

OREGON DEPARTMENT OF ENERGY

Regarding Statutes, Administrative Rules and
Other Requirements Applicable to the Proposed)
Idaho Power Boardman to Hemingway) PROJECT ORDER
Transmission Line Project)

1
2 On August 28, 2008, the Oregon Department of Energy (ODOE) received a Notice of Intent
3 (NOI) to apply to build a new aboveground 500-kV single-circuit transmission line that would
4 connect an existing power plant near Boardman, Oregon, and the planned Hemingway substation
5 near Murphy, Idaho. The Applicant is Idaho Power Company (IPC). The proposed transmission
6 line would run approximately 298 miles through five Oregon counties and three Idaho counties
7 and connect with transmission lines on either end of the project to convey electricity on a
8 regional scale. An additional in-line substation will be located in the vicinity of Sand Hollow,
9 Idaho. As described in the NOI, approximately 86% of the transmission line would be located on
10 private land, with the remainder on federal land managed by the US Bureau of Land
11 Management (BLM) or the US Forest Service (USFS)¹. The facility would require a Site
12 Certificate from the Oregon Energy Facility Siting Council (EFSC or the “Council”) and
13 approval under the National Environmental Policy Act (NEPA) process, which is required for
14 any proposed action on federally-managed lands.

15
16 On September 4, 2008, ODOE prepared the memorandum described in OAR 345-015-0120 and
17 distributed it, together with reference to the website location of the NOI (and the offer to forward
18 a printed copy of the NOI on request) to the officers, agencies, and tribes described in OAR 345-
19 020-0040. In the memorandum, ODOE requested agency comments on the NOI by October 10,
20 2008. ODOE received comments from the Oregon Department of Environmental Quality,
21 Oregon Water Resources Department, Oregon Department of Transportation, Oregon Parks and
22 Recreation Department, Oregon Department of Fish and Wildlife, the Confederated Tribes of the
23 Umatilla Indian Reservation, and the U.S. Department of the Interior, Bureau of Reclamation.
24 Local governments including Malheur County, Umatilla County, Union County, and the cities of
25 Ontario, Pilot Rock, Vale, Echo, and Boardman commented in writing.

26
27 On September 12, 2008, BLM published an NOI to prepare an environmental impact statement
28 for this project in the Federal Register, to notify the public and affected agencies of the
29 preliminary issues associated with this project². On September 25, 2008, ODOE issued a public
30 notice of the EFSC NOI to the EFSC mailing list and to adjacent property owners as defined in
31 OAR 345-020-0011(1)(f). This public notice was distributed jointly with the BLM to satisfy both
32 NEPA and EFSC requirements. The notice announced a series of public information meetings to
33 be held in Marsing, Idaho on October 21; Ontario, Oregon on October 22; Baker City, Oregon on
34 October 23; Island City, Oregon on October 28; Pendleton Oregon, on October 29; and

¹ These percentages are preliminary and are likely to change as the applicant finalizes the proposed route.

² The NOI that BLM published in the Federal Register is a different document from the EFSC NOI that Idaho Power submitted under OAR 345 Division 20. In this project order, the term “NOI” refers to the document submitted to the Oregon Department of Energy by the applicant under OAR 345 Division 20 unless specified otherwise.

1 Boardman, Oregon on October 30, 2008. In the notice, ODOE requested public comments on
2 the NOI by November 14, 2008.

3
4 Under Oregon law, ODOE must issue a project order following receipt of a Notice of Intent
5 (ORS 469.330(3)). OAR 345-015-0160(1) requires in relevant sections that ODOE issue a
6 project order that establishes the following:

- 7
- 8 (a) All state statutes and administrative rules containing standards or criteria that
9 must be met for the Council to issue a site certificate for the proposed facility,
10 including applicable standards of OAR Chapter 345, Divisions 22, 23 and 24;
11
 - 12 (b) All local government ordinances applicable to the Council's decision on the
13 proposed facility;
14
 - 15 (c) All application requirements in OAR 345-021-0010 applicable to the proposed
16 facility;
17
 - 18 (d) All state and local permits necessary to the construction and operation of the
19 proposed facility and the name of each agency with the authority to issue such
20 permits;
21
 - 22 (e) Any other data and information that must be included in the application for a site
23 certificate to allow the Council to determine whether the proposed facility will
24 comply with applicable statutes, administrative rules and local government
25 ordinances;
26
 - 27 (f) The analysis areas for the proposed facility;
28
 - 29 (g) Public concerns that address matters within the jurisdiction of the Council that the
30 applicant shall consider and discuss in the application for a site certificate, based
31 on comments the Department has received;
32
 - 33 (h) If the applicant has identified one or more proposed corridors in Exhibit D of the
34 NOI as required in OAR 345-020-0011(1)(d), any adjustments to the corridor(s)
35 that the applicant shall evaluate in the corridor selection assessment described in
36 OAR 345-021-0010(1)(b);
37
 - 38 (i) If the applicant chooses to demonstrate need for a proposed electric transmission
39 line under the economically reasonable rules, OAR 345-023-0030 and 345-023-
40 0040, the alternatives the applicant must evaluate in the application for site
41 certificate in lieu of construction and operation of the proposed facility in addition
42 to the alternatives described in 0010(1)(n)(E) or (F), if any; and
43
 - 44 (j) The expiration of the NOI, according to OAR 345-020-0060(1).
- 45

46 ORS 469.401(4) provides that a site certificate issued by the Council does not govern certain
47 matters. This Project Order does not consider matters outside the Council's jurisdiction. IPC must

1 nevertheless comply with all statutes, regulations and local ordinances applicable to the proposed
2 facility.

3 As provided in ORS 469.330(4), ODOE or the Council may amend this Project Order at any
4 time. The definitions in ORS 469.300 and OAR 345-001-0010 apply to the terms used in this
5 Project Order, except where otherwise stated or where the context indicates otherwise.

6
7 THEREFORE, pursuant to 345-015-0160(1), the Oregon Department of Energy orders that:

8
9 **I. DEFINITIONS (see ORS 469.300 and OAR 345-001-0010)**

10 As used in this Project Order:

11
12
13 "Energy facility" means the proposed high voltage transmission line. The term "energy facility"
14 does not include any related or supporting facility. If a reference is intended to apply to both the
15 energy facility and its related or supporting facilities, the term "facility" is used.

16
17 "Related or supporting facilities" means any structure, proposed by the applicant, to be
18 constructed in connection with the construction of the energy facility. The Council interprets the
19 terms "structure, proposed by the applicant, to be constructed in connection with" as meaning
20 that a structure is a related or supporting facility if it would not be built but for construction or
21 operation of the energy facility.

22
23 "Facility" means an energy facility together with any related or supporting facilities.

24
25 "Energy facility site" means all land upon which an energy facility is located or proposed to be
26 located.

27
28 "Related or supporting facilities site" means all land upon which related or supporting facilities
29 for an energy facility are located or proposed to be located. For pipelines, this includes the right
30 of way, any construction right of way and associated laydown or staging area.

31
32 "Site" means all land upon which a facility is located or proposed to be located.

33
34 **II. STATUTES, ADMINISTRATIVE RULES, RELATED PERMITS OR OTHER**
35 **APPROVALS AND DISCUSSION OF SPECIFIC INFORMATION**

36
37 This section identifies the Oregon statutes and administrative rules that IPC must address
38 in the application and related state permits and approvals. This section discusses specific
39 information to be included in the application.

