could remind me how many of
24 these noise-sensitive residences or occurrences there
25 are currently. I can't remember.

1 MS. RACKNER: So we -- under our modeling,
2 we predict that there are 41 residences. And I believe
3 they are all residences. We looked at schools and
4 hospitals as well. But I believe they are all
5 residences. And there's 41 of them where there's a
6 prediction of an exceedance.

7 Now, a number of these exceedances are 1 dBA
8 over the threshold, but there are exceedances -- you
9 know, I'm not going to say exactly what it is, because I
10 don't want to get it wrong. But they are more
11 significantly -- you know, more significant of
12 exceedances. They are kind of all over the map.

13 COUNCILMEMBER JENKINS: This is Hanley.

14 I would like to go back to the issue of
15 whether or not EFSC has the authority to grant the
16 variance. And we have in the record evidence that DEQ
17 responded -- they had an internal management directive,
18 and they responded to Stop's discovery request, that --
19 that the DEQ and EQC no longer administered the noise
20 control program and will not process requests for
21 exceptions and variances, and local governments and EFSC
22 may enforce the noise rules. So that's directly from
23 DEQ.

24 So I think it is important to recognize that
25 they recognize that we have the authority to process the

1 exceptions, backlash, variance requests.

2 And then, also, I believe it's under a DEQ
3 administrative rule, 340-035-0110, states that DEQ is
4 going to suspend their administration of the noise
5 program and includes, but not limited to, processing
6 requests for exceptions and variances.

7 So not only do they recognize that we have
8 the authority, they recognize they no longer had the
9 authority.

10 So I think that's important for us to
11 recognize as well.

12 VICE CHAIR HOWE: Any other questions from
13 Council of Ms. Rackner?

14 Okay. Counsel Rowe.

15 MR. ROWE: Hanley just did my job for me.

16 That is one of the main points I was going
17 to make is that there is that DEQ internal management
18 directive that explicitly says that EFSC staff review
19 applications to ensure that the proposed facilities
20 meet the state noise regulations.

21 So contrary to Mr. Anuta's assertion, this
22 Council and the Department don't need to go to DEQ and
23 EQC to request that authorization because they have
24 already made it explicit.

25 Beyond that, I don't know that there's much

1 I can add.

2 I will point out, I do appreciate the
3 question about the conditions that have been imposed.
4 And we do intend to go into those in some detail under
5 issue NC-4 and those are in the proposed contested case
6 order as well.

7 So when we have that discussion, we should
8 all have those conditions in front of us so that you're
9 comfortable that you're really understanding them.

10 VICE CHAIR HOWE: Thank you, Counsel Rowe.

11 And on my job here, keeping people to three
12 minutes, I let both parties exceed that. And so I
13 consider it even right now.

14 But from here on, I'll be interrupting you
15 at the 3-minute limit.

16 So on the -- I guess we're ready for the
17 straw poll.

18 SECRETARY CORNETT: Mr. Vice Chair -- for
19 the record, Todd Cornett -- so there's a lot of overlap
20 between issues N-2, N-3, and N-4. And so you can
21 absolutely take a straw poll solely on this issue right
22 now.

23 Our recommendation is because there is so
24 much overlap to wait and do a consolidated straw poll on
25 issues NC-2, NC-3, NC-4, as well as the standard.

1 As Patrick kind of pointed, under issue
2 NC-4, you're going to get into the conditions more. So,
3 again, your choice. But it's our recommendation, and
4 the way we've set this up is to hold until the
5 conclusion of all of the remaining noise control issues.

6 VICE CHAIR HOWE: Okay. What's the pleasure
7 of the Council?

8 COUNCILMEMBER JENKINS: This is Hanley. We
9 have polled on one, NC-1. I would like to go ahead and
10 poll on NC-2 and then consolidate 3 and 4, if we can.

11 SECRETARY CORNETT: That's fine.

12 VICE CHAIR HOWE: Council good with that?
13 Okay.

14 SECRETARY CORNETT: Okay. "Agree with the
15 findings of fact, conclusions of law, and conditions of
16 approval in the proposed contested case order pertaining
17 to issue NC-2."

18 VICE CHAIR HOWE: Sounds good.

19 SECRETARY CORNETT: Ann Beier.

20 COUNCILMEMBER BEIER: Yes.

21 SECRETARY CORNETT: Perry Chocktoot.

22 COUNCILMEMBER CHOCKTOOT: Yes.

23 SECRETARY CORNETT: Cindy Condon.

24 COUNCILMEMBER CONDON: Yes.

25 SECRETARY CORNETT: Hanley Jenkins.

1 COUNCILMEMBER JENKINS: Yes.

2 SECRETARY CORNETT: Kent Howe.

3 VICE CHAIR HOWE: Yes.

4 SECRETARY CORNETT: Jordan Truitt.

5 COUNCILMEMBER TRUITT: Yes.

6 SECRETARY CORNETT: Thank you,
7 Councilmembers.

8 MR. RATCLIFFE: Issue NC-3 has one limited
9 party filed exception, Stop B2H.

10 The issue is whether the methodologies used
11 for the noise analysis to evaluate compliance with
12 OAR 340-35-0035 were appropriate and whether the Oregon
13 Department of Energy erred in approving the methodology
14 used to evaluate compliance with that rule.

15 The Hearing Officer's opinion, she first
16 noted that the applicant identified specific locations
17 within the 300-mile transmission line to set noise
18 monitors and collect ambient noise monitoring data to
19 then be used for the evaluation of predicted worst-case
20 operational noise to evaluate whether the proposed
21 facility would result in an increase of 10 dBA or above
22 the ambient anti-degradation standard.

23 In Union County, the location selected and
24 evaluated in the application for site certificate and
25 proposed order for baseline noise monitoring is referred

1 to as MP-11. MP-11 is in proximity to I-84, Highway 30,
2 and a Union Pacific Railroad. Noise measurements
3 identified ambient noise levels at this location of
4 32 dBA.

5 The applicant's expert witness, Mark
6 Bastasch, confirmed that the noise level used to
7 evaluate compliance with the anti-ambient noise
8 degradation standard is based on L-50, which is an
9 averaging of all total hours, train noise, given its
10 limited duration, would be filtered out over the
11 sampling period.

12 In response to issues raised by the limited
13 parties through the contested case proceeding, the
14 applicant introduced new noise monitoring data for four
15 new monitoring position locations within Union County.
16 These are referred to as MP-100, -101, -102, and -103.

17 Data was collected for three weeks in
18 October 2021. The applicant selected the monitoring
19 positions to represent NSRs located closer to Morgan
20 Lake and the La Grande Valley.

21 Baseline data relies on the quietest times
22 of day, midnight to 5 a.m., where wind data was recorded
23 as calm. At these four new monitoring position
24 locations, the mean L-50 was 31 dBA, 36 dBA, 32 dBA, and
25 43 dBA, respectively.

1 Stop -- the hearing officer also found Stop
2 B2H's introduction of monitoring data from Mr. Carey
3 Stanley should not be used to determine representative
4 ambient noise levels. She concluded that the data set
5 is too small to allow that conclusion.

6 She also found that OAR 340-35-0035(3)(a)
7 expressly authorizes the reviewing agency to approve
8 sound measurement procedures and the Department and its
9 noise consultant, Golder Associates, appropriately
10 vetted and concurred with the applicant's methodology.

11 The hearing officer also considered whether
12 the variance/exception should only apply to the NSRs
13 where exceedances are predicted to occur today.

14 The noise control regulations do not address
15 the difference between a linear and nonlinear facility,
16 that Council should acknowledge the difference. Either
17 it could be a situation where there are new NSRs or NSRs
18 that were inadvertently missed in the evaluation,
19 granting an exception or variance for the whole line
20 creates some flexibility for IPC to avoid an automatic
21 violation of the standard. The conditions assure that
22 if this were to occur, a full formal evaluation would be
23 required.

24 And upon a complaint filed, the same level
25 of mitigation for known NSRs is required, which includes

1 the opportunity for Council review.

2 So that is the summary of the hearing
3 officer's opinion on that issue.

4 And Stop B2H can present oral argument.

5 MR. ANUTA: Karl Anuta presenting for
6 Stop B2H.

7 The -- hopefully you've had a chance to read
8 the exceptions and materials on this.

9 The crux of the dispute was over monitoring
10 point 11 and whether it is or is not representative.

11 Stop provided a spot-check with data from
12 Mr. Stanley that showed it was not representative.

13 The Idaho Power did a spot-check for a
14 little bit longer, but it was still nothing but a spot
15 check that suggested it might be representative but it
16 maybe not. Maybe it was not representative in the other
17 way.

18 Ultimately, the problem here is that you're
19 trying to set -- they are using monitoring point 11 to
20 set a baseline level. And the baseline level that was
21 chosen, which was started out at 32 and went to 31 dBA,
22 is way higher for a rural area than any other of the
23 rural counties.

24 And there's a chart in the record. We cited
25 it repeatedly in our testimony and our exceptions that

1 shows all the other counties have baseline dBAs between
2 24 and 25. That's where the dBA for Morgan Lake and
3 Mill Creek routes should be. And we presented evidence
4 that showed that the fundamental problem with monitoring
5 point 11 is it's too close to the Union Pacific train
6 line where there are 25 to 35 trains per day that
7 increase the ambient noise level.

8 So that's the fundamental problem.

9 Here we urge you to remand for further
10 analysis or to conclude that what's really needed here
11 is to set a baseline for Union County that's same as the
12 baselines for the other rural counties, which is the 24
13 to 25 levels.

14 If you do that, it's going to increase the
15 number of NSR exceedances. But as has been pointed out,
16 there is a process in the conditions for complaints in
17 addressing those exceedances. And we think that process
18 should be available to all those people that are at 25
19 and go up from there, rather than just all those people
20 that are at 31 and go up from there.

21 And I'll talk more about the conditions when
22 we get to NC-4. We made a bunch of recommendations to
23 tighten up that language so that it really does what
24 Idaho Power says they want to do.

25 For now, I think what you really need to

1 wrestle with is do you want to have ambient noise levels
2 set at a level way higher for Union County than all the
3 other rural counties and what's the safe thing to do
4 here.

5 We've outlined in our testimony and our
6 exceptions why the safe thing to do is to lower the dBA
7 for the baseline for Union County. I urge you to do so.

8 VICE CHAIR HOWE: Thank you, Mr. Anuta.

9 Are there any questions from Council?

10 Okay. Thank you.

11 MS. RACKNER: Again, Stop B2H's argument
12 about Idaho Power's noise monitoring methodology is
13 focused on the company's use of MP-11 to set the average
14 ambient sound level for NSRs in the Morgan Lake area.

15 However, all of these arguments were
16 completely invalidated by the Company's supplemental
17 noise monitoring in Morgan Lake area which yielded
18 ambient sound levels which are virtually identical to
19 the ones that we received at MP-11. So all this focus
20 on what's wrong with MP-11 is simple misdirection.

21 Mr. Anuta also referred to our monitoring as
22 spot monitoring. Well, Mr. Stanley performed spot
23 monitoring for three years.

24 Idaho Power performed monitoring round the
25 clock for three weeks, which was the same monitoring

1 protocol that was approved by ODOE for all the initial
2 monitoring. So our supplemental monitoring was robust
3 and lengthy and can't fairly be called spot monitoring.

4 Now, in response to Stop's concern.

5 So we did do this supplemental monitoring.

6 The monitoring point that we selected for the Morgan
7 Lake area, which was the area of most concern was right
8 adjacent to the park. We chose the quietest place in
9 the area that we could to provide the most conservative
10 results.

11 For MP-11, Idaho Power measured an ambient
12 sound level of 31 dBA, which is 1 dBA less than what we
13 had found at MP-11. One dBA, as our expert explained,
14 it is not perceptible to the ear. But it did create, if
15 we adopt that approach, which we agreed to do, two more
16 NSRs that will be mitigated under our plan.

17 Now, Stop B2H has taken exception to the
18 fact that the hearing officer didn't accept the
19 monitoring results of its own expert, Mr. Stanley, which
20 was indeed significantly lower than what we received
21 from MP-11 or 100.

22 But as I said, that took place at just three
23 and a half hours. And as pointed out by both ODOE's
24 expert and our expert, Mr. Stanley failed to follow the
25 most basic procedures for ensuring a verifiable and

1 reliable data.

2 And in the end, while Mr. Stanley initially
3 said that he produced an ambient level for the area --
4 he had to agree that he never really intended -- that
5 that's not really what his monitoring was intended to
6 do.

7 So Stop B2H also argued a list of criticisms
8 of Idaho Power's selection of MP-11 as the proxy. And I
9 see I'm out of time and I'm going to be respectful.

10 VICE CHAIR HOWE: Thank you, Ms. Rackner.
11 Are there any questions of Ms. Rackner?
12 Councillor Jenkins.

13 COUNCILMEMBER JENKINS: Sorry. This is
14 Hanley.

15 Lisa, I'm having trouble finding it, but I
16 was pretty sure that I had read in the exceptions that
17 Mr. Stanley admitted that his measurements -- and you
18 just alluded to that -- had problems because, one, he
19 didn't calibrate his equipment and, two, it was only for
20 the four hours; is that correct?

21 MS. RACKNER: So I think Mr. Stanley did
22 acknowledge through his attorney -- there was some email
23 back and forth -- that he had not calibrated his
24 equipment. He did something -- I can't remember --
25 something called like a "spot-check" of his equipment,

1 but didn't calibrate his equipment.

2 His equipment also hadn't been calibrated as
3 required under DEQ rules. You have to have it
4 calibrated a year before you do your monitoring. That
5 didn't happen. He didn't do a calibration in the field.

6 I don't believe he ever admitted that that
7 was the problem with his monitoring, but you'd have to
8 read his testimony. He seemed more to be focused on the
9 fact that he had to agree that since he only monitored
10 for three hours, he can't possibly have claimed to have
11 captured any representative example.

12 And he did in his -- he did in his
13 monitoring results note that it was a quiet night with
14 no wind. Well, many nights are quite windy. There's a
15 lot of trees out in that area, which means that it's
16 loud when it's windy.

17 So -- so on that, I think Mr. Stanley did
18 acknowledge that his -- that it was just the brevity of
19 his monitoring meant that it really couldn't be used to
20 set any kind of a responsible level.

21 COUNCILMEMBER JENKINS: Thank you.

22 VICE CHAIR HOWE: Any other questions from
23 Council?

24 Okay. Thank you.

25 MS. RACKNER: Thank you.

1 VICE CHAIR HOWE: Counsel Rowe.

2 MR. ROWE: Patrick Rowe, Department of
3 Justice on behalf of Department of Energy.

4 And couple comments just for context. I
5 know that we've already discussed the noise rules, but I
6 want it to make sure that council is understanding that
7 is, really essentially, two types of noise rules that
8 DEQ has. Kellen discussed these. There's a maximum
9 allowable noise and there's the anti-ambient degradation
10 standard. No one is arguing that the proposed facility
11 will exceed the maximum allowable noise. All we're
12 talking about is whether it will exceed the anti-ambient
13 degradation standard, meaning 10 dBA above background
14 levels. I just want to make sure that we're all
15 understanding that.

16 Second, with regard to the additional
17 supplemental monitoring that was done, I also want to
18 make sure that Council is appreciating that this was
19 done during the course of the contested case.

20 So Idaho Power was being responsive to
21 concerns that were raised. They weren't turning a deaf
22 ear. They are acknowledging that legitimate concerns
23 had been raised about the monitoring that was done at
24 MP-11 and whether or not it was representative.

25 In response to that, during the course of

1 the contested case, they retained their noise expert to
2 go out and do, as Ms. Rackner just described, an
3 additional three weeks of supplemental monitoring.

4 The hearing officer held that methodologies
5 that Idaho Power used for the noise analysis were
6 appropriate. The Department agrees.

7 CHAIR HOWE: Thank you, Mr. Rowe.

8 Any questions from Council?

9 COUNCILMEMBER JENKINS: This is Hanley. My
10 question is for Patrick. The hearings officer
11 recommended revisions to noise condition number one to
12 add the additional two exceedance locations.

13 Does the Department support that?

14 MR. ROWE: I think there was actually a
15 correction. There were two locations that Idaho Power
16 had initially estimated exceedances at and then
17 determined that there would not be exceedances -- but
18 then identified two other locations where their analysis
19 had now projected that there would be exceedances.

20 So the Department does support the
21 correction to the NS -- the NSR numbers that are
22 identified in the condition.

23 VICE CHAIR HOWE: Any other questions from
24 Council?

25 COUNCILMEMBER JENKINS: No. My comment

1 would be that we make those amendments.

2 VICE CHAIR HOWE: Yes.

3 MR. ROWE: Hanley, you had noted that the
4 hearing officer has included those in the proposed
5 contested case order; correct?

6 Okay. So we'll need to -- I want to make
7 sure I'm on the same page as what you're discussing. So
8 let me quick look at me my -- let me take a look and
9 make sure that you and I are talking about the same
10 thing.

11 COUNCILMEMBER JENKINS: Okay. What you're
12 suggesting is that they are in the contested case order
13 but they're not in the proposed order?

14 MR. ROWE: I'm referencing, yes, correct.
15 There's a proposed amendment in the -- to the condition
16 in the proposed contested case order that revises the
17 list of NSRs at which there are projected exceedances.

18 In other words, those folks that Ms. Rackner
19 was describing earlier that have already been identified
20 as possibly having exceedances and who will
21 automatically be part of the mitigation process that
22 Ms. Rackner described. So there is a proposed amendment
23 to those identified NSRs. That's what I'm referring to
24 and that is in one of the noise control conditions.

25 COUNCILMEMBER JENKINS: In the contested

1 case order?

2 MR. ROWE: Correct. But not currently --
3 not in the Department's order.

4 COUNCILMEMBER JENKINS: Right.

5 MR. ROWE: So that would be a change.

6 COUNCILMEMBER JENKINS: Yes. Okay. Thank
7 you.

8 VICE CHAIR HOWE: Okay. I believe we're
9 continuing on now to NC-4. And it's yours, Counsel
10 Ratcliffe.

11 MR. RATCLIFFE: Issue NC-4, the limited
12 party is Stop B2H.

13 The issue is whether the mitigation/proposed
14 site conditions adequately protect the public health,
15 safety, and welfare.

16 The proposed contested case order, the
17 hearing officer's opinion, the hearing officer noted
18 that there were -- that the proposed order -- the
19 Department's proposed order included five recommended
20 conditions to minimize and mitigate potential impacts
21 from operational corona noise at noise-sensitive
22 receptors. Through the contested case proceeding, Stop
23 B2H, the Department and the applicant proposed revisions
24 to noise control conditions 1, 2, 4 and 5.

25 The hearing officer rejected review of

1 additional revisions to noise control conditions
2 proposed by Stop B2H in their closing argument, but
3 accepted revisions proposed by the Department and the
4 applicant. The reasoning was based on the fact that the
5 Department and the applicant would not have had an
6 opportunity to review and respond.

7 The hearing officer concluded that the
8 amended recommended conditions posed by the Department
9 and applicant are adequate to protect public health,
10 safety, and welfare.

11 And so this is where -- as part of the
12 discussion we're going to go into a bit more detail in
13 terms of the amended recommended noise control
14 conditions. And -- and I -- you know, we -- we can see
15 what the Council wants to do with this.

16 We can either pull those amended conditions
17 up on the screen now before the oral argument takes
18 place and, you know, try to work through some of that or
19 we can go ahead and have the oral argument first and
20 then have discussion on the amended conditions.

21 VICE CHAIR HOWE: Council prefer details now
22 or after oral testimony?

23 COUNCILMEMBER JENKINS: Yeah, I'm with Ann.
24 I'd do the -- this is Hanley. I'd do the testimony.
25 And we've got the full package.

1 MR. RATCLIFFE: Okay. So we can go ahead
2 and have Stop B2H come on up for oral argument, then.

3 MR. ANUTA: Karl Anuta appearing for Stop
4 B2H.

5 First, let me start off by pointing out from
6 a background perspective. Stop submitted a series of
7 proposed amendments to the noise control conditions to
8 1, 2, 3, and 4. Those are on PDF pages 38 through 48 of
9 our exceptions. They are outlined with the proposed
10 changes in red and I urge you, when you get to the point
11 of discussing conditions, pull those up and look at them
12 or have the Department pull them up so you can see how
13 our language actually tracks what Idaho Power claims
14 that it is willing to do and tries to lock down the
15 protections for the citizens of these counties that will
16 be crossed by this massive project in a way that is
17 functional.

18 Basically, the initial dispute here was that
19 the hearings officer rejected our conditions claiming
20 they were untimely. That is not correct in our opinion.
21 We outlined why that was. It's my understanding from
22 reading the responses that the Department and possibly
23 even Idaho Power -- although I'm not clear on that --
24 agree that that rejection is untimely, was
25 inappropriate, and that those conditions should be

1 considered by this Council.

2 The conditions that we proposed create a
3 complaint process that extends out to the entire one
4 mile. It -- they create a notification requirement in
5 advance of construction, not an advance of energizing
6 the line after it is already built. But in advance of
7 construction so that everybody during the whole process
8 knows what their rights are.

9 We've also proposed that -- to some
10 additional monitoring to verify whether the baseline
11 levels really are accurate.

12 In addition, we've proposed that the --
13 again, that the -- the baseline, that levels being
14 modified back down to the level they should be.

15 Ultimately, I would urge you to look
16 carefully at those conditions that we've proposed,
17 because we tried hard to create a balanced functional
18 set of conditions. And we are convinced that the set
19 that was proposed by the hearings officer does not go
20 far enough in some areas.

21 In the responses, the Department and Idaho
22 Power contended that some of our condition language was
23 redundant of other places. It's not -- we were very
24 careful to try to cover, for example, ongoing
25 maintenance in the noise area and technology

1 developments in the noise control area out through the
2 operation of the line, not just up-front. Because as
3 you all know, technology changes. This line is going to
4 be here for a minimum of a hundred years and likely
5 forever. So there should be a condition that requires
6 ongoing monitoring and ongoing maintenance and ongoing
7 updated technology.

8 VICE CHAIR HOWE: Thank you, Mr. Anuta.

9 Any questions from Council?

10 Okay.

11 (Audio disruption.)

12 MS. RACKNER: -- to hear that you will be
13 going through the proposed conditions in detail, because
14 they are long and voluminous and there's lots of little
15 twists and turns in them. And I think I certainly cover
16 them all in three minutes.

17 And I think it's really important to
18 understand just how robust those conditions are.

19 And as Mr. Anuta acknowledged and
20 Mr. Ratcliffe referred to, many of the changes to the
21 conditions were either proposed by ODOE or Idaho Power,
22 specifically, to respond to Stop B2H's proposals.

23 We agreed when we heard their concerns.
24 There were many of those concerns that rang true for us
25 and we thought these are issues that we can cover.

1 So I'm happy to hear that you will be
2 hearing more about that. And I think it's hard to talk
3 about Stop B2H's conditions in the abstract. And,
4 again, I don't have time to refer to each of them.

5 I will say that I think that if you -- that,
6 number one, they are unnecessary to meet the standard.
7 We disagree. We think that they are -- that they are
8 duplicative of -- of condition requirements that the
9 hearing officer already adopted in response to both ODOE
10 and Idaho Power's proposed changes.

11 And we also believe that any number of them
12 are just impractical.

13 So, for instance, I'm just going to give you
14 an example. And if I've got this wrong, I'll -- and
15 Mr. Anuta can correct me, but I believe one of the
16 proposals is to do ongoing monitoring during -- you
17 know, once the line has been energized. It is a
18 300-mile line.

19 Any kind of -- there just isn't a sensible
20 monitoring approach that Idaho Power could undertake.
21 We absolutely believe that the best way to make sure
22 that the line is operating as it should and not
23 impacting citizens is the complaint process.

24 So we think the most important thing that we
25 can do is make sure that everybody within a mile of that

1 line gets notice that -- gets notice that they have
2 rights under the complaint process, clearly understand
3 what the complaint process is, and then it will be up to
4 ODOE, the applicant, the complainant, and ultimately
5 this Council to decide what is correct and fair for each
6 complaint.

7 VICE CHAIR HOWE: Thank you, Ms. Rackner.
8 Any questions from Council at this time?
9 Okay. Counsel Rowe.

10 MR. ROWE: I don't have any comments, but I
11 just have a suggestion for how we might go about doing
12 this.

13 And the condition as -- the amended
14 condition as proposed is in the proposed contested case
15 order condition. So I suggest that we project that on
16 the screen and that you also have it in front of you,
17 because sometimes I notice on this screen it is
18 difficult because it doesn't seem to capture the full
19 content.

20 So if you were -- if you have -- in the
21 proposed contested case order, if you start at page
22 205 -- and I would suggest we literally just go through
23 it paragraph by paragraph and we allow Mr. Anuta to come
24 back up, and when there are sections of the proposed
25 condition for which he has proposed an amendment or a

1 revision, he'll be allowed to explain his position and
2 then Idaho Power and the Department be allowed to
3 respond.

4 MS. TARDAEWETHER: I have the proposed
5 contested case order up here. I also -- because this
6 is -- under the -- in the order where the hearing
7 officer discusses the condition, she does highlight
8 where there are changes from the proposed order under --
9 down here at the bottom, which, Patrick, that's where
10 you pointed us to.

11 MR. ROWE: Actually, I wouldn't go -- I
12 would show what has been changed.

13 MS. TARDAEWETHER: Well, I guess what I'm
14 offering is that Sarah has provided this and this is --
15 and I know initially -- give it a minute here.

16 MR. ROWE: Kellen, can you go to page 205?

17 MS. TARDAEWETHER: Sure.

18 MR. ROWE: And I think it is important that
19 the Council understand the changes that have already
20 been made compared to what was in the proposed order,
21 because there have been significant revisions.

22 MS. TARDAEWETHER: Okay. I'm just going to
23 shrink it. I'll keep it a little bit.

24 MR. ROWE: So we have the changes that are
25 proposed by the hearings officer on the screen and in

1 our hard copies starting on page 205.

2 CHAIR HOWE: Correct.

3 MR. ROWE: We have other proposed changes by
4 Stop.

5 Do we want to go through these and then
6 listen here what Stop's suggestions are.

7 MR. RATCLIFFE: This is my idea and you can
8 handle it however you want.

9 If it were me, I would go through paragraph
10 by paragraph and Mr. Anuta can identify whether or not
11 Stop has proposed any revision to that particular
12 paragraph.

13 If he hasn't, then there's really nothing to
14 consider except do you accept what's proposed?

15 If Stop has proposed a revision to a
16 particular paragraph, Mr. Anuta can explain why he
17 thinks it's necessary and Idaho Power would be allowed
18 to respond and the Department as well.

19 MR. ROWE: So I guess maybe it's an
20 opportunity for both to come up to the table.

21 CHAIR HOWE: Mr. Anuta and Ms. Rackner, it
22 might be best if both of you come up as we work
23 through -- sounds like paragraph by paragraph the
24 sections of the conditions.

25 Okay. So I guess I'll start with paragraph

1 1. Begins with "prior."

2 Are there any suggested changes from Stop on
3 that paragraph?

4 MR. ANUTA: I'm trying to get there on my
5 computer.

6 VICE CHAIR HOWE: Okay.

7 MR. ANUTA: Unfortunately, my printer didn't
8 print all of the pages, so I normally would have it in
9 front of me.

10 And from a process standpoint, I might
11 suggest that another way to do this would be to pull up
12 the Stop recommended conditions, which has all the same
13 language that you have there and then has, in red, our
14 proposed additions, because that would show you what
15 we're actually proposing.

16 I know what PDF page those are in our
17 exceptions. I don't know where in your record exactly
18 those exceptions are and which page of the -- those you
19 should look at to get the same ones.

20 But, for example, on that first noise
21 control condition one, we did propose a paragraph in
22 advance of that -- (audio disruption) -- the 41 NSR
23 property owners and then it lists.

24 We suggested that it should start with prior
25 to construction all NSRs within one mile of the facility

1 will be notified in writing that they may be impacted
2 and that they will be informed of the mitigation process
3 and the complaint process. And then we outline specific
4 notice suggestions.

5 MS. TARDAEWETHER: I'm sorry.

6 What does counsel want me to project on the
7 screen?

8 Are we pulling up and are we looking at
9 their -- the proposed contested case order condition
10 language or am I navigating to the document? Because
11 I'm not sure what you're looking at.

12 What does Council want to look at?

13 VICE CHAIR HOWE: Do we want -- do we want a
14 red-lined version of changes that have been proposed?

15 COUNCILMEMBER JENKINS: I don't have that in
16 front of me. What I have is the proposed contested case
17 order.

18 VICE CHAIR HOWE: That's what I have here.

19 COUNCILMEMBER JENKINS: Yeah. So if we can
20 project on the screen --

21 VICE CHAIR HOWE: The changes.

22 COUNCILMEMBER JENKINS: -- what Mr. Anuta is
23 referring to then, at least, I can compare the two.

24 SECRETARY CORNETT: For the record, Todd
25 Cornett.

1 We're just trying to figure out the process
2 right now.

3 (Discussion for presentation.)

4 SECRETARY CORNETT: For the record, Todd
5 Cornett.

6 So could somebody please articulate exactly
7 what we're seeing.

8 So the red text is what you're proposing to
9 add in addition to the hearing officer's proposed
10 condition; is that correct?

11 MR. ANUTA: That is correct.

12 For the record, this is Karl Anuta.

13 The red text you see here are the changes
14 that Stop proposes in the condition that the hearings
15 officer put in the proposed contested case order where
16 we're suggesting adding language that's in red. We're
17 suggesting removing language that's in red strike out.

18 So, for example, if you look at what we've
19 proposed there as sub (c), it says, "prior to
20 construction the certificate holder will," and then
21 "work" was struck out and "initiate discussions" was put
22 in.

23 So this language is what we suggested for
24 the beginning of the noise control condition one. And
25 the premise here is that we want to make sure that the

1 notice is adequate that the -- that it goes to everyone
2 within one mile so that everybody who might be affected
3 knows what the mitigation and the complaint process is.
4 That's the intent of this.

5 MR. ROWE: Karl, just before we get into the
6 rationale for your proposed changes, I just want to
7 clarify one thing.

8 "Initiate discussions" is already in the
9 proposed contested case order. That was something that
10 Idaho Power and the Department had recommended.

11 So that's -- so I don't know that it's
12 accurate to state that that's something you have
13 proposed changing.

14 MS. TARDAEWETHER: For the record, Kellen
15 Tardaewether. So I'm just going to --

16 VICE CHAIR HOWE: You don't have a mic.

17 MS. TARDAEWETHER: For the record, Kellen
18 Tardaewether. So I'm just going to kind of toggle in
19 between. I'm going to go from the proposed contested
20 case order beginning of the condition and then we're
21 going to go over to the proposed condition.

22 Because as represented by Mr. Anuta, the
23 redline should be to -- anyhow, I feel like there might
24 be items missing.

25 For instance, the bold is 18 -- NSRs 118 and

1 132 were added. And then over here, I don't see 118 and
2 132. I feel like maybe we should be looking at the
3 proposed contested case order.

4 MR. ANUTA: We erred -- when I was putting
5 this together we did not capture the changes. And I
6 suspect that's because the version that I'm using here
7 was based -- was what we submitted and we somehow missed
8 that change. Because "initiate discussions" is in here
9 and the proposed one.

10 MS. RACKNER: And just --

11 MR. ROWE: Go ahead, Lisa.

12 MS. RACKNER: Well, what I'm wondering is
13 I'm a little concerned because when we were going --
14 going through Stop's proposed changes, it did feel to us
15 that a lot of -- am I not using -- okay. It did feel to
16 us that a lot of them had already been addressed, maybe
17 in different words, and I'm wondering -- I'm a little
18 concerned about what we're doing right now, which is
19 looking at different versions of conditions. Some of
20 which may -- the redlining may be right; some of it
21 which the redlining might be wrong.

22 And I'm wondering if -- if we want to go
23 through this and consider Stop's proposals, if we could
24 focus on what the hearing officer adopted.

25 And then, Karl, if you could say, well, this

1 is why we think it's inadequate and this is the change I
2 would propose.

3 Maybe kind of separate and apart from the
4 redlining that you provided. We could at least start on
5 a conceptual basis where you could say I'm -- because,
6 again, it gets to the point where we thought -- well, we
7 thought we covered this. And it's just in different
8 words.

9 But if you look at it and say, no, this
10 is -- this is the change that needs to happen in order
11 to make it more effective, then we can have a
12 conversation about that. Or well, I don't know whether
13 the Council wants to have a conversation about it.
14 Maybe you want to just talk to each other, but that
15 feels to me like the better approach here, given where
16 we are with lots of different pieces of paper with
17 different redlining around.

18 COUNCILMEMBER JENKINS: Yeah. This is
19 Hanley.

20 I want to talk about what your concepts are
21 that are different than what the hearings officer has
22 already suggested in her draft proposed order.

23 I don't want to go word by word here.

24 I want to know what concept do you feel is
25 not captured in the hearings officer's proposed

1 condition?

2 CHAIR HOWE: Yeah. And this is Kent. And I
3 agree with that. I think we have the proposed contested
4 case order on the screen, which this is. Right?

5 That's the final document that we're wanting
6 to know do we need to change or add.

7 Mr. Anuta can tell us paragraph by paragraph
8 if that has the language that they are hoping to have.

9 MR. ROWE: And then allow Lisa to respond.

10 VICE CHAIR HOWE: Correct. Does that work?

11 Okay. So if we start with this paragraph
12 that we're looking at on the screen, do you have
13 suggestions that you would like to see made to that
14 paragraph?

15 MR. ANUTA: Karl Anuta. Yes.

16 Stop would propose that this paragraph be
17 expanded to cover not just the 41 NSRs listed, but all
18 potential NSRs within one mile of the facility and that
19 there be -- that there be a written notice that includes
20 the parameters of the mitigation, what are the options,
21 and what's the complaint process that will ultimately
22 exist there.

23 And we felt that the generic -- that the
24 language that the hearings officer used in her first
25 paragraph there did not capture that level of detail.

1 VICE CHAIR HOWE: Okay. Ms. Rackner, what
2 would be your response to that?

3 MS. RACKNER: So this gets to a point where
4 I was saying we think your concern is covered in a
5 different condition.

6 This particular condition is specific to
7 those landowners for whom we do predict an exceedance
8 and requires us to mitigate and -- and to work on a
9 mitigation plan with them.

10 So it wouldn't be appropriate to address all
11 the folks going -- all the NSRs in the area for whom no
12 exceedance is -- is expected.

13 But in, I believe, it's condition three, is
14 it -- can -- here -- and I can pull up all -- I have so
15 many documents pulled up on my little tiny screen here.
16 Let me see what I can find.