40
41 **1. Energy Facility Siting Council**

42
43 **Statute and Rule References:** Statutes pertaining to the regulation of energy facilities,
44 starting at ORS 469.300, Administrative rules in OAR Chapter 345, Divisions 1, 21, 22,
45 24, 26 and 27.

1 **Permit:** An energy facility site certificate is required before construction or operation.

2
3 **Discussion:** Section V below describes specific application requirements under OAR
4 345-021-0010.

5
6 All general standards in OAR Chapter 345, Division 22, apply to the proposed facility. If
7 the Council issues a site certificate for the proposed facility, the certificate holder must
8 implement a compliance plan, as described in OAR 345-026-0048. The site certificate
9 will contain the mandatory conditions, applicable site-specific conditions, and monitoring
10 conditions described in OAR 345-027-0020, -0023 and -0028.

11 12 **2. Oregon Department of Agriculture – Plant Conservation Biology Program**

13
14 **Statute and Rule References:** ORS Chapter 564, OAR Chapter 603, Division 73

15
16 **Permit:** None required.

17
18 **Discussion:** The Oregon Department of Agriculture (“ODA”) provides technical review
19 and recommendations regarding compliance with the Council’s threatened and
20 endangered species standard (OAR 345-022-0070) as it relates to plant species.

21 OAR 603-073-0070 contains the state list of endangered and threatened plant species.
22 OAR 603-073-0080 gives ODA the authority to designate candidate plants. If IPC finds
23 any state-listed threatened or endangered plant species that may be affected by the
24 proposed facility, IPC must address the requirements of OAR 603-073-0090(5)(d)(A)-(E)
25 in the application.

26
27 IPC should include in its application a list of both state- and federally-listed endangered,
28 threatened, and candidate plant species that have potential to occur in the analysis area.
29 IPC should identify these species based on a review of literature, consultation with
30 knowledgeable individuals, and reference to the list of species on the Oregon Natural
31 Heritage Program.³

32
33 IPC should include in its application a description and the results of a field survey for the
34 listed plant species. A qualified individual shall conduct the field survey during the
35 season or seasons appropriate to the plant species under consideration. The field survey
36 report should include written descriptions of the survey methods and areas surveyed. IPC
37 should consult with the Oregon Department of Agriculture, Native Plant Conservation
38 Program, regarding field survey methods, appropriate survey seasons and qualifications
39 of field survey personnel.
40

³ OAR 345-022-0070 applies only to state-listed plant and animal species. However, OAR 345-021-0010(1)(q) requires applicants to consider plant and animal species listed as endangered or threatened under both state and federal law. This requirement applies because the Council, in making its decision, must be mindful of possible adverse impacts to federally listed species. Note also that OAR 345-022-0070 applies to all lands affected by a proposed facility including state, federal and private lands.

1
2 **3. Department of Environmental Quality – Water Quality**
3

4 **Statute and Rule References:** ORS Chapters 468 and 468B, OAR Chapter 340, Division
5 45.
6

7 **Permits:** NPDES Construction Storm Water 1200-C Permit (“NPDES”) and Clean Water
8 Act Section 401 Water Quality Certificate
9

10 Preliminary agency comments on the NOI request that IPC determine the potential for
11 stormwater discharge to a surface water body and total disturbed area in order to evaluate
12 whether the 1200-C construction stormwater permit is required for the proposed project.
13 Projects less than one acre or without the potential for discharge to a surface water body
14 or conveyance to surface water (e.g. drainage ditch or storm sewer) are not required to
15 obtain coverage under the 1200-C construction stormwater permit.
16

17 Under OAR 345-021-0000(7), the ODOE shall not find a site certificate application
18 complete unless the applicant has submitted to the ODOE a copy of each federally-
19 delegated permit application. The applicant must also provide a letter or other indication
20 from the Oregon Department of Environmental Quality (DEQ) stating that the agency has
21 received a permit application from the applicant, identifying any additional information
22 the agency is likely to need from the applicant based on the agency’s review of the
23 application as submitted and estimating the date when the agency will complete its
24 review and issue a permit decision.
25

26 The U.S. Environmental Protection Agency has delegated authority to DEQ to issue
27 NPDES Storm Water Discharge permits for construction and operation activities. The
28 Council does not have jurisdiction over the federally-delegated NPDES permit, but the
29 Council may rely on the determinations of compliance and the conditions in the
30 federally-delegated permit in making its determination about whether other standards and
31 requirements under the Council’s jurisdiction are met. In particular, site certificate
32 holders have frequently relied on the Erosion and Sediment Control Program (ESCP) that
33 is required for the 1200-C permit as evidence of compliance with the EFSC Soil
34 Protection standard and with some applicable land use ordinances. If Idaho Power will
35 cite the ESCP in support of compliance with Council standards, then the complete ESCP
36 must be provided for the application to be complete.
37

38 **4. Department of Environmental Quality – Hazardous Materials**
39

40 **Statute and Rule References:** ORS Chapters 465 and 466; OAR Chapter 340, Divisions
41 100 through 122
42

43 **Permit:** None required
44

45 **Discussion:** IPC must include in the application a list of all hazardous materials that
46 potentially would be stored or used at the facility site during construction and operation.

1 IPC must comply with DEQ regulations concerning the use, clean up and disposal of
2 hazardous materials.

3
4 The DEQ hazardous materials program implements requirements of the US EPA and is
5 considered a federally delegated program. However, information on hazardous materials
6 use and storage is important in determining the potential for spills that could adversely
7 impact soils and potentially affect the cost and success of site restoration. Therefore, the
8 application should include sufficient information on hazardous materials use and storage
9 to assess compliance with the Soils and Retirement standards. A complete application
10 would include sufficient information on plans and programs for hazardous materials
11 storage for DEQ to comment on their adequacy in the course of their comments on the
12 Application for Site Certificate.

13 14 **5. Department of Environmental Quality – Noise Control Regulations**

15
16 **Statute and Rule References:** ORS 467.020, ORS 467.030, OAR 340-035-0035

17
18 **Permit:** None required

19
20 **Discussion:** The proposed facility must comply with the noise control regulations
21 applicable to industrial facilities at OAR 340-035-0035. The requirement is incorporated
22 in the general standard of review, OAR 345-022-0000.

23
24 IPC shall include a noise analysis in the application. The analysis must contain
25 information to support a finding by the Council that the proposed facility would comply
26 with the requirements of OAR 340-035-0035.

27
28 The DEQ noise regulations have been most frequently applied to fixed site industrial
29 facilities such as power plants. However, the regulations apply to all energy facilities.
30 The application should provide the distance between the transmission line and the nearest
31 noise sensitive receptors as that term is defined by DEQ. The application should include
32 baseline sound measurements at the noise sensitive receptors most likely to be affected.
33 Because of the effect that terrain has on noise transmission, multiple baseline noise
34 measurement will probably be necessary. Baseline noise measurements must be taken
35 under conditions when low ambient noise is expected. The application should include
36 information on noise from the transmission line under reasonably expected weather
37 conditions, including weather conditions that typically result in greater noise production.
38 The application should not rely on literature or projected data for sound production from
39 the transmission lines, but should be based on actual measurements of existing
40 transmission lines of similar design under similar weather conditions. If IPC requests a
41 wide corridor, the noise analysis must be conservatively based on the assumption that the
42 transmission line will not be in the center of the corridor but will be placed on the edge of
43 the corridor that is closest to the most limiting noise sensitive receptors. The application
44 should provide evidence that the noise from the transmission line, as measured at the
45 maximally affected noise sensitive receptor, will not exceed the ambient degradation rule
46 of 10 dB above baseline, or the absolute levels listed in Table 8 of OAR 345-035-035.