17 VICE CHAIR HOWE: I think Kellen has got it
18 right here.

19 MS. RACKNER: Okay. So it is condition two.
20 So in condition two -- and maybe you could
21 look at that, Karl, and see if that satisfies your
22 concern.

23 That requires us to -- to create a new
24 version of X-7, which is the list in the application
25 that includes all landowners up to one mile and to send

1 notices to those. And inform the recipient that they
2 are the owner of an NSR and tell them about the
3 requirements of the conditions which include the
4 complaint and mitigation conditions.

5 And also let them know that prior to
6 construction, the certificate holder will develop and
7 submit to the Department an operational noise complaint
8 response plan.

9 So that's the place where we propose
10 language. I think that gets, Karl, to your concern.

11 MR. ANUTA: May I respond? I'm happy to do
12 so.

13 VICE CHAIR HOWE: Yes.

14 MR. ANUTA: Okay. I didn't want to take up
15 extra time, if -- the -- that does get some of the
16 issue. That does not, in our view, get all of the
17 issue. Because that we added -- in addition to
18 notifying everyone within one mile, we added a specific
19 paragraph that proposed the specifics of the notice --
20 the notice and what it would cover. I think the
21 language that the hearings officer covered was not quite
22 as detailed or -- and it was more of a broad brush. And
23 so we were trying -- apologies.

24 MS. RACKNER: Could you maybe --

25 MR. ANUTA: Thank you. That's the first

1 time in many years somebody has told me to speak up.

2 It's usually the opposite.

3 MS. RACKNER: And, Karl, could you -- and by
4 the way, I guess I would ask the Council's permission,
5 do you mind hearing a conversation between us just to
6 try to --

7 So, Karl, would you mind pointing out
8 what -- what you think is missing from what the hearing
9 officer adopted?

10 MR ANUTA: Let me find that section. I did
11 not see -- and perhaps I missed it in condition two -- a
12 list of what the notice to the landowners within one
13 mile would include. Like, the list that we included in
14 our (b) of our proposed condition one.

15 If you can point me to that --

16 MS. RACKNER: Yeah, just look at 2A. The
17 certificate holder will send notices to all landowners
18 listed in the updated attachment X-5, which notice shall
19 inform the recipient that the recipient is the owner of
20 an NSR and the requirements of noise control conditions
21 1 and 2.

22 And by the way, there are stray numbers in
23 the proposed contested case order. But I believe this
24 means noise control conditions one and two as adopted by
25 the Council.

1 So the noise conditions one and two talk
2 about mitigation obligations and also talk about the
3 complaint process.

4 COUNCILMEMBER BEIER: This is Councillor
5 Beier.

6 It seems as if the list that B2H is
7 proposing of what is in the notice is a little bit more
8 specific as to spelling out what Idaho Power has agreed
9 to in terms of mitigation.

10 And I think it's -- I think, as stated, the
11 information is there. It's just not as specific as what
12 B2H is proposing for notice language to the expanded
13 list of -- help me on the acronym, but NSRs.

14 So it's whether or not I think the Council
15 and the Department feel like we need that next granule
16 level of information in this condition.

17 The only thing that I don't see aligning is
18 the details of the mitigation information that would be
19 required in the -- in the condition. I think the
20 complaint process is clearly outlined in condition two.

21 So that information is there. Though, not
22 necessarily in the particulars of a notice requirement.

23 Excuse me, if I'm misinterpreting.

24 MS. RACKNER: No. I don't think you're
25 misinterpreting. But I would like to just direct your

1 attention, Councilmember Beier, to subsection (c) of
2 amended noise control condition one, which talks
3 about -- which talks about what Idaho Power will propose
4 and also is specific to any folks -- again, this was in
5 response to something Stop B2H brought up, was that if
6 there is someone who has a health condition that they
7 believe would be exacerbated by sound levels, then they
8 can request a much more robust -- an even much more
9 robust set of mitigation. So I think it's in there.
10 Because I think it's everything that we -- that -- that
11 we were ordered to do and required to do and we offered
12 to do.

13 I believe it's all in there. And -- and
14 I -- I do wonder if maybe one of the ways to address
15 Mr. Anuta's concerns is that if the full set of
16 conditions just gets provided to the landowners. So
17 every landowner can just look through and say this is
18 everything Idaho Power is required to do. You have
19 rights. You can take advantage of them.

20 COUNCILMEMBER JENKINS: If I might make a
21 suggestion. I've got an idea there. But go ahead,
22 Council.

23 COUNCILMEMBER BEIER: For the record, I'm
24 comfortable with that approach. I think that we
25 implement the conditions and need to enforce them and

1 having the public know what those conditions are should
2 be helpful.

3 MS. RACKNER: And before you respond, I just
4 want to say one more thing, which is, that given where
5 we are in the process, particularly, where we're
6 thinking about making changes to wording on the fly, as
7 a lawyer, that makes me a little nervous.

8 And so I -- I think the best way to make
9 sure everybody knows exactly what their rights are is to
10 give them the full set of robust conditions as opposed
11 to us now trying to revise the conditions themselves and
12 to try to provide some different notice.

13 I do have one other alternative that I think
14 we have out there, which is that if the Council is not
15 comfortable with just providing the full list of
16 conditions to each landowner, we could have an agreement
17 that we will work with ODOE as to a different notice.
18 Again, I just feel like we're safer, though, just going
19 with those conditions.

20 VICE CHAIR HOWE: Counsel Ratcliffe.

21 MR. RATCLIFFE: Yeah. So one thing I want
22 to point out here is we, if memory serves -- and I
23 think, Kellen, maybe perhaps you could correct me if I'm
24 wrong.

25 But I think we have one change to a

1 condition that has already been accepted by the Council
2 through the straw poll.

3 We have another one that is on the table
4 still that we're planning to do, you know, at the end of
5 this process related to the blasting notice.

6 And my recommendation, again, is the changes
7 to conditions constitute material changes that require a
8 material change hearing before we get to final order on
9 this.

10 So if that alleviates any concerns here
11 about, you know, having a chance to wordsmith conditions
12 and make sure that Department staff and I have not made
13 errors in trying to translate. There will be an
14 opportunity to comment on the changes to conditions that
15 get made before this gets to a final order.

16 MS. RACKNER: Thank you.

17 MR. ANUTA: And since I've been sitting here
18 trying to bite my lip, if you don't mind, I have a
19 number of different thoughts on the process issue.

20 My suggestion would be you listen to
21 Stop's reasons for wanting a change to the existing
22 order and what we're suggesting and you can go work with
23 the Department or suggest that the Department look at
24 our changes or Ms. Rackner's suggested change now of
25 providing all the conditions, and then come up with a

1 proposed final order that will then go out to hearing or
2 a change hearing if -- as Mr. Ratcliffe calls it.

3 From a substantive standpoint, the
4 difference between what we proposed and what Ms. Rackner
5 is proposing is that most people, when they get in the
6 mail a list of conditions that is written in legalese,
7 they are going to go, what? What does that mean?

8 So what we were proposing was a notice to
9 people that they had some rights, here's the outline of
10 what those rights are, and here's the processes that are
11 available.

12 And that was the intent of our changes to
13 condition one which we were trying to get at the
14 entirety of the folks.

15 And as I read condition two, it doesn't
16 necessarily require that kind of notice to everybody in
17 the -- that kind of notice being the kind we proposed of
18 here's your rights outlined in a simplistic form and
19 here's where you can find more information -- that does
20 not appear, as I saw it, in condition two.

21 Instead, it focuses in on the process and
22 the plan, and that's great, and it sets out those
23 things, but it didn't provide the notice. And that's
24 why we proposed the language at the beginning of
25 condition one.

1 VICE CHAIR HOWE: Okay. I think we've --

2 COUNCILMEMBER JENKINS: Hear from Patrick.

3 VICE CHAIR HOWE: Good idea.

4 COUNCILMEMBER JENKINS: I don't read --

5 MR. ROWE: We have filed --

6 COUNCILMEMBER JENKINS: -- condition two
7 that way.

8 MR. ROWE: I'm sorry, Hanley. You don't
9 read condition two in what way.

10 COUNCILMEMBER JENKINS: Condition two does
11 require that you go back to condition one.

12 MR. ROWE: That's the way I read it. I
13 mean, this condition was, as Ms. Rackner pointed out,
14 put in in response to concerns raised by Stop.

15 I read the condition as -- like, the plain
16 language of it says certificate holder -- not the
17 Department. The Department does not want to get into
18 the business of sending these notices. That's on Idaho
19 Power.

20 COUNCILMEMBER JENKINS: We all agree on
21 that.

22 MR. ROWE: Certificate holder will send the
23 notices to the landowners. In the attachment,
24 Ms. Rackner indicated that attachment is landowners
25 within one mile. That notice shall tell those folks you

1 own a noise-sensitive receptor and what the requirements
2 of noise control conditions one and two are.

3 Now, I agree it's not clear how they will
4 tell the landowners what the requirements of those
5 conditions are.

6 So what Council needs to determine is are
7 you satisfied with this?

8 Is it appropriate, as Ms. Rackner suggested,
9 to provide them the language of the condition? Or do
10 you want to do something that Mr. Anuta has suggested,
11 yeah, or potentially both, and have, you know, kind of
12 an easy-to-understand summary of it?

13 VICE CHAIR HOWE: Yeah, I think that's what
14 we want to pose to the Council right now, yeah, to move
15 forward.

16 So Councillor Condon.

17 COUNCILMEMBER CONDON: Cindy Condon.

18 I would prefer both. I mean, there are
19 people who -- I think Mr. Anuta is correct. Can get
20 lost in the conditions themselves and a list would be
21 appropriate. There are others that would want to say
22 where did this list come from and dive deeper.

23 And so I would prefer we have notice in
24 plain language for the public to -- to clearly
25 understand plus the conditions.

1 MR. ANUTA: Stop would certainly agree with
2 that.

3 VICE CHAIR HOWE: Councillor Jenkins.

4 COUNCILMEMBER JENKINS: I don't have a
5 problem with that. I don't know how Todd is going to
6 reflect that.

7 VICE CHAIR HOWE: Okay. Sounds like we got
8 somewhere right then.

9 COUNCILMEMBER CONDON: Cindy Condon. I
10 just -- I'm not clear on all the exhibits. And I just
11 want to make sure that attachment X-7. What's the title
12 of X-7? Does it include everyone within one mile?

13 MS. RACKNER: Yes. Everyone within one
14 mile. And -- and it needs to be updated because it is
15 old and a few things have changed over time.

16 COUNCILMEMBER CONDON: Right. And just a
17 follow-up. To distinguish between X-4 and -5 that are
18 referred to in condition one, those are the identified
19 NSRs.

20 MS. RACKNER: Yes. And exceedances. Yes.
21 Or it may not just be exceedances, but actual, I
22 believe --

23 COUNCILMEMBER CONDON: I just want to
24 understand the difference.

25 MS. RACKNER: Yeah. Those are the folks for

1 whom exceedances.

2 COUNCILMEMBER CONDON: Yeah. Okay. Thank
3 you.

4 VICE CHAIR HOWE: Okay. So we've got --
5 have we dealt with condition one or just the first
6 paragraph?

7 MR. ANUTA: Stop did have a few other
8 additional proposed changes to condition one.

9 VICE CHAIR HOWE: Okay.

10 MR. ANUTA: And those would be in
11 paragraph -- what was in Exhibit 1 -- or excuse me, in
12 condition one, the first paragraph if I -- or excuse me,
13 the second paragraph. We had suggested adding language
14 in what was, I think, sub (b), if I'm reading it right.

15 VICE CHAIR HOWE: Ms. Tardaewether, we are
16 on condition one --

17 MR. ANUTA: Yeah, condition 1(b). There we
18 go.

19 We had suggested adding some language in
20 the -- about six, seven lines down. There's a sentence
21 that says if this review is deferred to the
22 Department -- to the Department, Stop had suggested
23 adding language to clarify that appeals from the
24 Department would be taken to EFSC. That's sort of
25 implicit in your rules, as I read them. But we wanted

1 it to be clear in the material that -- in the condition
2 that it would go to EFSC ultimately.

3 If you look at the lines up there, it's
4 the -- where it says -- the sentence on the left side
5 that the line that starts with "review to the
6 Department."

7 We suggested that the word "appeals would be
8 taken to EFSC" be added after that to make it clear in
9 the condition that any appeal would go to EFSC,
10 ultimately.

11 Next one down. Review of the Department.

12 MR. ROWE: Patrick Rowe, DOJ.

13 I guess I'm not quite following that,
14 because the way it is set up is that the dispute does go
15 to the Council, unless the Council Chair decides, we
16 don't want to handle this one. We're going to defer it
17 to the Department.

18 VICE CHAIR HOWE: Right. That's the way I
19 read that part.

20 MR. ROWE: I'm sorry.

21 COUNCILMEMBER BEIER: Councillor Beier.

22 The default assumption is that any dispute
23 comes to the Council. If the Council made a decision to
24 direct the Department to weigh on it, that's separate.
25 But the default assumption is any dispute comes directly

1 to the Council.

2 MR. ROWE: That's the intention and that's
3 the way I read this language --

4 MR. ANUTA: Our concern was it -- it
5 actually says that the Council Chair can defer the
6 dispute to the Department, not the Council. And we
7 wanted the Council to have the last word rather than
8 just saying, oh, well, there's a dispute it goes -- and
9 then the Council Chair, for some reason, I'm sure it
10 probably wouldn't happen, but if they did, just defer
11 it. And the rest of the Council is going, wait, we want
12 to hear that one.

13 MR. ROWE: I follow you there. And Todd may
14 want to weigh in on this some more on that.

15 The intention of that is because Council has
16 a ton of business and we don't have any sense right now
17 of how many of these types of disputes might get
18 referred to the Council.

19 Council Chair coordinates prior --
20 coordinates with the Department prior to every month's
21 meeting as to the agenda for that meeting.

22 So if in a particular month there's a dozen
23 of these disputes and Council already has a lot of
24 business on that month's agenda, the Council Chair has
25 the discretion to decide -- would have the discretion to

1 refer that.

2 If that -- if those 12 disputes
3 automatically go to the Council, then the idea of trying
4 to be efficient with that month's Council meeting is
5 lost, because now the 12 disputes are already in front
6 of the Council. That was the intention behind that.

7 So do you understand why it says "Council
8 Chair" rather than "Council"?

9 MR. ANUTA: And we understood. We're
10 uncomfortable with just having the chair do the
11 deferral. And Stop is also uncomfortable with the idea
12 that if there was a deferral and the Department says,
13 oh, here's our decision, there should still be an appeal
14 back to the Council, ultimately. That was the Stop's
15 position, is that the Council should be the last word.

16 MR. ROWE: Okay. The Department is
17 comfortable with this provision. So now it is clearly
18 in your hands, Council.

19 And I don't know, Ms. Rackner, if you have
20 anything you'd like to add.

21 MS. RACKNER: No. Not at all.

22 VICE CHAIR HOWE: Okay. Where is the
23 Council on this suggestion?

24 COUNCILMEMBER JENKINS: This is Hanley. And
25 usually in the situations where the Council Chair makes

1 the decision, it is referred to the next Council meeting
2 as an information item where that has happened. So if
3 we have an issue, it's probably going to come up within
4 the next Council meeting.

5 So I'm comfortable with this language. I'm
6 not concerned that the Council Chair is going to abuse
7 that opportunity.

8 VICE CHAIR HOWE: Others?

9 COUNCILMEMBER CONDON: Cindy Condon.

10 I guess I do have a bit of concern that --
11 so there's -- there's no appeal. If the Department
12 makes a decision, reviews and makes a decision, so
13 there's no right to come back to the Council.

14 Am I -- as I read it, once it's been
15 deferred to -- to the Department, we have now washed our
16 hands of it. I mean, with no opportunity to voice as a
17 Council.

18 MR. ROWE: The way the condition is written,
19 yes. But again, the default is to the Council. This is
20 only in a situation where the Council Chair determines
21 that for this particular -- these disputes or this
22 particular meeting we're going to have the Department
23 handle it. The assumption is it's going to the Council.

24 COUNCILMEMBER CONDON: Yeah. It's
25 difficult, I guess, for me -- I mean, with the current

1 chair, I wouldn't have any issues. But we're making the
2 decision -- this is a long-term decision, I guess I -- I
3 have -- I do have concern about that.

4 SECRETARY CORNETT: For the record, Todd
5 Cornett.

6 Just from a practical standpoint, Council
7 also sets policy. So if in some circumstances the
8 Council Chair did defer that to staff and there were no
9 appeal rights but then -- and as Councilmember Jenkins
10 indicated, you know, in my secretary report at the
11 following Council meeting, I would provide that update.

12 And if Council was uncomfortable with that,
13 you would set the policy to say we do not want to have
14 any of these done by staff. We want all these done by
15 Council.

16 So there is -- there is a check in there.
17 Council has that -- as a body, has that authority to put
18 a check on the Council Chair if you believe that that --
19 you know, is being abused for whatever reason.

20 VICE CHAIR HOWE: Okay. So to try to keep
21 us moving on, does the Council feel we need to make any
22 changes to that language? No.

23 Okay. And Councillor Chocktoot.

24 COUNCILMEMBER CHOCKTOOT: Yes.

25 VICE CHAIR HOWE: You're okay with it?

1 COUNCILMEMBER CHOCKTOOT: Yes.

2 VICE CHAIR HOWE: Okay. So I think we can
3 move on. We have a majority of the Council is okay with
4 that language.

5 So the next -- what do we do? Did that take
6 care of condition one completely?

7 MR. ANUTA: This is Mr. Anuta.

8 That takes care of the Stop recommendations
9 for condition one.

10 VICE CHAIR HOWE: Okay. Let's go to
11 condition two.

12 And your suggestion on the first paragraph,
13 are there any?

14 MR. ANUTA: Let me find my version. It's
15 not the same language.

16 MS. TARDAEWETHER: For the record, Kellen
17 Tardaewether. I have a clarification question.

18 So, Mr. Anuta, you were proposing that the
19 notice language in front of condition one, but the
20 notice language is actually in condition two.

21 So are we addressing the -- having the
22 notice conversation in the context of potentially
23 changing condition two?

24 Are you comfortable with that, Mr. Anuta?

25 Because then, basically, we aren't trying to

1 add the notice portion to condition one.

2 MR. ANUTA: Whether you add it to one or
3 two, as long as it is there. If it fits better here,
4 that's fine. But the more detail -- and actually, I'm
5 more comfortable with what Mr. Rowe suggested, sending
6 both a notice that has the kind of summary and then
7 actually the conditions and putting that here.

8 SECRETARY CORNETT: Mr. Vice Chair -- for
9 the record, Todd Cornett -- so whether it goes in
10 condition one or condition two, I think we can evaluate.

11 As Jesse indicated, that would be a material
12 change. The language that I have -- and this is not
13 actual language because we would have to clarify this
14 and fit it in.

15 But as I sort of noted it, notice will
16 include both an easy-to-understand plain-language
17 summary as well as their rights with respect -- with --
18 of their rights with respect to the noise control
19 conditions as well as the noise control conditions
20 themselves.

21 So the full, sort of, spectrum is what I
22 have reflected. Again, whether it is in condition 2(a)
23 or in 1, we can kind of look to see where it might be
24 the most appropriate.

25 So if that satisfies everybody.

1 MR. ANUTA: Yeah. It works for Stop.

2 VICE CHAIR HOWE: Okay. That works then.

3 Was there anything else in condition two?

4 Or do we need to go paragraph by paragraph?

5 COUNCILMEMBER JENKINS: So with respect to
6 that issue, I guess I would ask if Lisa or Patrick have
7 any comments.

8 MS. RACKNER: On where the change should be
9 made, which condition?

10 COUNCILMEMBER JENKINS: Combine the two
11 on --

12 MS. RACKNER: In condition two.

13 COUNCILMEMBER JENKINS: -- on Todd's
14 proposal.

15 MS. RACKNER: Oh, we're fine with Todd's
16 proposal. But we would say that the language belongs in
17 condition two and not condition one.

18 VICE CHAIR HOWE: Patrick?

19 COUNCILMEMBER JENKINS: Condition two that
20 currently talks about notices. So it seems like it
21 would fit better there. Yeah, 2(a).

22 VICE CHAIR HOWE: Thank you, Councillor
23 Jenkins. I was moving too fast there. Sorry.

24 Okay. So on condition two, the remainder of
25 it --

1 MR. ANUTA: I don't see any issues with
2 paragraph (b). I believe we had some language at the
3 end of -- let's see.

4 So yeah, it was -- I think the -- my
5 language is confusing, maybe, because it is not in the
6 right place. But I know what we were intending.

7 Our intent here was to try and make sure
8 that in addition to the -- the plan outlining all those
9 stuff and providing the information that specifies what
10 needed to be done to file a complaint, we wanted to make
11 sure that the materials outlined the process for
12 reaching a resolution of that complaint.

13 I think with the changes that you've
14 suggested to part 2(a), that actually covers it, because
15 it outlines all of it with the conditions.

16 So I think that there's nothing there that
17 needs to be there in addition.

18 And I'm looking down. I think -- it wasn't
19 until -- I think it was (e) sub (3) that we had another
20 change that we were proposing. And that was a bigger
21 issue. That was down in the section that talked about
22 the -- identifying the process for a noise complaint.
23 And there were three subparts.

24 Kellen, if you could scroll down to sub (e)
25 I think it is.

1 There we go. There's subpart (1), there's
2 subpart (2), and then in subpart (3) it said -- it talks
3 about how the -- if they were not included in the area
4 in X-5, the certificate holder shall -- yeah -- model
5 the sound levels and we -- we suggested adding "model
6 and monitor the sound levels."

7 Because our -- Stop was concerned that just
8 modeling the sound levels wouldn't necessarily give you
9 an accurate answer as to what was going on and what
10 should happen. You needed to also monitor them.

11 So our suggestion was to add "and monitor"
12 there wherever in the sentence is appropriate.

13 VICE CHAIR HOWE: Councillor Jenkins.

14 COUNCILMEMBER JENKINS: This is Hanley.

15 Are you suggesting sample or what do you
16 mean by "model"?

17 Is that long-term model -- I mean "monitor."

18 Do you mean long-term monitoring or just
19 simply do a sample?

20 MR. ANUTA: We were suggesting monitoring of
21 some sort. We had not defined how long that monitoring
22 would take place, but presumably since what you're
23 trying to get at here is what's going on with this
24 particular NSR. You would need, at least, enough
25 monitoring to have some sense of what's the noise levels

1 over some period of time. We did not specify a period
2 of time.

3 Our intent was not to make it permanent
4 monitoring. It was monitoring to figure it out. Okay.
5 What's the issue here and then what -- how can we fix it
6 down the road.

7 Because this process is all for figuring
8 out, okay, what do we do about those people that we
9 didn't have on the list as expected NSRs.

10 MS. RACKNER: So from our point of view,
11 this could become completely burdensome and difficult
12 to do what Mr. Anuta is suggesting.

13 We have modeling that should show whether or
14 not there is an exceedance. If the complainant is
15 concerned about the result of that modeling, then the
16 complainant can do their own monitoring and provide that
17 to Idaho Power to at least substantiate that there
18 is an -- that there is an issue there.

19 So, you know, our concern is, again, we have
20 a 300-mile line. And a lot of NSRs. And while we
21 certainly respect that nobody will bring a complaint
22 unless they honestly believe that there's been an
23 exceedance, we also anticipate that a lot of people who
24 hear corona may assume there is an exceedance and we may
25 get a lot of complaints.

1 Modeling the kind of monitoring that's
2 responsible takes thousands of dollars for each
3 monitoring position. And that's probably an
4 underestimate. You're -- Idaho Power pays the bills, so
5 I don't know.

6 So our concern is that it could become just
7 completely infeasible if in every case somebody hears
8 corona and has this concern. They are able, then, to
9 shift the burden over to Idaho Power to do comprehensive
10 modeling.

11 And I will say that kind of the spot-check
12 idea. I mean, we -- our acoustical engineers just
13 couldn't get behind the idea that you could set a
14 responsible ambient based on going out for an hour.

15 So we don't know that -- we don't know that
16 that's going to be a solution to try to do something
17 quick and easy there.

18 Now, if the complainant does some monitoring
19 on their own, whatever it is, I mean, there's all kinds
20 of levels of monitoring. Idaho Power performs kind of
21 expensive state-of-the-art monitoring, but there's a lot
22 of ways to do less expensive monitoring. If the
23 complainant does some monitoring, even if it's quick and
24 dirty that demonstrates an exceedance that hasn't been
25 addressed, Idaho Power at that point could decide, okay,

1 we're going to do some of our own monitoring. Probably
2 longer term. Maybe more state-of-the-art equipment, but
3 at least it doesn't shift in every single instance over
4 to Idaho Power the responsibility to do very expensive
5 noise monitoring. So that's our concern about it.

6 MR. ANUTA: And if I might point out, this
7 is a policy issue for the Council because shifting the
8 burden is precisely what Stop is looking for here.

9 We think the burden should be on the
10 billion-dollar utility who is building the line to
11 monitor in some fashion whether there's a problem or
12 not. It should not be on the landowner who doesn't have
13 the thousands of dollars to do, as Ms. Rackner
14 described, the monitoring.

15 So that sort of shifting the burden was
16 precisely what Stop was trying to do with this suggested
17 language.

18 VICE CHAIR HOWE: Comments from Council?

19 MR. ROWE: Patrick Rowe, DOJ.

20 I'll quickly make my comment and then
21 Councillor Condon has a question.

22 As Ms. Rackner pointed out, they could do,
23 you know, quote/unquote, "down-and-dirty monitoring,"
24 which is -- I'm not -- I can't say I have personal
25 experience with these, but I understand there are simple

1 phone apps that do noise monitoring. Idaho Power could
2 then come out and do more sophisticated monitoring and
3 then that dispute would be presented to the Council for
4 resolution.

5 MS. RACKNER: And I will just say that is
6 what we had in mind that something quick and easy that
7 anybody with a smartphone could do.

8 VICE CHAIR HOWE: Okay. That being the
9 case, then where is the Council on the language?

10 Does it achieve what we've just kind of been
11 discussing?

12 COUNCILMEMBER JENKINS: So let me make sure
13 who we are dealing with here. These are people who have
14 not been identified through the prior modeling process
15 as having a noise impact facility.

16 VICE CHAIR HOWE: Right.

17 COUNCILMEMBER JENKINS: So what this
18 condition proposes is that there be additional modeling
19 done by Idaho Power. And then if the landowner still
20 has an issue, they can provide evidence and then it
21 comes to us or the Chair. I don't have a problem with
22 that process.

23 VICE CHAIR HOWE: Where is the rest of the
24 Council?

25 COUNCILMEMBER CONDON: So I think -- I was

1 sort of hung up on sub issue (3). But what happens next
2 is pretty clearly outlined in subsections four and five
3 that says, if there's alternative data, here's the
4 responsibility of IPC and ultimately the Council, so I'm
5 comfortable with the language.

6 VICE CHAIR HOWE: I'm seeing head nods.

7 Do you need to say something, Councillor
8 Condon?

9 COUNCILMEMBER CONDON: Yeah. I had
10 indicated I had a question. Actually, I was just going
11 to comment -- make the same comment that Mr. Rowe made
12 but wanted to verify that that was true.

13 I think there is a phone app -- actually, I
14 think I've used it -- that measures decibels. And then
15 if that's enough, if that is what Idaho Power would
16 accept, then hopefully the people impacted would know
17 that that's a measure -- you know, I think if the public
18 reads monitoring or whatever, they might think, Oh, my
19 gosh, I have to, you know, buy monitoring equipment,
20 whatever. I just think the public should be made aware
21 this is what we'll accept.

22 So because we're -- or, at least, I'm
23 thinking given this conversation that that's acceptable.

24 You know, a phone app or some -- something
25 less than.

1 MS. RACKNER: Yeah. And -- and I will say,
2 because I don't have a lot of personal experience with
3 what all the options are out there.

4 I -- I really can't say in this moment that
5 that -- maybe it's the monitor -- a monitoring
6 methodology of the complainant's choice. Or which may
7 include -- I don't know. Yeah, we're a little bit --
8 trying to do this in realtime. But -- but we are
9 certainly comfortable.

10 That was the idea that our modeling that we
11 did to our mind -- not that this is legal -- legally the
12 case, but kind of created this rebuttable presumption
13 that there wasn't no exceedance at this NSR. But if the
14 person at the NSR is able to show in any way, like, no,
15 we really think that the ambient anti-degradation
16 standard has been exceeded by more than 10 dBA, whether
17 it's a cell phone monitoring, then it would be incumbent
18 upon Idaho Power to present its own monitoring data.

19 And if there's a dispute, then, again,
20 hopefully they can resolve it. A lot of disputes can be
21 resolved. But ultimately, it could come to the Council
22 to look at the data presented by the complainant versus
23 what Idaho Power brings.

24 VICE CHAIR HOWE: Okay. I think we've
25 reached agreement, then, on condition two.

1 MR. RATCLIFFE: Mr. Anuta, I think there may
2 be one of your proposals you haven't pointed out to
3 Council. And that goes with regard to a revision to
4 condition 2(a). You had made a proposal about
5 submitting the -- they are going to -- Idaho Power will
6 outline a complaint plan. And I believe you had made a
7 proposal that -- that be submitted to the Department for
8 approval. And once approval is obtained, distributed to
9 all NSR properties within one mile.

10 So I just wanted to point that out to you if
11 you wanted to discuss that with Council.

12 MR. ANUTA: We thought that made sense. I
13 don't know if Idaho Power objects to that at all.

14 MS. RACKNER: I don't know that we object to
15 that. I think we felt in our briefing that it was a
16 little redundant because we were -- the conditions
17 themselves are going to explain that there's a complaint
18 process through ODOE and they can contact ODOE.

19 But I don't know that we have an objection
20 to the details of the complaint process going out to
21 everybody, so that they have it in the first place.

22 VICE CHAIR HOWE: Okay. Good. And then
23 Councillor Condon had a question on (c).

24 MR. ROWE: Is that an instruction from
25 Council that you would like this condition to state that

1 the complaint will -- complaint plan will be distributed
2 to the NSR property owners?

3 VICE CHAIR HOWE: Yes.

4 MS. RACKNER: And again, that's the same
5 list -- I'm just saying that as we write it up, that
6 would be the same list of the X-7 that will have been
7 updated.

8 MR. ROWE: Yes, that's the way I'm seeing
9 it.

10 VICE CHAIR HOWE: Do I see head nods? Okay.
11 Yes.

12 And then, Councillor Condon, you had a
13 question on (c).

14 COUNCILMEMBER CONDON: Yes, Cindy Condon.
15 On condition (2)(c), I just want to be clear. In the
16 fourth line from the bottom, it reads -- well, I'll read
17 the added language in (C) and will specify the
18 information that the complainant -- so this is the NSR;
19 right?

20 The complainant must include in its
21 complaint including the date the certificate holder
22 received the complaint, the nature of the complaint,
23 weather conditions of the date for which the complaint
24 is based, including wind speed, temperature, relative
25 humidity, and precipitation.

1 So we're expecting that the public will
2 collect all that information with their home weather
3 center.

4 Is that the --

5 MS. RACKNER: We thought a smartpone app.
6 I've got that all on my phone.

7 COUNCILMEMBER CONDON: And could be. I'm
8 just wondering if at the moment -- I don't have my
9 complaint procedure in front of me. I've missed the
10 day. It's the next day -- I mean, so I guess looking
11 up -- I don't know how you get wind speed for
12 ten o'clock in the morning two days earlier. I just
13 want to make sure it's reasonable as opposed to making
14 it a little bit too detailed -- or more detailed than it
15 needs to be.

16 MS. RACKNER: And I believe this was
17 Department language, so maybe better responded to by
18 Kellen or Patrick.

19 MR. ROWE: I honestly can't remember if it
20 was Department language or not. I know we were
21 discussing this quite a bit.

22 I understand the concern. And I can't tell
23 you if that type of information is available just
24 through the app.

25 If you're concerned about the -- the

1 rationale for it is because those -- those are the
2 factors that impact -- have an impact on noise. That's
3 the idea behind it. I suppose you could -- rather than
4 make it mandatory, you could make it a discussion and
5 then if they don't have that information but then Idaho
6 Power is able to pull that information from whatever
7 sources they have, then when the dispute is presented to
8 Council, there's potentially more evidence favoring
9 Idaho Power's analysis.

10 So -- but I think we would be -- I think at
11 a minimum, we should let folks know that these are the
12 types of things that you ought to be thinking about
13 collecting if you don't want to make it mandatory. I
14 would be all right with that.

15 MS. RACKNER: Yeah, I believe we would, too,
16 because I also thought that this was the type of
17 information you could look up for any one day on the
18 internet as well.

19 Now, I know not everybody has internet
20 access, but --

21 MR. ANUTA: Or knows how to operate a
22 smartphone sufficient to gather all that data.

23 For whatever it is worth, Stop would
24 suggest -- this was not one we had picked up on before,
25 but since Councillor Condon has flagged it, that you

1 simply modify this to say if complainant has available
2 the wind speed, that gives them both the information
3 about what kind of things you're looking for but makes
4 it optional rather than mandatory.

5 COUNCILMEMBER TRUITT: Jordan Truitt, for
6 the record.

7 Wondering if in the notification that a
8 brief description of how and where some of this
9 information could be accessed to somebody who may not
10 know how to look up on NOAA's website what the previous
11 24-hour conditions were. Just a brief tutorial on how
12 to collect some of the parameters as much as possible.

13 Because you still -- if there's a complaint,
14 I believe you still have to quantify the complaint with
15 relative data that has to support your complaint.

16 If it's just, it was loud last night, how do
17 you -- how do you support that?

18 And so I do recognize that is, for many,
19 difficult information to gather. But if there's a
20 starting point on how to get there, that might help.

21 COUNCILMEMBER JENKINS: This is Hanley.

22 And what I would suggest there is just
23 simply saying such as including wind speed, temperature,
24 yeah.

25 MS. RACKNER: I believe that's the easiest.

1 I think the most important thing would be for the -- to
2 know the date and the time that the person believes they
3 experienced the exceedance. Because then at that point,
4 Idaho Power or the Council can go back and try to -- and
5 perhaps discern what was happening in that location at
6 that evening.

7 THE COURT: Okay. Sounds like we have some
8 Council direction on that one. All -- all in agreement,
9 such as language being added.