1
2 **6. Oregon Department of Fish and Wildlife**
3

4 **Statute and Rule References:** ORS Chapters 496, 498, 506, and 509; OAR Chapter 635,
5 Divisions 100, 415, and 425
6

7 **Permit:** None required
8

9 **Discussion:** The Oregon Department of Fish and Wildlife (ODFW) provides technical
10 review and recommendations on compliance with Council rules set forth in OAR
11 345-021-0010(1)(p) and (q) and 345-022-0040, -0060 and -0070. ODFW will base its
12 review and recommendations on state policies concerning Wildlife, Threatened and
13 Endangered Wildlife Species, Protection and Propagation of Fish, Food Fish
14 Management, Fish Passage and Screening Devices, and Placing Explosives in Waters.
15

16 OAR Chapter 635, Division 100 provides authority for adoption of the state sensitive
17 species list and the Wildlife Diversity Plan, and contains the state list of threatened and
18 endangered wildlife species.
19

20 OAR Chapter 635, Division 415 describes six habitat categories and establishes a
21 mitigation goal for each category. The application for a site certificate must identify the
22 appropriate habitat category for all areas affected by the proposed facility and provide the
23 basis for each category designation, subject to ODFW review. IPC must show how it
24 would comply with the habitat mitigation goals and standards by appropriate monitoring
25 and mitigation.
26

27 OAR Chapter 635, Division 425 contains requirements for in-water blasting. In the event
28 that construction of the facility would require the use of explosives on, under, or in
29 Oregon waters or in a location that might affect fish or other wildlife or their habitat, an
30 in-water blasting permit would be required. An application for an in-water blasting permit
31 must include the information necessary to meet the requirements of ORS 509.140 and
32 OAR 635-425-0000 through 635-425-0050 and be submitted to ODFW for approval. An
33 application for an in-water blasting permit must be submitted 90 days prior to the date of
34 blasting.
35

36 Although most communication from ODFW so far has emphasized the protection of the
37 sage grouse, Idaho Power must also meet ODFW requirements for big game range. The
38 Union County district biologist in particular has emphasized the protection of big game
39 range, and on October 31, 2008 ODFW confirmed in writing that big game winter range is
40 classified as Habitat Category 2.
41

42 ODFW provided detailed comments on the NOI by letter dated October 20, 2008. The
43 main contact person for ODFW for the proposed project will be Rose Owens at
44 headquarters and Colleen Fagan in the La Grande office.
45

1 **7. Department of Geology and Mineral Industries**

2
3 **Statute and Rule References:** OAR 345-021-0010 and 345-022-0020

4
5 **Permit:** None required.

6
7 **Discussion:** The Department of Geology and Mineral Industries (DOGAMI) provides
8 technical review and recommendations on compliance with the Council’s structural
9 standard, OAR 345-022-0020. In its application, IPC must include a geotechnical report
10 that includes, as a minimum, the information required by OAR 345-021-0010(1)(h). IPC
11 should submit a full geotechnical report meeting the guidelines of DOGAMI open file
12 report 00-04 “Guidelines for Engineering Geologic Reports and Site Specific Seismic
13 Hazard Reports”. Also relevant is the information required by OAR 345-021-0010(1)(i).

14
15 ODOE recognizes that detailed onsite geotechnical work usually cannot take place until
16 the final route is selected and access from landowners is obtained. If a geotechnical
17 report at the level of detail described in the DOGAMI open file report cannot be prepared
18 for these reasons, IPC should include the conclusions reached in a direct consultation
19 with DOGAMI regarding the level of geotechnical investigation practical for the
20 application, and DOGAMI’s concurrence with IPC’s plans to complete the geotechnical
21 investigation prior to start of construction.

22
23 **8. Oregon Parks and Recreation Department**

24
25 **Statute and Rule References:** ORS 97.740 and ORS 358.905, OAR Chapter 736,
26 Division 51

27
28 **Permit:** An archaeological permit may be required to conduct archaeological
29 investigations of the site.

30
31 **Discussion:** The Oregon Parks and Recreation Department provides technical review and
32 recommendations on compliance with Council standards in OAR 345-022-0040
33 (Protected Areas), OAR 345-022-0080 (Scenic and Aesthetic Values), and OAR 345-
34 022-0100 (Recreation).

35
36 The State Historic Preservation Office (SHPO) provides technical review and
37 recommendations in reference to the Council’s Historic, Cultural and Archaeological
38 Resources Standard (OAR 345-022-0090). Protection for archaeological sites, objects,
39 and human remains on both state and private lands is the primary concern of SHPO,
40 including compliance with Section 106 of the National Historic Preservation Act.

41
42 SHPO anticipates IPC’s compliance with Section 106 through the applicant’s
43 communication with SHPO, the EFSC process, and the BLM’s Environmental Impact
44 Statement. The application should include an archaeological and cultural survey
45 conducted by a qualified archaeologist. The ODOE recommends that IPC work as early

1 as possible with the SHPO to ensure that IPC provides required information in SHPO's
2 preferred formats.

3 4 **9. Oregon Department of State Lands – Removal-Fill**

5
6 **Statute and Rule References:** ORS 196, OAR Chapter 141, Division 85

7
8 **Permit:** A removal-fill permit is required if 50 cubic yards or more of material is
9 removed, filled or altered within a jurisdictional water of the State (OAR 141-085-0015).

10 **Discussion:** IPC should include information in the application to support a finding of
11 whether a removal-fill permit is or is not needed. The application should include
12 complete wetland delineation for all areas to be affected by the proposed facility. If a
13 removal-fill permit is needed, the application must include an itemized demonstration of
14 compliance with each applicable provision of ORS 196.825 and OAR 141-085-0029.

15
16 In Oregon, the removal fill permit is issued by the Department of State Lands (DSL)
17 separately from the 404 permit issued by the US Army Corps. DSL will review a joint
18 permit application (JPA) for compliance with DSL wetland mitigation requirements.
19 Note that in some cases the DSL wetland mitigation success criteria may differ from and
20 exceed those of the Corps.

21
22 To be complete, the application must include a wetland delineation of the entire width of
23 the proposed corridor. DSL must concur with the delineation. If jurisdictional wetlands
24 occur within the proposed corridor then the Council may impose conditions requiring
25 their avoidance. ODOE expects that the transmission line will span wetlands. However,
26 access roads and temporary laydown area are considered part of the site and must be
27 delineated as well.

28 29 **10. Oregon Department of State Lands – Easement**

30
31 **Statute and Rule References:** ORS 273, OAR Chapter 141, Division 112

32
33 **Permit:** Easement for constructing transmission line on state land

34
35 **Discussion:** IPC should include an application for an easement on trust and non-trust
36 land in their facility application. The facility application must include an itemized
37 demonstration of compliance with each applicable provision of OAR 141-122.

38 39 **11. Water Resources Department – Water Rights Division**

40
41 **Statute and Rule References:** ORS Chapters 537 and 540, OAR Chapter 690, Divisions
42 1 through 410, ORS Chapter 538 (withdrawal of municipal/county water)

43
44 **Permit:** A Limited Water Rights permit is required if new water rights are necessary for
45 the project.