10 MS. RACKNER: And I'd like to make a request
11 for a five-minute break, if we could.

12 VICE CHAIR HOWE: Yeah, I was trying to get
13 us -- we're done with condition two.

14 MR. ANUTA: We did have some additional
15 language further on down in subpart (5).

16 VICE CHAIR HOWE: Okay. Let's go ahead and
17 take a break now and we'll come back.

18 MS. RACKNER: I am okay with finishing up
19 the condition. I was just observing that it was almost
20 three hours.

21 COUNCILMEMBER CONDON: Thank you.

22 THE COURT: Okay. Subsection (5).

23 MR. ANUTA: Subsection (5) of subpart (e).

24 And so further down, Kellen, if you're in
25 (e), there should be a 5 -- no, you're -- you're in (f).

1 So there we go.

2 This was a discussion of what happens if
3 there's a dispute. And this was the same issue that we
4 raised earlier. We had suggested at the end of this
5 that you clarify that the EFSC chair may direct the
6 Department to make the determination. We had suggested
7 adding language at the end of that.

8 But if there has been a delegation, the
9 Department decision can still be appealed to EFSC, and
10 that goes back to Stop's point of we didn't want the
11 Department to be the final decision-maker.

12 And your earlier discussion may be
13 sufficient for that issue. But we -- I wanted to flag
14 that we wanted to clarify there as well, that ultimately
15 even if there is a deferral, it should come back to the
16 Council because that's the ultimate last word.

17 VICE CHAIR HOWE: Counsel Rowe, that
18 language that you referred to before, I think clarified
19 that it -- it comes to Council.

20 MR. ROWE: Well, the default is to Council.

21 CHAIR HOWE: Right. Right.

22 MR. ROWE: The issue here is similar to the
23 prior one, which is if the Chair is going to direct the
24 Department to make the determination that the Chair, in
25 his or her discretion, has determined that -- that

1 coming month's business they would prefer that the
2 Department make the determination.

3 So to me there's -- I don't understand what
4 the point of the deferral to the Department would be if,
5 ultimately, it's coming back to the Council anyhow.

6 If the idea behind referring it to the
7 Department is efficiency of Council meetings, it's still
8 going to end up before the Council under Mr. Anuta's
9 proposal.

10 VICE CHAIR HOWE: Right. Right.

11 So, Mr. Anuta?

12 MR. ANUTA: That, Mr. Rowe, is absolutely
13 correct. Our approach is to say it needs to ultimately
14 go to Council, even if it's been deferred to Department,
15 that may take care of some of the process.

16 Some people get deferred and have the
17 Department make a decision may be fine with that. But
18 if somebody ultimately wants a Council ruling on their
19 complaint, they ought to be able to appeal a Department
20 decision on a deferral back to the Council to really get
21 a Council vote on it.

22 But from a policy perspective from Stop, the
23 Council should be the last word, rather than the Council
24 Chair making an executive decision, which may be from an
25 efficiency standpoint totally appropriate, but from the

1 standpoint of policy, we wanted the Commission to be the
2 final backstop, regardless.

3 VICE CHAIR HOWE: Okay. Where is the
4 Council on this one? Where we ended up on condition
5 one?

6 COUNCILMEMBER JENKINS: Support where we
7 ended up on condition one.

8 This is Hanley.

9 VICE CHAIR HOWE: Okay. I'm seeing head
10 nods.

11 COUNCILMEMBER CONDON: I would not be in
12 favor. I wasn't in favor.

13 VICE CHAIR HOWE: Okay. Councillor
14 Chocktoot.

15 COUNCILMEMBER CHOCKTOOT: Yes.

16 VICE CHAIR HOWE: Okay. I think we've got a
17 majority on that one to leave it like it was understood
18 in condition one.

19 Okay. I think we'll take a, what, 10-minute
20 break? Come back at 11:05 and start on condition three,
21 I guess.

22 (A break was taken.)

23 (No audio from 11:05 a.m to 11:08 a.m.)

24 MS. RACKNER: Okay. The site certificate
25 and the timelines in the site certificate for responding

1 and working with landowners, because if they don't do
2 what's required by the site certificate, they will be
3 out of compliance with the site certificate and subject
4 to enforcement.

5 But it makes no sense to -- to place them in
6 that -- (audio disruption) --

7 MR. ANUTA: -- included a determination that
8 if they reached this point in the process the applicant
9 will be considered to be in violation of the site
10 certificate and subject to enforcement until they work
11 out with the NSR property owner a mutually agreed upon
12 mitigation plan in order to create incentive for the
13 applicant to work out that plan.

14 VICE CHAIR HOWE: Okay. Ms. Rackner.

15 MS. RACKNER: So we just disagree. We have
16 obligations under the site certificates. If we don't
17 follow the very detailed requirements for what we do in
18 response to a complaint, then we could be found in
19 violation of the site certificate.

20 But to suggest that any complaint,
21 meritorious or not, somehow places us out of compliance.
22 Makes virtually no sense. It also gives an enormous
23 amount of inappropriate, undeserved leverage to a
24 landowner. Just as Mr. Anuta is suggesting what if
25 there is someone who could be unreasonable at Idaho

1 Power working on this issue, it's equally possible that
2 there could be a landowner that could also be
3 unreasonable. Those things can happen, which is why you
4 have rules that everybody has to follow and if they
5 follow the rules, they are in compliance.

6 MR. ANUTA: And if I could respond briefly
7 on the point. This part of the process is after it has
8 been determined that there is a noise -- corona noise
9 issue that exceeds the standard. This is after -- it is
10 not just a complaint and then they are working it out.
11 This is further down in the plan where it says that if
12 it is determined pursuant to the process described above
13 that this condition -- that this condition -- the corona
14 noise at the complainant's property exceeds the
15 standard.

16 So this is where there has already been
17 Idaho Power and the complainant working together. They
18 are working it out. There is an exceedance. Stop's
19 position is there needs to be an incentive at that point
20 for Idaho Power to work things out.

21 The process that Ms. Rackner is describing
22 would require the complainant, who has already been
23 found to have a problem, to come to the Council and ask
24 that the Council find that there's a violation of the
25 site certificate because Idaho Power won't work with

1 them to get a mutually agreeable agreement.

2 Our suggestion is put the burden on the
3 applicant and say, okay, either you reach an agreement
4 or you are in violation automatically.

5 VICE CHAIR HOWE: Ms. Rackner.

6 MS. RACKNER: Well, I'd also like to point
7 out that if we can't reach an agreement, then there is
8 another process, and that process is coming to the
9 Council.

10 So of -- let's say, you have an actual
11 exceedance, but let's say you have a landowner that is
12 saying I -- you know -- that is asking for something
13 that seems completely out of proportion and
14 inappropriate, so the parties cannot come to an
15 agreement. Then that's why we are able to come to the
16 Council. The Council can tell -- at that point can tell
17 Idaho Power either do what the landowner is asking you
18 to do or tell the landowner that feels like an
19 overreach. Here's, instead, what we think should
20 happen. But there's just no reason to be holding Idaho
21 Power in some "out of compliance" until they have --
22 until we have gone through the process.

23 And as long as Idaho Power is faithful to
24 the process, abides by Council rules and determinations,
25 they should be seen to be in compliance.

1 Okay. Council, you've heard both sides.
2 Do we feel there's language change needed
3 here or not?

4 Councillor Condon?

5 COUNCILMEMBER CONDON: Cindy Condon.

6 And I might be reading this incorrectly.
7 But so what -- how does Idaho Power read this provision
8 if there isn't a mutually -- I'm not reading that
9 there's a returned -- that what happens if.

10 So what you're proposing is that they're not
11 in violation of the certificate, so -- so then what?

12 MR. ROWE: Councillor Condon, this is
13 Patrick Rowe, Department of Justice. Go down to sub
14 (3).

15 COUNCILMEMBER CONDON: Yes. Okay.

16 MR. ROWE: So it's (f) sub (3), that -- that
17 outlines the process Ms. Rackner just referred to.

18 COUNCILMEMBER CONDON: But doesn't that
19 start with if through the efforts described above the
20 certificate holder executes an agreement with the NSR?

21 MR. ROWE: Going down, the next sentence
22 says, if an agreement can't be reached.

23 COUNCILMEMBER CONDON: Okay. Apologies.
24 Yes. Thank you.

25 MS. RACKNER: They are long and complicated.

1 They loop back on themselves. I totally get it.

2 VICE CHAIR HOWE: Okay. So back to the
3 Council, are we feeling there's any language change
4 needed or not?

5 COUNCILMEMBER JENKINS: I think it is
6 covered. I don't think it is appropriate to find
7 somebody in violation if it is still being disputed.

8 VICE CHAIR HOWE: Right.

9 COUNCILMEMBER JENKINS: Agreed.

10 VICE CHAIR HOWE: Okay. Councillor
11 Chocktoot.

12 COUNCILMEMBER CHOCKTOOT: Yes.

13 VICE CHAIR HOWE: Okay. We've got that one
14 done.

15 Now, do we move to condition three or --

16 MR. ANUTA: I'm looking to see. I don't see
17 any other changes that we proposed that we didn't
18 already address. And two -- we did suggest language
19 further on down in sub (3) that would suggest that
20 the -- Council remain the appellate body, but this is
21 the same issue that you have discussed before as to
22 whether or not there should be a deferral by the Chair
23 as an option.

24 It's Stop's position that Council should
25 remain the appellate body even if there's a deferral.

1 There are no other suggested changes to condition two
2 from Stop.

3 VICE CHAIR HOWE: Let's move on to condition
4 three, then. First paragraph.

5 MR. ANUTA: There are a number of specific
6 changes that Stop recommended to the first paragraph of
7 condition three. And, conceptually, they all focus on
8 the same thing.

9 Stop's position is there should be long-term
10 inspection, monitoring, and maintenance for the entire
11 operational life of the project.

12 And that we suggested some specific things
13 that should be done to protect the lines and in terms of
14 maintenance. And we suggested language that would --
15 that would require the certificate holder to monitor and
16 inspect the line over time. And that the inspections of
17 that sort would take place on the schedule that aligns
18 with the OPUC, utility wildfire plans or more frequently
19 if the Department felt there were needed to be more
20 frequent.

21 And that when -- when Idaho Power completes
22 an inspection or monitoring of the line, that they
23 should do a monitoring and maintenance and report and
24 submit it to the Department so that the Department can
25 track where things are going.

1 And then finally that the certificate holder
2 is required to upgrade and apply new technologies as
3 they become available to mitigate corona noise issues.
4 Stop's point there was that we don't know what future
5 technology in terms of noise mitigation might be for
6 corona noise, but if there is additional technology that
7 comes into existence, that Idaho Power should be
8 required to stay current on that and to apply those
9 upgraded technologies, maybe there will be a new type of
10 conductor that will help reduce noise or new type of
11 metal or tower or something.

12 We were just trying to get at the idea that
13 for the life of the project you've got to stay on top of
14 the technology and apply upgraded technology to help
15 reduce corona noise for the people being affected by the
16 project.

17 MS. TARDAEWETHER: For the record, Kellen
18 Tardaewether here.

19 I've got it pulled up on the screen. It
20 took me a minute just to kind of orient. I want to
21 orient Council of where we're at.

22 So in front and on the screen, I have the
23 amended condition language that Mr. Anuta just verbally
24 presented with his rationale and the edits just to help
25 Council.

1 In the proposed contested case order, the --
2 the hearing officer discusses these revisions and the
3 Department and Idaho Power's responses, and ultimately
4 she declines to adopt these revisions.

5 So in your proposed contested case order,
6 there's noise condition three, isn't there.

7 So your noise condition three, as it stands
8 now, according to the PCCO, is what it says in the
9 proposed order. Give me a minute, there's a delay here.

10 So this is the condition as it stands, so I
11 don't know if Council wants to take a minute to -- I'll
12 let Jesse or Patrick read what the -- okay.

13 So there's Mr. Anuta's. And then the
14 hearing officer provides her basis and rationale under
15 her discussion of condition three.

16 Oh, can I -- I'm going to slowly scroll
17 through.

18 MS. RACKNER: I'm sorry. Someone let me
19 know when it is time for me to respond.

20 MS. TARDAEWETHER: Yes.

21 VICE CHAIR HOWE: So, Mr. Anuta, is this
22 what you were working off of?

23 MR. ANUTA: Correct. That's what I -- the
24 red language there is what Stop proposed as changes to
25 three. And I think Ms. Rackner probably has some

1 responses to those, conceptually if not specifically.

2 VICE CHAIR HOWE: Yeah.

3 MS. RACKNER: Yeah. So what's been proposed
4 here is pretty completely impractical.

5 We have a 300-mile transmission line. It
6 will get bird feces on it at times. The idea that Idaho
7 Power would immediately need to clean off that bird
8 feces does not make a lot of sense.

9 Similarly, we have a 300-mile transmission
10 line. Now, it seems completely hypothetical to me, but
11 even if there were some type of new conductor that would
12 right -- that could reduce corona noise, it would be at
13 least hundreds of millions of dollars for us to
14 re-conductor this line, just to buy the conductor
15 itself, let alone string a new conductor.

16 For those -- and I do want to say one thing,
17 is that, yes, the company has to -- on a regular basis,
18 it has to maintain the line; it has to be trimming
19 vegetation; it needs to be out there making sure the
20 line is in good working order.

21 We also have the situation where we don't
22 know if anyone is going to be bothered by the noise on
23 this line at this point. Lots of people live near high
24 voltage transmission lines and are not bothered at all.
25 I'm not saying there won't be anyone. There may be

1 legitimate complaints, but we don't know. That's very
2 hypothetical. Given the extreme expense of that type of
3 monitoring or tech -- technological upgrades that
4 Mr. Anuta is referring to and given a chance that we
5 don't really know how the public is going to perceive
6 the corona noise on this line, it just makes perfect
7 sense to do this on a complaint basis.

8 If a human being or group of human beings
9 are bothered by the noise on the line, then that is
10 something Idaho Power needs to address.

11 If there's a nick in the line that's causing
12 corona, that is something Idaho Power needs to address.

13 If its modeling was wrong, such that there
14 is an exceedance where we didn't think there was going
15 to be one, that's something that Idaho Power needs to
16 address.

17 Just the sheer reality of what it's like to
18 build and maintain a 300-mile 500 kV line suggests that
19 the complaint approach is a human being bothered, let's
20 fix that. That that's the best way to deal with this.

21 MR. ANUTA: And Stop and Idaho Power have a
22 clear policy difference on that. We think the utility
23 should be regularly maintaining -- we're not suggesting
24 daily, but they need to be regularly maintaining,
25 monitoring, and upgrading.

1 VICE CHAIR HOWE: Okay. Council.

2 MR. ROWE: If I may, Patrick Rowe,
3 Department of Justice. I would also point out that
4 there is another recommended site certificate condition.

5 And the hearing officer pointed this out in
6 her ruling on this -- her analysis of this proposed
7 condition. That recommended organizational expertise
8 condition one addresses transmission maintenance
9 inspection plan and requires Idaho Power to inspect,
10 monitor, and maintain the facility. That coupled with
11 the complaint process that Ms. Rackner has -- that we've
12 been discussing, the Department is comfortable with this
13 condition as is.

14 COUNCILMEMBER JENKINS: Mr. Chair, this is
15 Hanley.

16 My concern with the upgrades is our purpose
17 is to make sure that the standard is met. It's not to
18 make sure that all possible noise is eliminated.

19 And so, you know, I don't believe that by
20 performing upgrades to reduce the noise is part of the
21 requirement to meet the standard.

22 VICE CHAIR HOWE: Other Councillors? Leave
23 the language?

24 Councillor Condon.

25 COUNCILMEMBER CONDON: Just a question.

1 My lack of knowledge on transmission lines.

2 Do transmission lines generally degrade and
3 get replaced from time to time? And if so, does the
4 Department have a role in that -- is that an amendment
5 process or?

6 I guess the first question is do they
7 degrade over time? And would you expect more corona
8 noise as time goes on?

9 MS. RACKNER: That is nothing that I have
10 ever heard.

11 What I have heard is that damage to the line
12 can cause corona.

13 Now, I will say that transmission lines do
14 get maintained, I mean, for nicks and scrapes and all
15 the types of things that can happen with a 300-mile
16 line. They do need to get maintained on a regular
17 basis. But I have never heard that they degrade over
18 time such that corona would begin to increase. And I'm
19 going to look back and make sure that --

20 Okay. I got the go-ahead that that was
21 correct.

22 COUNCILMEMBER CONDON: Yeah. My expectation
23 is that Idaho Power maintains its line, its assets, and
24 so that goes without saying. It was just the
25 degradation of the line over time I was --

1 MS. RACKNER: Yeah.

2 VICE CHAIR HOWE: Okay. So we're saying no
3 changes to noise control condition three are needed.
4 Okay.

5 Councillor Chocktoot.

6 COUNCILMEMBER CHOCKTOOT: Yeah. I think the
7 document needs to stay the same.

8 VICE CHAIR HOWE: Okay. Thank you.

9 So we move on then to condition four.

10 MR. ANUTA: Actually, Stop had proposed an
11 addition -- an addition either to three or as a new four
12 that essentially requires the development of a
13 monitoring plan and data collection plan for corona
14 noise at the 41 NSRs that have already been identified
15 over the life of the project.

16 So Stop's concept here was that we already
17 know that those -- from the modeling that there's likely
18 to be a problem there. The utility should develop a
19 monitoring plan for over the entire life of the project
20 for those locations that it may be if agreements are
21 reached and upgrades are done, there doesn't seem to be
22 a problem, but the utility should monitor them because
23 their data already shows that there is likely to be a
24 problem at those key NSRs.

25 And that then at the end of each ten-year

1 period of operation, the certificate holder should do an
2 assessment to determine if there is new technology that
3 would further reduce corona noise or problems and advise
4 the Department on that.

5 And to the extent that our -- Stop's view is
6 that your standards are you're trying to protect the
7 public, health, welfare, and safety and noise situation.

8 And so because technology changes, in order
9 to meet that standard, you have to require the -- or you
10 should require the applicant to stay up-to-date on
11 technology and to report to the Department on upgrades
12 or changes in technology.

13 VICE CHAIR HOWE: Ms. Rackner.

14 MS. RACKNER: We had the same response; that
15 we believe that the complaint process is the correct
16 process.

17 And I just do want to remind everybody that
18 those 41 NSRs will have received mitigation at that
19 point.

20 If at any point they believe that the --
21 conditions have changed such that something new is
22 required, they can make that complaint.

23 VICE CHAIR HOWE: Okay. Council, you've
24 heard both sides. Nothing from Council.

25 So any language changes needed?

1 Two heads no over here. Three, four, five.
2 And Councillor Chocktoot.

3 COUNCILMEMBER CHOCKTOOT: If this is the
4 appropriate time for that language change, then I think
5 we need to make it.

6 But for the document itself, I believe it
7 covers it. That's how I read it.

8 VICE CHAIR HOWE: Councillor Chocktoot, we
9 can't hear you, can you speak up a bit?

10 COUNCILMEMBER CHOCKTOOT: You can't hear me?

11 VICE CHAIR HOWE: We're turning your volume
12 up a little to see if that helps. Try again.

13 COUNCILMEMBER CHOCKTOOT: Can you hear me?

14 VICE CHAIR HOWE: Yes, much better.

15 COUNCILMEMBER CHOCKTOOT: Okay.

16 VICE CHAIR HOWE: Yeah, go ahead.

17 COUNCILMEMBER CHOCKTOOT: Okay. If it needs
18 to be changed, I think we need to change it.

19 But how I read it, it covers everything as
20 it is. And for the future, we can't really dictate
21 what's going to happen.

22 VICE CHAIR HOWE: Yes, I think we agree.

23 Okay. So Council's ready to move then on to
24 condition four.

25 MR. ANUTA: Stop did not propose any

1 specific changes to condition four or condition five.
2 We recommended that they be removed because they allow
3 for ongoing issues to -- that we didn't think were
4 necessary.

5 VICE CHAIR HOWE: So no changes to condition
6 four or five. I don't think we need to belay that any
7 more and can move on. Is that right?

8 COUNCILMEMBER JENKINS: This is Hanley.

9 VICE CHAIR HOWE: Oh, okay. Yeah.

10 MS. RACKNER: Did we already make a
11 determination on the exception and variance?

12 MR. ANUTA: That's what this relates to. So
13 our opposition -- so our suggested removal was because
14 these recognize the possibility of a variance or
15 exception and our position earlier, as I articulated
16 was, you shouldn't grant a variance.

17 So to the extent you have granted a
18 variance, if you are going to do that in your final
19 order, you should keep them.

20 But to -- as to our position in our
21 exceptions was because they acknowledge the existence of
22 a variance that we didn't think you should grant, they
23 needed to go away.

24 But if you are going to grant the variance,
25 then you absolutely should keep them.

1 VICE CHAIR HOWE: Okay. So I think we can
2 move forward through four and five and we're now
3 up to -- whoa --

4 MR. ANUTA: That's it.

5 CHAIR HOWE: We're through. Okay.

6 COUNCILMEMBER JENKINS: This is Hanley.

7 I want to thank both of you helping us
8 through that process. I think it was very beneficial
9 for us and, hopefully, it was beneficial for you.

10 VICE CHAIR HOWE: Okay. I think I turn it
11 back over to Counsel Ratcliffe.

12 MR. RATCLIFFE: No. I believe where we're
13 at then is a straw poll on issues three and four
14 combined, as well as the overall standard.

15 SECRETARY CORNETT: For the record, Todd
16 Cornett.

17 If Council is ready, I can read the straw
18 poll.

19 VICE CHAIR HOWE: We're ready.

20 SECRETARY CORNETT: So "agree with the
21 findings of fact, conclusions of law, and conditions of
22 approval in the proposed order pertaining to the noise
23 control regulations that are not related to the issues
24 in the contested case and in the proposed order -- in
25 the proposed contested case order pertaining to issues

1 NC-3 and NC-4, with the following modifications" -- and
2 this would be specific changes to condition two,
3 condition 2(a), to include language at the appropriate
4 location and the specific language. Notice will include
5 both an easy-to-understand plain-language summary of
6 property owner rights with respect to noise control
7 conditions as well as the noise control conditions.

8 And then also under 2(a), complaint plan
9 will be distributed by certificate holder.

10 Again, appropriate language in appropriate
11 location.

12 And then under subsection (c), in the
13 parenthetical prior to the first word, which is
14 "including," we would add "such as."

15 And that is it.

16 VICE CHAIR HOWE: Sounds good.

17 SECRETARY CORNETT: Perry Chocktoot.

18 COUNCILMEMBER CHOCKTOOT: Yes.

19 SECRETARY CORNETT: Hanley Jenkins.

20 COUNCILMEMBER JENKINS: Yes.

21 SECRETARY CORNETT: Kent Howe.

22 VICE CHAIR HOWE: Yes.

23 SECRETARY CORNETT: Cindy Condon.

24 COUNCILMEMBER CONDON: Yes.

25 VICE CHAIR HOWE: Ann Beier.

1 COUNCILMEMBER BEIER: Yes.

2 SECRETARY CORNETT: Jordan Truitt?

3 COUNCILMEMBER TRUITT: Yes.

4 SECRETARY CORNETT: Thank you,
5 Councilmembers.

6 VICE CHAIR HOWE: Okay. I believe now we're
7 ready to move on to the land use standard issues. We've
8 got 9, 5, 7, and 8. And so --

9 Did I do something wrong there? 9, 5, 7, 8.
10 That's what's on my list.

11 MR. RATCLIFFE: Right. I only have 9 and 5.

12 VICE CHAIR HOWE: I've got them on here, but
13 not 7 and 8.

14 (Discussion on agenda items.)

15 MR. RATCLIFFE: Okay. Yeah. I think that's
16 right. So 7 and 8 had -- we had kind of -- the intent
17 was to have covered those along with kind of the
18 procedural issues at the outset.

19 Where, you know, the recommendation was that
20 there wasn't sufficient substantive information in those
21 exceptions to be able to allow the Council to -- to make
22 an informed decision on those. So that's why we ended
23 up with 9 and 5.

24 VICE CHAIR HOWE: Okay. Ms. Tardaewether,
25 9 -- 9 and 5.

1 MS. TARDAEWETHER: Kellen Tardaewether.

2 Bear with me as I kind of come out of the
3 noise and let's go over -- so the Council's Land Use
4 Standard requires the Council to find that the proposed
5 facility complies with the local applicable substantive
6 criteria and statewide planning goals as adopted by the
7 LCDC or the Land Conservation and Development
8 Commission.

9 Applicable substantive criteria from the
10 affected -- are the criteria from the affected local
11 government's acknowledged comprehensive plan and land
12 use ordinances that are required by the state -- that
13 are required by the statewide planning goals identified
14 as applicable to a proposed facility.

15 Based on -- based on the facility type.

16 And the applicable substantive criteria, the
17 goalpost in Council's rules for that preliminary
18 application is submitted.

19 And so for land use for the jurisdictions
20 where the land use applies, that was 2013.

21 The analysis area for land use is one
22 half-mile from the site boundary. So that is the area
23 that is -- oops, looked at -- I wasn't ready for that.
24 And then the -- because this is a long linear facility,
25 we talked about the jurisdictions it crosses. It's five

1 counties in Oregon. It crosses Malheur, Baker, Union,
2 Umatilla, and Morrow County. There's also some facility
3 components in North Powder and Huntington, Oregon.

4 So those are all of the local governments
5 that must comply with the land use standard.

6 And so the land use section in the proposed
7 order is very -- is very long. Right? Because
8 criteria -- I'm going to go to the next slide here --
9 that's -- the table is kind of small.

10 But these are the criteria that are
11 identified by the local governments. The applicant in
12 its Exhibit K also identifies criteria that is
13 applicable to the facility.

14 I'm going to kind of just go through these
15 pretty quickly. My presentation is fairly short on land
16 use just so we can go and talk to the -- I don't know.
17 The meatier stuff are the items that are related to the
18 contested case issue. So I'm kind of just doing a quick
19 overview of land use. And this is kind of the layout in
20 the section.

21 There are lots of land use conditions, and a
22 lot of them are -- I don't -- I'm kind of air quoting
23 "typical conditions" that would apply to setbacks of
24 certain -- certain structures. Same with compliance
25 with local permits, comprehensive and conditional use

1 permit submission under each county as per their
2 criteria.

3 So in Umatilla and Union County, as we can
4 kind of see on the top of each slide, I have a summary
5 of the -- the zones that are crossed by the facility.

6 In Umatilla and Union County, the facility
7 does cross forest lands. So under OAR
8 660-006-0025(4)(q), it establishes that new electric
9 transmission lines with right-of-ways up to 100 feet are
10 conditionally permissible uses within forest lands.

11 And we're kind of going back to that --
12 going back to the actual final right-of-way width of the
13 facility. And it is anticipated to be the 300 feet in
14 forest lands and that is to ensure that there is enough
15 vegetative clearance for hazard trees. And this is a
16 safety and fire prevention part of the operation and
17 maintenance of the transmission line. So this is
18 related to that wider right-of-way in forest lands.

19 The transmission line would satisfy
20 OAR 660-006-0025 (4)(q). However, the permanent access
21 roads that would be necessary to service
22 the transmission line in operation, those would be
23 located within the hundred foot right-of-way for which
24 the structures are allowable.

25 So the applicant requests that the Council

1 take an exception to the statewide policy embodied in
2 goal four for the forest lands in Umatilla and Union
3 Counties.

4 And Jesse will go over those more in more
5 detail. But that's just kind of the setup background
6 for that portion.

7 So this is in Union County, which has the
8 same note about the forest lands.

9 And then Baker County. Shout out to
10 Umatilla County over here. Hi, guys. And Union. Oh,
11 Scott left. Okay.

12 All right. So -- and this is just a really
13 high-level overview. And that -- that's basically my
14 presentation, unless Council has any specific questions
15 to the proposed order, we can pass it off to Jesse.

16 VICE CHAIR HOWE: Floor is yours,
17 Mr. Ratcliffe.

18 MR. RATCLIFFE: Thank you.

19 MS. TARDAEWETHER: For the record, Kellen.

20 I did have a couple conditions here. I'll
21 just leave them up here. This is kind of -- this
22 relates to the wider right-of-way and forest lands and
23 then there's also the right-of-way clearing assessment
24 which talks about -- has that built-in agency
25 consultation. And this is the applicant's proposal for

1 maintaining, you know, vegetative clearance in the -- in
2 the utility right-of-way.

3 Let me make sure. Okay. Now I'm done.
4 Sorry.

5 MR. RATCLIFFE: Thanks.

6 So issue LU-9, the limited party is Myers.

7 The issue is whether the applicant
8 adequately analyzed the risk of wildfires from the
9 operation of the proposed transmission line especially
10 during red flag warning weather conditions and the
11 impact, the proposed transmission lines will have on
12 Mr. Myers' ability to use an aerial applicator on his
13 farmland.

14 So in the Hearing Officer's proposed
15 contested case order, she first provided a definition of
16 what a red flag warning is.

17 It's a forecast warning issued by the
18 national weather service to inform the public,
19 firefighters, and land management agencies that
20 conditions are ideal for wildland fire combustion and --
21 rapid spread. Red flag warnings are often preceded by
22 a fire weather watch, which indicates weather conditions
23 that could occur in the next 12 to 72 hours.

24 A national weather service has developed
25 different zones across the nation for providing weather

1 alerts, such as red flag warnings, to more discrete
2 areas. These zones are monitored and factored into the
3 applicant's determination of whether to imitate a public
4 safety power shutoff. So a little bit of background on
5 what that is.

6 So the Hearing Officer's opinion concluded
7 that the risk of wildfire during red flag warning
8 weather conditions was adequately evaluated in the 2022
9 wildfire mitigation plan which was submitted by the
10 applicant during the contested case.

11 The potential fire risk zones along the
12 proposed route were evaluated in that mitigation plan.

13 The hearing officer found that evidence on
14 the record demonstrates that the distance between
15 structures -- the height of structures and soil type
16 result in low risk of the potential for large dust
17 devils to interact with the transmission line and cause
18 a fire.

19 Based on review of the data regarding fire
20 size and cause in the area, which is Morrow County, the
21 likelihood of a catastrophic project-related wildfire
22 during the operation is very low.

23 Therefore, there is no need for the
24 applicant to have a soil rehabilitation plan in place in
25 response to potential fire-related damage to

1 agricultural soils on Mr. Myers' property.

2 Hearing officer found that the applicant
3 provided expert testimony that evaluated the fuel source
4 on Mr. Myers' property, including herbaceous, grass and
5 grain vegetation.

6 Based on this fuel source, any fire on or
7 near Mr. Myers' property is expected to be low intensity
8 and fast moving. Given wind conditions in there area,
9 low-intensity, fast-moving fires do not cause
10 significant damage to soils.

11 Hearing officer found that the applicant
12 identified potential impacts to agricultural operations,
13 including accessibility to fields for aerial spraying.

14 Specifically under the agricultural
15 mitigation plan, the applicant would be required to work
16 with landowners, microsite the line, siting the line
17 along the edge of fields or existing rights-of-way and
18 negotiate right-of-way easements.

19 Finally, the hearing officer concluded that
20 ORS 215.275 sub (5) does not require that there be no
21 impacts from the transmission line to agricultural
22 operations. The potential impacts to aerial spraying
23 have been identified and evaluated, and the
24 preponderance of evidence demonstrates that the
25 applicant will generally reduce the intensity and

1 frequency of impacts to farmlands.

2 That, again, is the summary of the hearing
3 officer's findings and conclusions with respect to this
4 issue and we're ready for Mr. Myers' oral argument.

5 MR. MYERS: -- we're directly -- or the
6 applicant adequately analyzed the risk of wildfires from
7 operation and during red flag warnings.

8 I request that you reverse the ALJ's
9 decision, specifically the ALJ was incorrect in finding
10 that Idaho Power adequately analyzed the risk of
11 project-related wildfire during red flag warning,
12 weather warning conditions, and in operation as well.

13 It's clear in the IPC's 2022 fire mitigation
14 plan that they failed to include the zone that
15 potential -- that poses a highest level of risk. That
16 zone is over our farm. That's a weather service
17 designated zone over our farm. It's not a zone that you
18 talked about prior to this and that groups
19 weather issues that are similar issued by the weather
20 service itself.

21 The -- the IPC failed to include our zone as
22 a critical fire zone risk or at-risk zone. They failed
23 to include this. This zone includes our cropland, our
24 farm. And this zone also makes up 25 percent of the
25 proposed transmission line link. The IPC misclassifying

1 this zone as a critical fire risk, again, this zone has
2 statistically the same number of red flag warnings
3 issued on average as other zones that were classified as
4 high -- critical -- high critical fire risk zones.

5 In addition, the ALJ was incorrect in
6 finding that high winds pose little risk for wildfires
7 caused by transmission line ignition.

8 In my supporting evidence I presented in
9 multiple filings showing the 500 kV transmission lines
10 have ignited fires in comparable landscapes. Idaho
11 Power has confirmed this fact.

12 Furthermore, the ALJ was incorrect in
13 finding that if a fire were to occur on my farm, it
14 would have minimal soil impact. And there's no need for
15 the IPC to have a soil rehabilitation plan in place.

16 Quite frankly, contrary to Idaho Power's
17 expert witness, Mr. Madison, the facts provided in my
18 direct testimony are a hundred percent accurate and
19 specifically unique to this cropping system.

20 As supporting evidence, I provided a signed,
21 written testimony of a local farmer that experienced the
22 fire in his cropland. That fire impacted his soil
23 negatively for over six year.

24 This is a well-documented testimony that
25 completely contradicts Mr. Madison's findings. It is

1 very clear that a much larger risk exists than what was
2 assessed.

3 In essence, the risk on our section of farm
4 has not been addressed and certainly not as adequately.

5 Judge Webster was incorrect in finding I did
6 not timely offer testimony from the article by
7 Zhaolin Gu into the hearing record. I presented this
8 article within the filing deadline in my declaration
9 testimony, and it is critical evidence -- crucial
10 evidence related to my issue, should not be overlooked.

11 VICE CHAIR HOWE: Mr. Myers, you need to
12 wrap up.

13 MR. MYERS: By leaving out this zone over
14 our farm plays out in a number of different ways, but we
15 are at risk of soil damage in a fire. Fires do happen.
16 These lines do light fires. That's -- that's a fact.
17 And our environment, locally, is at risk.

18 Because we don't have a large history of
19 fires in our area is because we got lucky. And because
20 local residents are diligent about not mishandling fire
21 in any way to have a fire take off.

22 Things will change if a transmission line is
23 installed. It's a different environment.

24 You can't say that because we haven't had
25 fires prior to this, that it's not an issue. We just

1 got lucky and we've had people that care about not
2 lighting a fire by accident. And it does happen.

3 And we haven't had a lot of -- we're very
4 rural.

5 VICE CHAIR HOWE: Okay. Thank you very
6 much.

7 Are there questions from Council?
8 Councillor Beier.

9 COUNCILMEMBER BEIER: This is Councillor
10 Beier.

11 We just touched on the fire component -- the
12 wildfire component of your exception. But if you could
13 give us 20 to 30 seconds on the aerial application and
14 your concerns vis-à-vis the power line and how you apply
15 to your property.