1 **Discussion:** The uses of water anticipated for this facility are for construction purposes,
2 road watering and dust abatement. IPC should include information in the application to
3 support a finding of whether a water right is or is not needed. The application must
4 identify the sources of water to be used during construction and operation of the proposed
5 facility, the quantity of water needed, and the means of disposal of all water discharges
6 from the proposed facility.
7

8 Unless obtained from a Municipal supplier, water used in the construction, dust
9 abatement, and road watering will require Limited Licenses. Such licenses cannot
10 authorize use or discharge of water outside a single basin; therefore multiple Limited
11 Licenses may be required.
12

13 Jerry Sauter of WRD commented on the NOI in writing. Mr. Sauter's comments are
14 attached and are incorporated in this Project Order.
15

16 **12. Oregon Department of Land Conservation and Development**

17

18 **Statute and Rule References:** ORS Chapter 469, Division 504
19

20 **Permit:** None required
21

22 **Discussion:** The proposed facility must comply with the Council's General Standard
23 regarding Land Use (OAR 345-022-0030) to ensure the facility complies with statewide
24 planning goals adopted by the Land Conservation and Development Commission. IPC
25 has indicated in the NOI that it will seek a Council determination under ORS
26 469.504(1)(b) for compliance with applicable statewide planning goals. The final
27 selection of land use path is not made until the application for site certificate is submitted.
28 However, once made in the application, the election of land use path is final.
29

30 The Department of Land Conservation and Development (DLCD) issues no permit but
31 will provide additional review for compliance with statewide planning goals and with
32 directly applicable DLCD rules.
33

34 **13. Oregon Department of Transportation**

35

36 **Statute and Rule References:** OAR 734-051, OAR 734-055
37

38 **Permit:** Access Management permit and Utility Facility permit
39

40 **Discussion:** Any utility installations within the right of way of a state highway in Oregon
41 will require a utility permit issued by the Oregon Department of Transportation (ODOT).
42 No utilities may be installed within an interstate highway right of way. Utilities may
43 cross an interstate highway but may not be sited longitudinally within the operating
44 interstate highway right of way.
45

1 Any access from Oregon state highways would require an access permit, which also
2 would be issued by the Pendleton District ODOT Office. ODOT does not typically allow
3 access to utilities from an interstate highway. Randy Randolph of the Pendleton office
4 would be coordinating the permit work for this project. He can be reached at 541-278-
5 3450.

6 7 **III. TRIBES**

8
9 **Statute and Rule References:** OAR 345-020-0011(p)

10
11 **Permit:** None required.

12
13 **Discussion:** The application should include evidence of consultation with affected tribes
14 regarding archaeological and cultural sites and materials that may be found on the
15 proposed site of the facility, and natural and cultural resource issues to ensure protection
16 for tribal rights and resources. In preparing the NOI, IPC contacted the State Commission
17 on Indian Services requesting that it identify appropriate tribes for future consultation.
18 Tribes identified as being expected to have an interest in the proposed project (including
19 alternate corridors) are the Burns-Paiute Tribe, Confederated Tribes of the Umatilla
20 Indian Reservation (CTUIR), Confederate Tribes of Warm Springs, Nez Perce Tribe, and
21 Confederate Tribes of the Colville Reservation.

22
23 In addition to EFSC approval, the project requires a BLM Right-of-Way Grant. Part of
24 BLM's responsibility includes government-to-government consultation with affected
25 Indian tribes.

26
27 ODOE understands that CTUIR has made a written request for government-to-
28 government consultation with BLM. In a letter dated October 20, 2008, CTUIR also
29 requested government-to-government consultation with the Oregon Department of
30 Energy. ODOE and CTUIR representatives held a kickoff meeting at the CTUIR
31 headquarters on October 31, 2008. A representative of BLM Vale District also attended.
32 CTUIR raised certain issues that are of concern and are not addressed by any State
33 agency. CTUIR also indicated that it would provide comments and applicable tribal
34 concerns in writing.

35
36 Particular concerns raised by the CTUIR included but were not limited to:

- 37
38 1. Certain viewsheds may have cultural significance even though they are
39 outside the formal reservation. CTUIR states that those viewsheds should
40 be protected.
- 41
42 2. Some viewsheds and habitat areas cannot be surveyed yet because they are
43 in roadless areas. Moreover, some of these viewsheds and habitat areas
44 cannot be accessed during the winter. This creates a "chicken and egg"
45 situation, where the applicant must explain how it determined that a
46 certain route is appropriate without being able to access it during winter

1 months. ODOE concurs and believes the Application should explain how
2 IPC can select segments of the route that it cannot physically access.
3 Aerial photography may provide limited information if this is dense
4 canopy.

5
6 3. CTUIR asked if the transmission line would enable certain wind facilities,
7 in particular the one at Burnt River. If so, CTUIR believes that impacts of
8 those enabled facilities should be part of the environmental impact
9 evaluation. Under the regulatory framework laid out in Oregon law, EFSC
10 can only review the facility being applied for, and cannot make findings or
11 impose conditions regarding other facilities that may be proposed by
12 someone else. However, the question of other enabled facilities may apply
13 to the BLM review under NEPA.

14
15 4. CTUIR noted that during route selection, it is more concerned about the
16 overall environmental impact and on impact to cultural resources on all
17 lands included ceded lands, rather than just on whether or not the route
18 crosses the formal reservation.

19 20 **IV. APPLICABLE LOCAL GOVERNMENT ORDINANCES**

21
22 **Statute and Rule References:** Applicable Substantive Criteria from Comprehensive
23 Land Use plans of Malheur, Baker, Union, Umatilla and Morrow Counties.

24
25 **Permit:** Conditional Use Permits and Zoning Permits.

26
27 **Discussion:** In the memorandum described at OAR 345-015-120 and distributed on
28 September 4, 2008, the Department requested the rules and local government ordinances
29 that apply to the facility, the list of local permits required for the project, and information
30 required by the affected local governments in their review of the application for site
31 certificate. At its meeting in Boardman, Oregon, on July 25, 2008, the EFSC appointed
32 the commissions for these counties as a “Special Advisory Group”.

33
34 Union and Umatilla County have responded in writing with applicable rules, ordinances
35 and comprehensive plan goals and polices. The criteria and comments provided by those
36 counties are included in this Project Order in their entirety.

37
38 ODOE has received draft land use criteria and comments from Morrow County and
39 anticipates final criteria and comments. ODOE has contacted Baker and Malheur
40 Counties and anticipates applicable substantive land use criteria from those counties as
41 well. The application should therefore address each applicable ordinance, rule, and
42 comprehensive plan goal and policy as it would for a conditional use permit directly from
43 the counties.

1 Malheur County has not yet supplied substantive criteria but has sent written comments
2 in a letter signed by all three members of the County Court. That letter is incorporated
3 into this Project Order.
4

5 **ORS 215.275:** Regardless of route selected, it appears that large portions of the corridor
6 will be in the exclusive farm use (EFU) zone. The application must therefore establish
7 whether the facility is a “utility facility necessary for public service” under ORS
8 215.283(1)(d). That definition in turn is defined in more detail at ORS 215.275. The
9 analysis of compliance with ORS 215.275 will therefore be an important element of
10 Exhibit K. Although the transmission line may be a permitted use in the EFU zone if the
11 criteria set forth in ORS 215.275(2) are met, DLCD rules and county substantive criteria
12 regarding the avoidance of significant adverse impact on farming practices or increases in
13 the cost of farming operations still apply. A detailed Agricultural Impact Mitigation Plan
14 is required and the facility must meet the requirements of sections (4) and (5) of ORS
15 215.275 regarding mitigation and minimization of agricultural impacts. In particular,
16 ODOE received many public comments regarding weed control, compatibility with aerial
17 spraying and with irrigation. The effect of stray voltage on agriculture was also raised in
18 public comment. The ORS 215.275 analysis must show that these potential impacts will
19 not create a significant adverse impact or significant cost increase on farming operations
20 on EFU land in Oregon.
21

22 The core of the 215.275 analysis is the alternatives analysis. The statute requires that IPC
23 consider reasonable alternatives to the EFU zone. Land that not currently in active farm
24 use but is in the EFU zone should still be treated as part of the EFU zone.
25

26 The 215.275 analysis must include a project purpose. That project purpose is different
27 from the IRP review performed by the Public Utility Commission. It must clearly state
28 why only a transmission line that begins in the Hemingway area and ends somewhere
29 near Boardman (Eastern Morrow or Western Umatilla counties) can allow Idaho Power
30 to meet its obligations.
31

32 Federal lands and other habitat lands are an alternative to the farm zone that must be
33 seriously considered. Although the project must also meet the EFSC Habitat standard,
34 that alone is not reason to use the EFU zone unless use of the alternative would violate
35 another rule or statute or cannot be used for one of the other factors in ORS 215.275(2).
36 In the South Mist pipeline case, the Council found that the EFU zone could be used if
37 necessary to avoid ODFW Category 1 or 2, but not category 3 or lower. ODOE
38 recognizes that the resource agencies, such as USFS and BLM, prefer that habitat lands
39 be avoided. However, that preference is not reason enough to eliminate those lands
40 unless that preference is required by regulation. For example, if federal or state rules
41 allow use of habitat land with mitigation, then a corridor using habitat land would be
42 considered a reasonable alternative to the EFU zone.
43

44 If there are certain locations that the transmission lines “must” cross, the application must
45 explain why. For example, the Sand Hollow substation appears to be a key location.
46 EFSC does not regulate the transmission line in Idaho, but locating a route in Idaho must

1 be considered an alternative to locating in the Oregon EFU zone. If the Sand Hollow
2 substation drives part of the route in Oregon (for example, if it precludes following the
3 existing PPL line to the south of Malheur valley), then the application must demonstrate
4 that the substation is essential to the project and cannot be relocated someplace that
5 allows avoidance of the EFU zone in Malheur county.
6

7 The issue of cost is one in which the statute calls for some judgment. The statute states
8 that cost associated with one or more of the factors at 215.275(2) can be a consideration
9 but not the sole consideration. The Council has found in the past that if an increase in
10 cost would render the project infeasible, then a cost of that magnitude is a valid
11 consideration. But, if the project can avoid EFU zone by adding some length, or if the
12 impacts associated with use of non-farm alternatives can be mitigated at additional cost,
13 those costs cannot be the sole reason for use of the EFU zone.
14

15 Cities that commented include Vale, Ontario, Echo, Pilot Rock, and Boardman, Oregon.
16 Malheur and Umatilla Counties, in particular, suggested alternative routes. As a
17 minimum, the alternate routes noted in the section of this order on public and agency
18 comments must be considered. If one of those alternate routes would enable Idaho Power
19 to avoid the EFU zone, then that route must be used unless it is infeasible according to
20 the criteria of ORS 215.275(2). In some cases, the people who suggested alternate routes
21 provided detailed maps. In other cases the alternate routes were in the form of general
22 suggestions. In such cases, we expect Idaho Power to make a good faith effort to explore
23 those possible routes and give them sufficient consideration to see if a reasonable way to
24 avoid the EFU zone can be found. Idaho Power's efforts to consider the alternate routes
25 that avoid the EFU zone must be described in full detail, especially if the application
26 states that an alternate was not practical for one of the reasons listed in ORS 215.275(2).
27 All of the public and agency comments were forwarded to the applicant, the EFSC
28 members, and to BLM in their entirety and in their original form.
29

30 **V. FEDERAL REQUIREMENTS**

31
32 Although federal permitting requirements are matters outside the Council's jurisdiction, IPC
33 must comply with all federal requirements applicable to the proposed facility. ODOE received
34 comments from the Department of the Navy and the Bureau of Reclamation, which will be
35 forwarded to the applicant and to BLM. This list is not a comprehensive list of federal permits
36 or requirements, but only those that commented on the proposed project.
37

38 **VI. OTHER CONSTRUCTION-RELATED REGULATIONS**

39
40 If the Council issues a site certificate, the certificate holder must comply with construction-
41 related regulations that apply to the proposed facility. As provided under ORS 469.401(4), the
42 site certificate does not address these regulations.
43

44 **VII. APPLICABLE REQUIREMENTS FROM OAR CHAPTER 345, DIVISION 21**

1 The Application for a Site Certificate (ASC) should include the information described in OAR
2 345-021-0010(1), as discussed below. The application should include the information described
3 in OAR 345-021-0010(2) and (3). IPC must also submit the information required by OAR 345-
4 021-0000, particularly the information in sections (6) and (7) regarding the status of non-
5 federally-delegated and federally delegated permits.

6
7 (a) Exhibit A – General Information about the Applicant

8
9 Paragraphs (A) through (D) apply. Note that paragraph (B) calls for a list of
10 “participating persons, other than individuals.” “Person” is defined in OAR
11 345-001-0010(45). Include in the application information about all third-party
12 entities (persons other than individuals) that are important to the project.

13
14 (b) Exhibit B – General Information about the Proposed Facility

15
16 All paragraphs apply except (A)(i), (A)(vi), (A)(vii), and (A)(viii).

17
18 The description of the proposed facility in the application will form the basis for
19 the description of the facility in the site certificate. The site certificate will require
20 that IPC will build the facility “substantially as described”. Exhibit B will also
21 provide the basis for the project description in the notice of application that
22 ODOE will issue to reviewing agencies and public. Therefore, Exhibit B should
23 describe the project in enough detail for members of the public and reviewing
24 agencies to make informed comments. It should describe the project sufficiently
25 for ODOE staff to verify that the constructed project meets any representations
26 that were the basis for any findings of compliance with applicable regulations for
27 standards but need not include descriptive material that IPC would not want to be
28 held to in a condition.

29
30 Some members of the public were confused by the descriptions of corridor width
31 in the Notice of Intent. The Application for Site Certificate should be very clear
32 about the width of the proposed corridor. It should provide the reader with a clear
33 understanding of the difference between corridor and right of way. For purposes
34 of this Project Order, the term “corridor” refers to the area that EFSC would find
35 in compliance with applicable standards and would authorize the transmission
36 line. “Right of way” is the area where Idaho Power has acquired an easement
37 from the land owner, and is the area within which the line would actually be
38 constructed. The corridor could be a wide area, in order to allow flexibility in
39 selecting the final alignment. However, the right of way must be no wider than
40 required for construction and operation.