16 MR. MYERS: Absolutely. Absolutely.

17 The IPC has tried to mitigate that with
18 lines going around fields and so on, they mentioned
19 that. Right?

20 In my case, it runs right through a -- a
21 section and a half of ground that had been continuously
22 farmed for 60 to 80 years.

23 I'm stuck with a line going right through my
24 field. What am I going to do?

25 I can't -- it's like -- there's no

1 mitigation here. It goes right through it. Right
2 through the middle of it.

3 I don't even know if I can farm it. I
4 can't -- what am I -- the pilot is not going to want to
5 go anywhere near that. I don't know the regulations
6 there. For my case, it is a disaster. There's no great
7 option. I appreciate that question. Immensely, I
8 really do.

9 VICE CHAIR HOWE: Thank you, Mr. Myers.

10 MS. RACKNER: Good morning. Lisa Rackner
11 for the record.

12 Mr. Myers' exceptions raise a number of
13 issues and I'm going to try to briefly address each of
14 them.

15 But before I do that, I just want to provide
16 a little bit of context about the company's wildfire
17 mitigation plan and public safety shutoff plan for
18 de-energizing lines. The company needs to --

19 Sorry about that. The company filed its
20 most recent -- it's 2022 plan with the Public Utility
21 Commission and that plan was approved.

22 Now, our understanding from Mr. Myers'
23 exceptions was his concern that the public safety power
24 shutoff plan doesn't include risk zone 641. That was an
25 issue he brought up for the first time.

1 Our understanding is that risk zone 641
2 includes Marrow and Umatilla County. And I do want to
3 ensure the Councilmembers that in the wildfire
4 mitigation plan itself, the company has thoroughly
5 addressed wildfire risk in those counties.

6 With respect to the public safety shutoff
7 plan, again, that's the plan for de-energizing lines in
8 certain emergency situations, that is a living document.
9 It only covers the transmission lines that have been
10 built. It's because it's dynamic and it has to always
11 change. So B2H has not been added to that -- to that
12 plan yet.

13 But it certainly will before it's energized.
14 And the company will have an appropriate plan for
15 that -- the PSPS.

16 So Mr. Myers also alleges that the hearing
17 officer erred by failing to consider evidence concerning
18 the risk of fire ignition with respect to 500 kV lines.

19 However, there was substantial evidence in
20 this case by our expert addressing this issue. And as
21 Idaho Power's expert witness explained, fires from
22 high -- extra high voltage lines, like a 500 kV line,
23 are extremely rare. They are much less likely to cause
24 fires because they are subject to stricter safety and
25 engineer requirements. They are high above the tree

1 line and they are a much wider right-of-way around --
2 around it.

3 So the hearing officer correctly found that
4 the risk that a fire would be started from a 500 kV line
5 was extremely -- was extremely low.

6 With respect to -- I know Councilmember
7 Beier wanted to know about the aerial spraying and the
8 issue there.

9 My understanding is that -- is that there
10 is -- B2H is planned right now to be routed through
11 Mr. Myers' farmland; that that was unavoidable. There
12 were a number of other constraints that led that to be
13 the case.

14 My understanding is that micrositing of that
15 line is available, but to the extent there is some
16 impact on the aerial spraying operations planned on his
17 plan (sic), and we acknowledged that there will be --
18 that will become part of right-of-way negotiations and
19 there will be discussions about -- compensation for the
20 diminution of value of his farmlands for that reason.

21 VICE CHAIR HOWE: Thank you, Ms. Rackner.

22 Are there questions from Council?

23 Okay. Counsel Rowe.

24 MR. ROWE: Anything I add will just be in
25 addition to comments that Ms. Rackner made.

1 The hearing officer considered Mr. Myers'
2 arguments. She found that Idaho Power had adequate --
3 (audio disruption) --

4 Okay. Sounds like everybody is back on
5 board.

6 This is Patrick Rowe, Department of Justice.
7 Just two brief comments.

8 Again, the hearing officer did find that
9 Idaho Power had adequately analyzed the risk of
10 wildfire. She cited to the wildfire mitigation plan.

11 With regard to the aerial spraying issue, in
12 addition to the measures that Ms. Rackner referenced
13 with regard to potential compensation to Mr. Myers, the
14 Department would also point out the recommended land use
15 condition 14 would require the certificate holder to
16 finalize and implement an agricultural mitigation plan.
17 That plan is described in attachment K-1 of the
18 application for site certificate. It includes measures
19 to avoid, mitigate, repair, and/or provide compensation
20 for impacts that may result from the construction or
21 operation of the project on privately owned agricultural
22 land.

23 THE COURT: Okay. Council, does anyone feel
24 there are changes needed to the language of land use
25 condition number nine?

1 Councillor Condon.

2 COUNCILMEMBER CONDON: Cindy Condon.

3 And this is to, I think, Mr. Myers and
4 Ms. Rackner.

5 I'm a little bit confused and I think it has
6 been mentioned. But the substantial disagreement about
7 the zone being adequately -- this specific zone that
8 Mr. Myers -- on Mr. Myers' property.

9 It just sounds diametrically opposed. No --
10 no review or no analysis and then --

11 MS. RACKNER: I think that the -- I think
12 it's a disagreement about what it's called.

13 So in the wildfire mitigation plan, Idaho
14 Power did analyze the area that B2H is going to be going
15 through.

16 So -- and we felt that that was adequate and
17 we do feel that that was adequate. In his exceptions
18 for the first time, Mr. Myers' brought up -- he said,
19 well, you didn't look at this whole zone. And that was
20 the first time we had ever heard that. He also was
21 specific that we hadn't brought it up in the power
22 safety shutoff portion, which is kind of -- which is a
23 different document.

24 But to the extent, perhaps, he meant, you
25 didn't consider it at all in the wildfire mitigation

1 plan itself, I think the answer is we didn't say we're
2 looking at the zone. We said we're looking at the route
3 that B2H goes through, which would be the zone of
4 concern for the purposes of our analysis. So -- so I
5 think we may just be crossing each other.

6 To -- so, I guess, that's the answer if
7 Mr. Myers is really referring to the wildfire mitigation
8 plan itself.

9 If Mr. Myers is, as he says in his
10 exceptions, really concerned about, well, what's in your
11 public safety shutoff plan? What is your plan for
12 de-energizing lines in the Morrow County/Umatilla County
13 area?

14 Then the answer is Mr. Myers is correct. We
15 don't have that in our public safety shutoff plan yet,
16 because that's a living document, as is the wildfire
17 mitigation plan.

18 But, particularly, the electrical
19 consequences of shutting off a plan. It's just very
20 technical and it is going to be very specific to the
21 line that you are talking about and what that line is
22 connected to. So B2H would not yet be included.

23 It is a living document. It will be
24 included.

25 COUNCILMEMBER CONDON: Thank you. And I do

1 understand the difference between the power safety
2 shutoff.

3 But is Mr. Myers still here? I just want to
4 be clear. I -- in his remarks today, at least I don't
5 remember that he mentioned specifically the power
6 safety. I heard it as the wildfire mitigation analysis.

7 MS. RACKNER: That's what he said today and
8 that's why I answered the way I did.

9 COUNCILMEMBER CONDON: I just want to be
10 clear that we might be able to get some agreement that,
11 no, it was adequately or not analyzed.

12 MS. RACKNER: I don't see Mr. Myers in the
13 room.

14 COUNCILMEMBER CONDON: Thank you.

15 VICE CHAIR HOWE: Okay. With that, does
16 Council feel there's any changes needed to land use
17 condition nine?

18 Hearing none, I think we're ready for the
19 straw poll.

20 SECRETARY CORNETT: So it would be to "agree
21 with the findings of fact, conclusions of law, and
22 conditions of approval in the purposed contested case
23 order pertaining to issue LU-9."

24 VICE CHAIR HOWE: Sounds good.

25 SECRETARY CORNETT: Kent Howe.

1 VICE CHAIR HOWE: Yes.

2 SECRETARY CORNETT: Ann Beier.

3 COUNCILMEMBER BEIER: Yes.

4 SECRETARY CORNETT: Hanley Jenkins.

5 COUNCILMEMBER JENKINS: (No audible
6 response.)

7 SECRETARY CORNETT: Jordan Truitt.

8 COUNCILMEMBER TRUITT: Yes.

9 SECRETARY CORNETT: Perry Chocktoot.

10 COUNCILMEMBER CHOCKTOOT: Yes.

11 SECRETARY CORNETT: Cindy Condon.

12 COUNCILMEMBER CONDON: No.

13 SECRETARY CORNETT: Thank you,
14 Councilmembers.

15 VICE CHAIR HOWE: Okay. Counsel Ratcliffe,
16 it's back to you.

17 MS. TARDAEWETHER: Okay. So our other land
18 use issue is land use issue five.

19 The limited party is Irene Gilbert.

20 The issue statement is whether calculation
21 of forestlands must be based on soil class or whether it
22 is sufficient to consider acreage where forest is the
23 predominant use.

24 This was addressed by the hearing officer on
25 a ruling on motion for summary determination, as a

1 number of the other issues that the Council has been
2 considering over the past few days have.

3 Once again, that means that the hearing
4 officer reached a conclusion that there were no
5 materials -- issues of fact and that the issue is
6 appropriate for disposition on interpretation of the
7 law.

8 The Hearing Officer's ruling concluded that
9 Ms. Gilbert did not provide an adequate explanation as
10 to how or why the Union County comprehensive plan or the
11 Union County zoning ordinance are not compliant with
12 goal four of the state's land use process.

13 The hearing officer found that Ms. Gilbert
14 did not previously claim that Union County applied an
15 incorrect cubic foot per acre per year standard, or that
16 Union County incorrectly identified the soil class in
17 its comprehensive planning map, nor did she cite any
18 applicable statute or administrative rule requiring
19 Union County or the applicant to use a soil capacity
20 standard of 20 cubic feet per acre per year when
21 determining the predominant use and differentiating
22 between farmland and forestland.

23 The hearing officer concluded that Union
24 County Planning Director testimony from Mr. Mark Hartell
25 confirms that the applicant worked with the Union County

1 planning staff to determine the predominate use of each
2 of the 61 parcels located in the timber grazing zone and
3 used SSURGO soil data, the Union County tax law data,
4 and GIS software in making that determination.

5 And the hearing officer found that the
6 amount of impacted forestland acreage specifically is
7 not material to the goal four compliance analysis and
8 that overall there were no issues of material fact on
9 this issue.

10 So that's the summary of the hearing
11 officer's ruling on motion for summary determination as
12 it appears in the proposed contested case order. And
13 that brings us to oral argument from Ms. Gilbert.

14 MS. GILBERT: To appear here would be
15 humorous if it were not so sad. Let me get to my --

16 The contested case here and the dismissal
17 was with summary determination and findings of fact from
18 the Administrative Law Judge are absolutely not correct.

19 Summary judgment is not permissible if the
20 opposing party demonstrates there are factual disputes
21 going to the merit of the challenged agency decision. I
22 did do that. And she indicated -- the statements that
23 she made are just flat out incorrect.

24 This contested case is regarding whether
25 local land use rules that failed to comply with the

1 state land use rules can be used to determine
2 forestland. There are three of you with the experience
3 in land use law.

4 Can you ethically make a determination that
5 a county planner can use county rules over state
6 statutes when they conflict with one another.

7 Scott Hartell, in his deposition, said this
8 is the only document that he used to identify what was
9 forestland in the combined area.

10 It's -- the -- it shows only land that has
11 67 -- 67 cubic feet per square acre or greater as
12 forestland, did not even evaluate most of the land that
13 is being called range or agricultural land.

14 So anyway, there are multiple disputes of
15 law. The overlying issue is whether the 2008 and 2011
16 land use rule changes apply when a local government
17 fails to update local land use regulations within one
18 year as is required by the statute.

19 Is the developer required to determine soil
20 capacity for all soils in the combined ag. timber
21 classification?

22 The answer is yes. The Union County planner
23 stated that was the only documents that he used to
24 identify forestland.

25 The hearings -- I'm just amazed, anyway.

1 The Council needs to approve an exception to the summary
2 determination on this issue and allow a contested case
3 to move forward or remand to the hearings officer to
4 correctly identify forestland per the LCDC rules.

5 Evaluation of changes to related Council
6 rules -- they need to evaluate the changes to the
7 related council rules that are impacted by this
8 forestland decision, including LC-7 and LC-8.

9 Lisa Rackner even stated that it would be a
10 relatively small number of issues that could be handled
11 through summary determination and then the
12 Administrative Law Judge went ahead and approved all 33
13 that were requested.

14 We have disagreements of fact.

15 The proper identification of forestland is
16 critical to landowners. It has a significant impact on
17 the payment Idaho Power must pay the landowners when
18 they condemn land for the transmission line. One
19 Malheur County landowner said he was offered 3500
20 dollars, 3,500 for a 100 year right-of-way for a road
21 that crosses approximately one mile of his property.

22 VICE CHAIR HOWE: Ms. Gilbert, you need to
23 wrap it up.

24 MS. GILBERT: Yes, I know.

25 Anyway, leaving these landowners vulnerable

1 to that kind of offer is not ethical. It's not -- it's
2 just not okay.

3 So I guess, thank you.

4 VICE CHAIR HOWE: Thank you.

5 Any questions from Council?

6 Okay. Thank you.

7 MS. GILBERT: This one will go to the
8 Supreme Court.

9 MS. RACKNER: So as Ms. Gilbert says, this
10 was an issue that the hearing officer disposed of on a
11 motion for summary determination.

12 In her DPO comments and petition,
13 Ms. Gilbert had argued that Idaho Power and Union County
14 failed to appropriately determine forestlands in Union
15 County based on soil class as is required by the Union
16 County rules but, instead, made an evaluation of what
17 land should be designated based on the current use of
18 that land.

19 But as the company demonstrated in its
20 motion for summary determination, that simply wasn't the
21 case.

22 So as some important background, the only
23 impacted forest acres in Union County are located in
24 hybrid forest farm zones.

25 Union County requires Idaho Power to

1 determine whether the impacted parcels in the -- in the
2 hybrid zones should be considered forestland or farmland
3 and then apply the relevant land use standards based on
4 the predominant use of the impacted parcel.

5 Per the Union County zoning ordinance
6 predominant use is determined by soil type. And that's
7 exactly how Idaho Power, working with Union County, did
8 determine it.

9 So the un rebutted evidence in the record
10 shows that to determine the appropriate soil
11 classifications for each lot, Idaho Power worked with
12 Union County to analyze the soil data based on the
13 Natural Resources Conservation Services Soil Survey
14 Geographic database, which people refer to as "SSURGO,"
15 which was consistent with what was stated in
16 Mr. Hartell's deposition.

17 Any lot with soils consistent with
18 forestlands were designated as such. Now, there were
19 some parcels for which there was no soil data available.
20 And Idaho Power just conservatively assumed that was
21 forestland.

22 Now, when Union County reviewed these
23 determinations, including a review -- they included a
24 review of the current use of the land, but there were no
25 parcels for which that predominant use changed forest to

1 agricultural land. So contrary to Ms. Gilbert's
2 arguments, the determination of forestland were made
3 entirely based on soil type.

4 Now, in her reply brief on summary judgment,
5 Ms. Gilbert did raise a different argument. Instead of
6 asserting that Idaho Power failed to rely on soil type,
7 she now argued that Idaho Power used the wrong approach
8 for its soil analysis. And she argue that Union County
9 failed -- and Idaho Power failed to apply what she
10 believes to be a state planning rule that any parcel
11 consisting primarily of soil types with timber
12 production capacity of 20 cubic feet per acre must be
13 considered forestland.

14 However, Ms. Gilbert never identified any
15 state statute or regulation to support that position and
16 that's why the hearing officer rejected her argument.

17 And I see I'm out of time. But if you have
18 any other questions, I'd be happy to hear them.

19 VICE CHAIR HOWE: Thank you, Ms. Rackner.

20 Questions from Council?

21 Okay. Counsel Rowe.

22 MR. ROWE: Patrick Rowe, Department of
23 Justice on behalf of Department of Energy.

24 As has been discussed, the issues related to
25 Union County zoning -- zoning code issue, evidence on

1 the record shows that the applicant properly consulted
2 with Union County on how to interpret and apply the
3 requirements of that code.

4 Union County Planning Director testified in
5 the contested case and affirmed that the applicant's
6 approach to evaluating both farm and forestlands in
7 Union County was appropriate.

8 So the Department agrees that it was -- it
9 was appropriate for the hearing officer to dismiss this
10 issue on summary determination.

11 VICE CHAIR HOWE: Any questions from
12 Council?

13 Okay. Does Council feel that there's any
14 changes needed to land use condition five?

15 Hearing none. We're ready for a straw poll.

16 SECRETARY CORNETT: Okay. So this will be
17 for both the land use standard and issue LU-5.

18 So agree with the findings of fact,
19 conclusions of law, conditions of approval in the
20 proposed order pertaining to land use stand -- land use
21 standards that are not related to the issues in the
22 contested case and in the proposed contested case order
23 pertaining to issue LU-5.