41
42 The application must explain the reason for the width of right of way that is
43 selected. If Idaho Power states that a wide right of way is needed for
44 construction, it must explain clearly why construction could not be done on
45 narrower right of way. EFSC may direct Idaho Power to acquire a narrower right
46 of way in areas that are important for agriculture or for habitat, and it may allow

1 wider right of way at certain locations for laydown and staging. The application
2 must specify how much permanent right of way Idaho Power will request, and it
3 must justify that width of right of way. The application must also explain in detail
4 what limitations would be placed on the property owner in transmission line right
5 of way, such as limitations on structures, crops, or other uses.
6

7 The description of the proposed facility should include sufficient information to
8 allow for verification of the estimated cost of facility retirement and site
9 restoration. Pertinent information would include, but not be limited to, the
10 following: (1) types and sizes of transmission line support structures, including
11 height, width, and weight of steel; (2) amount of concrete above three feet below
12 grade included in transmission line support structure foundations; (3) spacing of
13 transmission line support structures; (4) number of conductors to be mounted on
14 the transmission line support structures; (5) length, width and surfacing of new
15 access roads in Oregon; (6) scope, size and types of related or supporting facilities
16 to be located in Oregon; (7) estimated area of temporary disturbance in Oregon
17 during construction of the proposed facility; and (8) estimated area of permanent
18 disturbance in Oregon during operation of the proposed facility. The information
19 regarding these factors can be placed in Exhibit B or in the exhibit demonstrating
20 compliance with the retirement standard, but it should be clear enough for ODOE
21 staff to review it.
22

23 The alternatives analysis described in section (D) of this exhibit must be
24 consistent with the analysis required by ORS 215.275, and it also includes factors
25 not listed in ORS 215.275. For example, OAR 354-021-0010(1)(b)(D) requires
26 the applicant to consider “least percentage of the total length that would be in land
27 zoned EFU”. This “least length requirement” is not found at ORS 215.275 but
28 nonetheless must be addressed in Exhibit B of the application. Other factors in
29 this section require least percentage on high category habitat lands, greatest
30 percentage using existing rights of way including road right of way, and other
31 factors. EFSC recognizes that some of these factors compete with one another
32 (for example, the apparent conflict between avoiding habitat land and avoiding
33 farm land) but expects the application to demonstrate that both factors were
34 considered.
35

36 ODOE received suggestions for route changes from counties and in public
37 comment. The proposed route changes suggested in public comment should be
38 addressed in this section. In particular, two counties in Oregon suggested major
39 route changes that would be almost completely new corridors. If those routes are
40 not used, the application must provide the basis for their rejection.
41

42 Malheur County, along with many of its residents, strongly advocated a corridor
43 in Idaho from Hemingway to Sand Hollow. Cities in Malheur County argue that
44 the EFU zone in that county is required to be preserved for farm use by strict land
45 use laws that exist in Oregon but not Idaho. ODOE expects IPC to strongly
46 consider changing the route to a direct one in Canyon County. Residents of

1 Malheur County also proposed routes that follow the existing PPL line to the
2 south, turning north towards Durkee in one case, or proceeding farther west to
3 produce a corridor largely on federal land. These alternatives must be seriously
4 considered for use.

5
6 Umatilla County also proposed two alternatives. One option makes more use of
7 the interstate highway. The other travels south of Pilot Rock toward Ukiah.
8 ODOE understands that Idaho Power has met directly with the Umatilla County
9 Planning Department to work on the southerly alternative. The Council
10 encourages such direct consultation between the applicant and the county. The
11 application for site certificate must describe the alternate route that emerges from
12 this direct consultation. If Idaho Power does not eventually choose to use that
13 route, the application should describe the basis for its rejection. If Idaho Power
14 does choose this route, it must still meet all of the other applicable standards of
15 EFSC and other state agencies.

16
17 ODOE recognizes that a route following the interstate highway would include
18 land belonging to the Confederated Tribes of the Umatilla (CTUIR). However,
19 the CTUIR has requested government to government consultation with both
20 EFSC and BLM. In its initial meeting with EFSC, the CTUIR did not state that
21 use of the interstate highway should be precluded.

22
23 Preferences of federal agencies cannot be the sole reason for avoiding federal land
24 or highway right of way unless required by law. For example, a statement that
25 “USDOT prefers not to have the power line on highway right of way” would not
26 be considered sufficient unless that USDOT has cited a regulation precluding its
27 use. The prohibition must be stated in writing. Similarly, a preference by a federal
28 agency such as US Fish and Wildlife Service cannot be the sole reason for
29 avoiding federal land, unless the Service has stated in writing that the use would
30 violate an applicable federal regulation.

31
32 Other less extensive route alterations suggested in public comment should also be
33 addressed in this section, but EFSC will apply the factors at OAR 354-021-
34 0010(1)(b)(D) and ORS 215.275 in evaluating the application.

35
36 (c) Exhibit C – Location

37
38 All paragraphs apply. Maps included in Exhibit C should provide enough
39 information for property owners potentially affected by the facility to determine
40 whether their property is within or adjacent to the site. Major roads should be
41 named. The application should include identification of lands enrolled in the
42 Conservation Reserve Program and lands currently zoned EFU.

43
44 There is no map format prescribed in rule. The resource maps presented at the
45 scoping hearings were useful for the resource agencies but the maps in the

1 Application for Site Certificate need to more helpful to the private property
2 owners in helping them determine how the project affects them personally.
3

4 For fixed sites, ODOE has found USGS quads or maps of scale 1 inch = 2000
5 feet to be a reasonable format. However, for this project, that format may not
6 work. One past applicant supplied a set of two-foot by two-foot aerial photos,
7 with each photo covering roughly a mile and a half. For the B2H project, this
8 would result in a set of about 200 photos. However, the aerial photograph
9 approach, with all roads identified, worked well for members of the public. Maps
10 should clearly show the boundaries of the proposed corridor within which the
11 transmission line could be constructed, and should include familiar landmarks
12 such as roads and existing power lines that reviewing agencies and affected
13 landowners may use to identify the proposed route.
14

15 Some counties have GIS capability and IPC is encouraged to provide the GIS data
16 that those counties can input to their own mapping capabilities.
17

18 All proposed access and temporary laydown sites, with their site boundaries, must
19 be marked. IPC should be aware that access and temporary laydown areas are part
20 of the site, just as the corridor itself is.
21

22 Maps should indicate the “site boundary” as defined in OAR 345-001-0010(53).
23 For resources where the Analysis Area boundary is different from the site
24 boundary, please include maps showing the analysis area boundaries in the
25 exhibits devoted to those resources.
26

27 (d) Exhibit D – Organizational Expertise
28

29 All paragraphs apply. Regarding the ability to successfully construct the project
30 “in accordance with site certificate conditions”, the Council’s review is not
31 limited to IPC’s ability to construct a transmission line. The application must also
32 demonstrate that IPC can honor all commitments and conditions regarding
33 minimization and mitigation of impacts on the resources protected by Council
34 standards and applicable regulations of other agencies. Citations resulting from
35 other similar projects (for example, wetland permits) must be disclosed.
36

37 (e) Exhibit E – Permits
38

39 All paragraphs apply. Although the Council does not review for compliance with
40 federal permits, the application should describe federal permits particularly as
41 federal permitting requirements are often relied on as evidence of compliance
42 with EFSC or local standards.
43

44 (f) Exhibit F – Property Owners
45

1 Much of the proposed transmission line corridor crosses farm and forest zones.
2 Accordingly, the distance in paragraph (C) applies. In preparation for the NOI, the
3 Oregon Department of Agriculture recommended notice of landowners within
4 750 feet of the proposed corridor to be consistent with local land use
5 requirements. ODOE recommends the 750-foot distance.
6

7 Because of the importance of issuing proper notice, Exhibit F must document the
8 steps Idaho Power takes to ensure that all property owners who meet the criteria at
9 OAR 345-020-0010(1)(f) are included. The rule states that property owners are
10 found by consulting the most recent property tax assessment roll. Exhibit F
11 should demonstrate that Idaho Power worked with the assessor to ensure that all
12 property owners meeting these criteria are listed in the Exhibit.
13

14 The property owner list must be checked and updated at each phase of the
15 process. In past projects ODOE has seen cases where recent property purchasers
16 who were not yet listed on the property tax rolls have claimed that notice of the
17 proceeding was inadequate.
18

19 Some properties have multiple owners. The notification requirement is for notice
20 to all persons who own property within the specified distance from the proposed
21 corridor. If a property has multiple owners, all must be listed.
22

23 (g) Exhibit G – Materials Analysis
24

25 All paragraphs apply. See discussion above under “Department of Environmental
26 Quality” regarding the importance of listing hazardous materials used and stored
27 at the facility, or at temporary access and laydown areas. ODOE also uses the
28 materials analysis to identify any hazardous materials whose storage could affect
29 site restoration.
30

31 (h) Exhibit H – Geology
32

33 All paragraphs apply except (E). The application should include all results of field
34 and laboratory investigations and any other geotechnical and geologic hazard
35 evaluation work. A thorough ground shaking amplification, liquefaction, and
36 lateral spread analysis with all of the calculations, methodologies, and
37 recommendations based on this site-specific analysis will be required. See the
38 discussion above under “Department of Geology” regarding the applicability of
39 DOGAMI Open File Report 00-04 and the advisability of pre-application
40 conferences with DOGAMI regarding the level of geotechnical investigation that
41 must be done prior to the application.
42

43 (i) Exhibit I – Soils
44

45 All paragraphs apply. IPC must demonstrate that the proposed facility would have
46 minimal impact on soil productivity in farm zones. The applicant may take credit

1 for any Erosion and Sediment Control Program (ESCP) and 1200-C and 1200-Z
2 permit applications provided to DEQ.

3
4 (j) Exhibit J – Wetlands

5
6 All paragraphs apply. See above discussion under Department of State Lands.

7
8 (k) Exhibit K – Land Use (Statewide Planning Goals)

9
10 The NOI states that IPC will seek a Council determination of compliance with the
11 Council’s Land Use Standard under ORS 469.504(1)(b). IPC can change this
12 election, but the election is final when the ASC is submitted. Accordingly, all
13 paragraphs apply except (B).

14
15 (l) Exhibit L – Protected Areas

16
17 All paragraphs apply. Note that many specific properties in the five Oregon
18 counties are listed on the Oregon National Heritage website. ODOE expects
19 Idaho Power to research all of the protected areas listed at OAR 345-0022-0040 to
20 determine if they are potentially affected by the transmission line.

21
22 (m) Exhibit M – Financial Capability

23
24 All paragraphs apply. The Council’s Financial Assurance Standard and
25 Mandatory Conditions at OAR 345-027-0020 clearly spell out the requirement for
26 a surety such as bond or letter of credit. Please note that devices such as escrow
27 accounts and corporate guaranties have been proposed in the past and have been
28 rejected. The Council has not accepted scrap value as part of the finding for
29 retirement and site restoration. However, this policy is not codified in rule, and
30 EFSC is mindful of recent bank failures and the changes in the financial markets.
31 If IPC believes an approach other than the one prescribed in OAR 345-027-0020
32 is necessary, it should discuss options with ODOE before writing the application.
33 A Council decision may be required, and rulemaking is a possibility.

34
35 (n) Exhibit N – Need for the Facility

36
37 The applicant must address need for the facility under OAR 345-023-005(1). IPC
38 states in the NOI that the proposed transmission line can satisfy the Need standard
39 based on OAR 345-023-0030 (System Reliability Rule) and in part on OAR 345-
40 023-0020(1) (Least Cost Plan Rule).

41
42 It appears that IPC intends to rely on both rules to demonstrate Need. If IPC will
43 rely on the System Reliability Rule, OAR 345-023-0030, then the application
44 must include all of the information at Division 21 Exhibit N section Note that the
45 System Reliability Rule was written in 1992 and has never been updated. If the
46 transmission line, or a substantially equivalent project, is identified in the most

1 recent Integrated Resource Plan (IRP) acknowledged by the Oregon Public Utility
2 Commission, the Council's "Least Cost Plan" rule fits this project. If the "Least
3 Cost Plan" rule is not the basis for a finding of Need then ODOE would
4 recommend that EFSC consider rulemaking to update the standard. Note that
5 Idaho Power or any interested person can petition EFSC for rulemaking under
6 OAR 137-001-0070.
7

8 The current version of Idaho Power's IRP was submitted to the PUC in 2006 and
9 does not include a transmission line that matches the proposed Boardman to
10 Hemingway line. IPC should notify ODOE when it submits the update to its IRP,
11 and indicate the PUC's expected timeline for IRP review. The application for site
12 certificate will not be deemed complete until OPUC issues an order
13 acknowledging the IRP update that includes the Boardman Hemingway line.
14

15 (o) Exhibit O – Water Use

16
17 All paragraphs apply, except (D). Please see the specific comments of Jerry
18 Sauter of WRD.
19

20 (p) Exhibit P – Fish and Wildlife Habitat

21
22 All paragraphs apply. Please see the direct comments of ODFW and the
23 discussion above regarding ODFW habitat mitigation goals and polices.
24

25 (q) Exhibit Q – Threatened and Endangered Species

26
27 All paragraphs apply.
28

29 (r) Exhibit R – Scenic Resources

30
31 All paragraphs apply. The application should include visual impact analysis on all
32 scenic resources listed in land management plans, county inventories, or other
33 designations. The Scenic and Aesthetic Standard only considers scenic resources
34 listed in a land use or land management plan inventory. However, IPC should
35 describe and minimize impact on scenic resources identified in local government
36 comments, such as Malheur Butte.
37

38 (s) Exhibit S – Historic, Cultural and Archaeological Resources

39
40 All paragraphs apply. IPC should pay particular attention to the Oregon Trail. The
41 application should include a map showing where the site is in relation to the
42 Oregon Trail, and should document the source of information regarding the
43 Oregon Trail's location. Because the site will include some federal lands, the
44 application must address statutes identified by the State Historic Preservation
45 Office as applicable on public lands.
46

1 The State Historic Preservation Officer has advised that documenting the
2 requirements of Section 106 of the National Historic Preservation Act will satisfy
3 applicable SHPO rules.

4
5 (t) Exhibit T – Recreation
6

7 All paragraphs apply. Many public comments on the NOI raised concern over the
8 potential impact on recreational activities ranging from tourism, cycle and
9 motorcycle rallies, and in the case of Malheur County, golf. The application
10 should carefully analyze the importance of recreational opportunities using the
11 consideration factors listed in OAR Chapter 345, Divisions 21 and 22, and must
12 present evidence that the project, net of mitigation, is unlikely to have a
13 significant adverse impact on “important” recreational resources. IPC should
14 address all of the recreational resources cited in the many public comments.
15

16 The ASC should particularly address potential impact on tourism. Tourism is a
17 key recreational opportunity and component in the economy throughout Eastern
18 Oregon. In particular, ODOE received comments stating that the transmission
19 line would degrade the scenic views that tourists expect.
20

21 Many public comments expressed concern about the potential impact on the
22 Oregon Trail, particularly on the Oregon Trail Interpretive Center in Baker
23 County. Most comments were not specific about which standard would cover the
24 Interpretive Center. However, ODOE expects the application to carefully analyze
25 the potential impact of the transmission line on the interpretive center to
26 determine whether or not it would have a significant adverse impact.
27

28 Scenic byways, while not listed in county inventories or land management plans,
29 could be considered an important recreational opportunity under this rule. Some
30 public comments stated that the annual motorcycle and Cycle Oregon rides would
31 not choose the scenic byways if the transmission line is located there.⁴ Other
32 areas that have been managed for hunting or wildlife viewing may not qualify as
33 ODFW Category 1 or 2 habitat but might nonetheless be considered important or
34 unique recreational facilities⁵ The application must describe reasonable efforts to
35 avoid such impacts by route adjustments or project design, or it must describe
36 why alternate alignments were not available.
37

38 (u) Exhibit U – Public Services
39

40 All paragraphs apply. The ASC should include an analysis of estimated facility-
41 related traffic during construction and operation and the potential impact on
42 traffic safety. Discuss transportation of heavy equipment and shipments of facility

⁴ See for example comments of Alice Trindle, Diane Naglee, Allison Valerio and Holly Gustafson.