24 Jordan Truitt.

25 COUNCILMEMBER TRUITT: Yes.

1 SECRETARY CORNETT: Hanley Jenkins.

2 COUNCILMEMBER JENKINS: Yes.

3 SECRETARY CORNETT: Kent Howe.

4 VICE CHAIR HOWE: Yes.

5 SECRETARY CORNETT: Cindy Condon.

6 COUNCILMEMBER CONDON: Yes.

7 SECRETARY CORNETT: Ann Beier.

8 COUNCILMEMBER BEIER: Yes.

9 SECRETARY CORNETT: Perry Chocktoot.

10 COUNCILMEMBER CHOCKTOOT: Yes.

11 SECRETARY CORNETT: Thank you,

12 Councilmembers.

13 VICE CHAIR HOWE: Okay. We have a few
14 remaining items. Adoption of minutes and some other
15 things.

16 Do we want to break for lunch and come back
17 or go through?

18 SECRETARY CORNETT: Entirely Council's
19 discretion. So we have a couple remaining things for
20 this agenda item and then the two minutes -- the draft
21 minutes for the two Council meetings. So it is entirely
22 your choice if you want to push through or if you want
23 to take a break and come back.

24 VICE CHAIR HOWE: What's Council's pleasure?
25 Get a little food and come back and work through it?

1 Working lunch. Okay. We'll take a
2 15-minute break and be back -- do we need 15? Or do we
3 want 10? Start at 12:30 or 12:35?

4 Okay. 12:35 we'll come back.

5 (A break was taken.)

6 VICE CHAIR HOWE: Okay. I'm calling the
7 Council back to order. So we're ready.

8 I'll turn it over to Secretary Cornett.

9 SECRETARY CORNETT: For the record, Todd
10 Cornett.

11 Thank you, Mr. Vice Chair.

12 So we have one holdover issue, and that is
13 the -- give me one second -- that is the structural
14 standard.

15 So at the beginning of day one, on the
16 structural standard, Council had some questions. There
17 was some interest in a condition related to notification
18 related blasting.

19 And so thanks to Christopher Clark, we
20 tasked him with doing some research. He found some
21 information related to the Oregon Department of
22 Transportation. Provided that to us. Sarah was able
23 to package that into condition language.

24 So I have proposed condition language.
25 Yeah, actually, I can just read it or if you would like

1 me to share it on the screen.

2 What's your preference?

3 Okay. Maybe I will just email it to you.

4 Okay. Give me one minute, please.

5 Okay. It should only be just a minute.

6 Give you a chance to eat a little bit more, too.

7 So with the -- I'll work on the preamble.

8 So this would be to "agree with the findings
9 of fact, conclusions of law, and conditions of approval
10 in the proposed order pertaining to the structural
11 standard that are not related to issues in the contested
12 case with the following modifications to be included in
13 the draft framework blasting plan, Section 3.3.2,
14 blasting and notification and safety procedures, which
15 is an existing section of the plan under recommended
16 soil protection condition one."

17 And then the specific language we'll bring
18 up on the screen.

19 Okay. And I will -- you can see it, but I
20 will read it.

21 So this would be in addition to the
22 notification that was previously in there -- in the
23 newspaper. Not in place of it, but in addition to.

24 So at least 14 days prior to any blasting
25 necessary during construction of the facility,

1 certificate holder shall ensure that its construction
2 contractor identifies all landowners of record and
3 occupants within 1250 feet of blasting actions and
4 provide notifications to those landowners and
5 occupants -- which I spelled incorrectly -- the blasting
6 schedule, potential hazards -- potential risks and
7 hazards, and of measures that will be taken to monitor
8 and minimize any ground shaking impacts.

9 VICE CHAIR HOWE: Any comments from Council?

10 COUNCILMEMBER BEIER: For the record, this
11 is Councilmember Beier.

12 And thanks to staff for addressing this
13 issue.

14 I know we heard testimony earlier today that
15 this really doesn't get at the heart of the issue, but
16 at least people will have notice and -- and understand
17 that there will be some impacts to their neighborhoods.

18 So thank you to staff.

19 VICE CHAIR HOWE: Councillor Condon.

20 COUNCILMEMBER CONDON: Thank you.

21 I'm just wondering if it would be beneficial
22 to have it as part of the notice contact information.

23 So, you know, should you have -- have
24 concern -- concerns -- you know, contact information --
25 contact Idaho Power, the blasting company. I don't know

1 who would be contacted. But I'm wondering if that would
2 be helpful.

3 CHAIR HOWE: What does the rest of the
4 Council think of that suggestion?

5 COUNCILMEMBER TRUITT: Jordan Truitt.

6 I guess I suppose it -- I guess it depends
7 on who sends the notification out and who the
8 appropriate contact would be, whether it's a blasting
9 contractor or -- but, yeah.

10 VICE CHAIR HOWE: Does that look good,
11 Council?

12 Okay. Okay.

13 So what action do you need from Council?

14 SECRETARY CORNETT: A straw call as well.

15 VICE CHAIR HOWE: Roll call? Okay.

16 SECRETARY CORNETT: Cindy Condon.

17 COUNCILMEMBER CONDON: Yes.

18 SECRETARY CORNETT: Kent Howe.

19 VICE CHAIR HOWE: Yes.

20 SECRETARY CORNETT: Jordan Truitt.

21 COUNCILMEMBER TRUITT: Yes.

22 SECRETARY CORNETT: Perry Chocktoot.

23 COUNCILMEMBER CHOCKTOOT: Yes.

24 SECRETARY CORNETT: Ann Beier.

25 COUNCILMEMBER BEIER: (No audible response.)

1 SECRETARY CORNETT: Hanley Jenkins.

2 COUNCILMEMBER JENKINS: Yes.

3 SECRETARY CORNETT: Thank you,
4 Councilmembers.

5 MR. RATCLIFFE: All right. So that has
6 taken us through all of the exceptions and oral
7 argument. We have also gone through all of the
8 standards now between the July and August meetings.

9 Where that is going to take us to is now,
10 based on the results of those straw polls, some work on
11 the part of myself and the staff to incorporate some of
12 the recommended changes that the Council would like to
13 see.

14 We'll be putting together a document that
15 will incorporate those changes. And where we have, you
16 know -- as the Council is probably familiar with, when
17 we get to this kind of draft final order stage, there
18 are a number of kind of scrivener's corrections that are
19 just meant to reflect that this is a final document
20 instead of a proposed document, so there will be those
21 sorts of changes.

22 But in addition where we do have these
23 proposed changes to conditions in particular, that will
24 trigger this material change hearing where, you know,
25 there will be an opportunity to comment on the -- those

1 proposed changes specifically.

2 So when we get back together again, there
3 are going to be a couple of components here.

4 You know, it will be a review of the draft
5 final order and then this material change hearing, and
6 then that will ultimately culminate in the Council's
7 vote on the site certificate.

8 But before we get to leave this agenda item,
9 there's one other housekeeping thing that I want to note
10 here.

11 MR. ROWE: Jesse, I'm sorry to interrupt --
12 sorry to interrupt. Before we get off the scrivener
13 error issue, I just want to point out that I've just
14 been conferring with Secretary Cornett that if any of
15 the parties or limited parties have scrivener error
16 corrections that they would like to suggest, that they
17 do so and we believe a week from today would be
18 appropriate.

19 MR. RATCLIFFE: Okay.

20 MR. ROWE: And that would be scrivener
21 corrections to the proposed contested case order or to
22 the proposed order.

23 MR. RATCLIFFE: All right. Thank you for
24 that clarification.

25 So the one other housekeeping thing I wanted

1 to note was in reference to a comment that I made
2 towards the beginning of the meeting where I was going
3 over some of the procedural issues that had been raised
4 on the contested case record. And one of the issues had
5 been some conditions that have been proposed at closing
6 argument.

7 And we just went through some of those
8 conditions here with Mr. Anuta and Idaho Power with
9 regard to the noise standard.

10 Most of the other conditions the hearing
11 officer had addressed as saying I don't think these are
12 timely filed, however, you know, here are the other
13 reasons that I am not planning to adopt them if she
14 didn't plan to adopt them.

15 And, essentially, the reasoning on all of
16 those was the conditions that show up in the proposed
17 contested case order and the proposed order are
18 sufficient as they are. The ones that have been
19 adopted. They are sufficient as they are to demonstrate
20 a finding of compliance with whatever the Council
21 standard is that -- that's in play, whether it's land
22 use or waste minimization or whatever it is.

23 There are a handful of those conditions that
24 she did not add that extra sentence on to; however, by
25 implication, the reasoning is the same. She didn't

1 adopt the conditions because she had separately
2 concluded that those standards had been satisfied with
3 the conditions that were in the proposed order or
4 proposed contested case order.

5 And so I just wanted to -- to note that for
6 Council that that is probably, you know, something that
7 I would suggest that in coming back to you with the
8 draft final order that we take that implicit, you know,
9 reasoning from the -- the hearing officer and make that
10 explicitly consistent with her statements with respect
11 to the other -- other conditions, just so that we don't
12 have a reasoning gap there, as it exists in the proposed
13 contested case order.

14 So if there are any questions on that, ask
15 away, but that's all I have on that one.

16 VICE CHAIR HOWE: Any questions from
17 Council?

18 Any action needed today from Council?

19 MR. RATCLIFFE: No, other than just kind of
20 a head nod that -- that we're headed in the right
21 direction on that one.

22 VICE CHAIR HOWE: Yeah. Okay. Councillor
23 Beier.

24 COUNCILMEMBER BEIER: Timing? Calendar?
25 Just curious.

1 SECRETARY CORNETT: That's a good question.

2 For the record, Todd Cornett.

3 So what we're -- the next Council meeting --
4 which I think I may have missed that in my secretary
5 report -- we're looking at September 27th, which is
6 Tuesday. We'll be in Salem. So either remote or in
7 Salem, you know, as available for Councilmembers. And
8 we would then be getting the draft of the final order --
9 at least two weeks ahead of time -- out. We'll try to
10 get it out earlier than that, but we're already on the
11 clock. So that would hopefully give Councilmembers and
12 Idaho Power and limited parties an opportunity to look
13 at that. We will identify any material changes.

14 So, you know, structurally, you know, you're
15 looking at the proposed order and the proposed contested
16 case order.

17 What then happens is those get folded kind
18 of together in a way to become the draft of the final
19 order, which you will then be looking at. And as we
20 talked about earlier, any material changes that are
21 identified -- and we will call those out specifically so
22 people don't have to comb through it to kind of figure
23 out where those are. There will be a material change
24 hearing, so those who want to make comment on those can.

25 And then if Council is ready, you could be

1 issuing a final decision during that Council meeting in
2 September.

3 VICE CHAIR HOWE: Cindy Condon.

4 COUNCILMEMBER CONDON: Cindy Condon.

5 Just a quick question. Monday -- I think it
6 was Monday -- we discussed some language where "would"
7 was replaced for "will." And agreed to change it there.

8 And -- I should have brought it up at the
9 time, but I think that's used throughout the proposed
10 order. And if staff could just take a look at that for
11 the same reasons.

12 SECRETARY CORNETT: Yeah. Again, for the
13 record, Todd Cornett.

14 So Sarah Esterson responded to that. And
15 the way she had responded to that, you know, the -- the
16 documents, as they are moving through the process, are
17 either the Department's documents, so the draft proposed
18 order; that's our. The proposed order, that's our. The
19 proposed contested case order; that's the Hearing
20 Officer's. The final order is your document.

21 And so the way we structure some of the
22 recommendations on findings, we recommend Council -- so
23 there's a lot of language like that that gets converted
24 from those, you know, documents that are moving up
25 through the process that are not your documents to the

1 final version which is your document. So we will make
2 those changes within the final -- or at least the draft
3 of the final order.

4 COUNCILMEMBER CONDON: Thank you.

5 VICE CHAIR HOWE: And so kind of head nods
6 from Council regarding the superfluous conditions being
7 removed and brought back to us in the September meeting?

8 MS. TARDAEWETHER: Sorry. I just wanted to
9 follow up on the -- the -- the will/would -- and for the
10 record, Kellen Tardaewether. Did I say that?

11 And Todd is absolutely correct. A lot of
12 the tenses and the recommends and the order language,
13 all of those change when -- in the final order. And I
14 think that we -- we have flagged where you identified it
15 with -- you know, relative to that sentence and wanting
16 to change it to a "shall."

17 But this is like the -- using "would"
18 instead of "will," it is -- I guess we do that for all
19 of our -- all of our projects and all of our documents,
20 so -- and it doesn't necessarily mean that every "would"
21 is going to turn into a "shall." Because some of it is
22 just actually temporal.

23 It's just like -- because even in the final
24 order it's still -- they are going to -- it is still
25 going to do -- so -- so I just want to be very clear.

1 It's some -- not every would is going to turn into a
2 shall, because some places it just won't make sense.
3 It's just kind of the tense -- we do it. Anyhow, it's
4 just a tense of how we include in the documents.

5 COUNCILMEMBER CONDON: Thank you.

6 And I -- I just want to reiterate. So
7 "would" to me is a conditional element. So the would
8 do, if applies, and so "will" or "shall" or "must" is
9 not as conditional. And so I just want to be clear
10 about that. That's the issue.

11 SECRETARY CORNETT: Yeah.

12 For the record, Todd Cornett. Thank you.

13 We absolutely totally agree with that.

14 And to Kellen's point, you know, if it is in
15 a condition and it is being a mandatory, in those, we
16 absolutely, will/shall. You know, but again, depending
17 upon other circumstances, you know, it may be -- the
18 word "would" may be the appropriate word.

19 So we will evaluate all of those in context,
20 you know, of the structure of the findings, the
21 conditions, whatever it is. And any of those changes
22 will be in strike out, so you will be able to see those.

23 MR. RATCLIFFE: And I'm just responding.

24 Mr. Anuta just handed me a note about the
25 material change hearing. And it is a hearing. There

1 will be an opportunity for comment. And that -- I was
2 trying to scroll through the details of how that hearing
3 is supposed to work.

4 I didn't get to it on the fly quite fast
5 enough here. But I think that the -- the point here is
6 that for the interested parties that when we send out
7 notice of the meeting, those -- all those details about
8 the opportunity for -- for argument and comment on the
9 material changes will be included.

10 COUNCILMEMBER JENKINS: So, Mr. Chair, does
11 that material change hearing occur on the 27th?

12 SECRETARY CORNETT: For the record, Todd
13 Cornett.

14 What constitutes material changes, you know,
15 can be fairly narrow. So it is not everything that the
16 Council decided is going to be a material change. But
17 we will, you know, thoroughly evaluate that and again
18 call out those material changes.

19 So at this point, I can't tell you if it's 3
20 or 15. You know, but we will call those out and those
21 will be available for oral comment.

22 VICE CHAIR HOWE: Didn't we decide a year
23 ago the "shalls" become "must"?

24 SECRETARY CORNETT: Yeah. There was some
25 conversation about that. I do not recall. We would

1 have to go back and look at that.

2 VICE CHAIR HOWE: Just remember that.

3 SECRETARY CORNETT: Yeah.

4 VICE CHAIR HOWE: Okay. Then is the next
5 item --

6 SECRETARY CORNETT: If I may -- if you'll
7 allow me, just before we conclude agenda item B. So the
8 work involved for this agenda item was monumental. And
9 I know everybody knows that. But I think it is worth
10 stating for the record that the amount of effort put in
11 by everybody -- by the limited parties, by Idaho Power,
12 by Department of Justice, by my staff, by Council, this
13 has been monumental. The amount of time and effort
14 preparing for this meeting and then going through this
15 meeting is very, very significant.

16 So I just want to call out to everybody, you
17 know, my appreciation for the commitment, the time, the
18 complete effort put into this.

19 I know not everybody is in agreement on all
20 of the outcome, but I just want to recognize the serious
21 effort that went into this. So thank you to everybody
22 who participated in there.

23 VICE CHAIR HOWE: I second that.

24 Okay. So we're ready to move to approval of
25 minutes as -- going back to the June 23rd/24th meeting

1 minutes and the July 22 meeting minutes.

2 Do we have a motion?

3 COUNCILMEMBER JENKINS: This is Hanley.

4 I so move, and as prepared.

5 VICE CHAIR HOWE: For both dates?

6 COUNCILMEMBER JENKINS: Yes.

7 VICE CHAIR HOWE: Is there a second?

8 COUNCILMEMBER TRUITT: This is Jordan.

9 I will second.

10 VICE CHAIR HOWE: Okay. Ready to call the
11 roll, Secretary Cornett?

12 SECRETARY CORNETT: Give me one second.

13 Kent Howe.

14 VICE CHAIR HOWE: Yes.

15 SECRETARY CORNETT: Ann Beier.

16 COUNCILMEMBER BEIER: (No audible response.)

17 SECRETARY CORNETT: Hanley Jenkins.

18 COUNCILMEMBER JENKINS: Yes.

19 SECRETARY CORNETT: Jordan Truitt.

20 COUNCILMEMBER TRUITT: Yes.

21 SECRETARY CORNETT: Perry Chocktoot.

22 COUNCILMEMBER CHOCKTOOT: Yes.

23 SECRETARY CORNETT: Cindy Condon.

24 COUNCILMEMBER CONDON: Yes.

25 SECRETARY CORNETT: Motion carries, Mr. Vice

1 Chair.

2 VICE CHAIR HOWE: Is there any other
3 business for the good of the order?

4 SECRETARY CORNETT: Mr. Chair, there is no
5 more business from staff's perspective.

6 VICE CHAIR HOWE: Anything from Council?

7 Okay. The time is now 12:57 p.m., and the
8 August 29th, 30th, and 31st, 2022 meeting of the Energy
9 Facility Siting Council is now adjourned.

10

11 (Adjourned at 12:57 p.m.)

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