⁵ See for example comments of Ross Seyfield, Elk Song Ranch.

1 components during construction. If the proposed transmission line would be
2 located near hospitals or health care facilities, then the application must contain
3 sufficient evidence that the line will not interfere with those facilities or with the
4 welfare of the patients either through direct health effects or by affecting
5 electronic instruments in use.⁶
6

7 Other comments stated that the transmission line could increase the likelihood of
8 fires in forested zones. The application must assess this likelihood relative to
9 other initiating events for fires. To meet the standard, the application must
10 demonstrate that the transmission line will not adversely affect the ability of local
11 or volunteer fire fighting organizations to maintain fire safety.
12

13 One commenter noted that the effect on farming and loss of farm revenue would
14 create a reduction in state and local tax revenues, which would increase the
15 already existing revenue shortfall at the state and local level.⁷
16

17 (v) Exhibit V – Solid Waste and Wastewater
18

19 All paragraphs apply.
20

21 (w) Exhibit W – Facility Retirement
22

23 All paragraphs apply. ODOE realizes that transmission lines do not generally
24 have the 30-year life associated with fixed-site facilities. Nonetheless, the
25 retirement standard requires a reasonable engineering estimate of the cost to retire
26 an energy facility and restore the site to a useful condition consistent with the site
27 zoning. The requirement is that the site be restored to the condition suitable for
28 its zoned use. If the site is on EFU land, for example, then the site must be
29 restored to a condition suitable for the agricultural use prevalent in the
30 surrounding vicinity.
31

32 In 2003, EFSC adopted a policy rejecting retirement cost estimates that include
33 scrap value to offset retirement cost. Any position by IPC that this practice
34 should be modified should be presented well before the application is submitted.
35

36 ODOE has used a standard retirement cost estimating method, first developed for
37 generation plants but since applied to other facilities. The method is available for
38 download and is intended to provide guidance. However, if IPC uses a different
39 cost estimate methodology it should demonstrate that the estimate is realistic, and
40 the estimate should be discussed with ODOE before submitting the application.
41

⁶ See public comment of Nancy Peyron.

⁷ Comment of Matt Ure, Jan 19, 2009

1 (x) Exhibit X – Noise

2
3 All paragraphs apply. See above discussion of DEQ noise standard.

4
5 (y) Exhibit Y – Carbon Dioxide Emissions

6
7 Exhibit Y does not apply.

8
9 (z) Exhibit Z – Cooling Tower Impacts

10
11 Exhibit Z does not apply.

12
13 (aa) Exhibit AA – Electric and Magnetic Fields

14
15 All paragraphs apply. The Council has previously addressed the impact of EMF,
16 citing studies by the National Institute of Health and the California PUC.

17
18 ODOE recommends that IPC review the Final Order for the “COB” generating
19 plant to see the most recent Council discussion of the issue. However, the B2H is
20 a much larger project and crosses a wider variety of lands. IPC should not rely
21 entirely on the findings in the COB order, but should provide a complete and up
22 to date analysis

23
24 A thorough analysis will include studies done since mid-2004 both in the United
25 States and in other countries, such as the Swiss study referenced in several of the
26 scoping comments. The analysis must address the many comments on this topic.

27
28 Although the Council does not have an “EMF standard”, it does have a statutory
29 mandate to adopt any conditions needed to ensure public health and safety. This
30 mandate provides the regulatory basis for any findings or conditions, including
31 setbacks, based on EMF considerations.

32
33 (bb) Exhibit BB – Other Information

34
35 Any information requested in this Project Order that is not addressed in any other
36 exhibit, such as issues raised in public comment.

37
38 (cc) Exhibit CC – Other Law

39
40 Exhibit CC applies.

41
42 (dd) Exhibit DD – Facilities for which the Council has Adopted Specific Standards

43
44 The Council applies specific standards for transmission lines under its jurisdiction
45 in OAR 345-024-0090. Accordingly, paragraph (C) applies.

VIII. ANALYSIS AREAS FOR THE PROPOSED FACILITY

The analysis areas are the minimum areas that IPC must study for potential impacts from the construction and operation of the proposed facility. The analysis areas described in this Project Order do not limit the applicant’s responsibility to assess the potential impacts of the facility. They are the areas in which significant adverse impacts from the proposed facility are likely to occur. If significant impacts could occur beyond the analysis areas described here, then IPC must assess those impacts in the application and show how the facility would comply with the applicable standard with regard to the larger area where impacts could occur.

For all potential impacts, the analysis area includes all the area within the site boundary. “Site boundary” means “the perimeter of the site of the proposed energy facility, its related or supporting facilities, [and] all temporary laydown and staging areas” (OAR 345-001-0010(53)). In its application, IPC must specifically describe the site boundary and provide a map showing the proposed site boundary. The minimum required analysis areas are as listed in Table 1.

<u>Affected Standard or Resource</u>	<u>Exhibit</u>	<u>Analysis Area</u>
Structural Standard	Exh. H	The area within the site boundary.
Soils	Exh. I	The area within the site boundary.
Wetlands	Exh. J	The area within the site boundary.
Land Use	Exh. K	The area within the site boundary and one-half mile from the site boundary.
Protected Areas	Exh. L	The area within the site boundary and 20 miles from the site boundary, including areas outside the state.
Water Use	Exh. O	The area within the site boundary.
Fish and Wildlife Habitat	Exh. P	The area within the site boundary and within 1000 feet from all ground disturbing activities, unless otherwise described in an ODFW- and ODOE-approved protocol.
Threatened and Endangered Species	Exh. Q	The area within the site boundary and 5 miles from the site boundary.
Scenic and Aesthetic Values	Exh. R	The area within the site boundary and 10 miles from the site boundary.
Historic, Cultural and Archaeological Resources	Exh. S	The area within the site boundary.
Recreation	Exh. T	The area within the site boundary and five miles from the site boundary.
Public Services	Exh. U	The area within the site boundary and 30 miles from the site boundary.
Noise	Exh. X	The distance to the maximally affected noise-sensitive receptors.
Electric Transmission Lines	Exh. AA	The area within the site boundary.

IX. EXPIRATION DATE (OAR 345-015-0160(1)(j))

1
2 Pursuant to OAR 345-20-0060(1) this NOI shall expire 18 months following the date this Project
3 Order is issued. The date of expiration is July 26, 2010. IPC may petition the Council to extend
4 the duration of the NOI for the Boardman to Hemingway Transmission Line Project beyond that
5 date as provided under OAR 345-020-0060(1).
6

7 If an application for a site certificate for the facility for which this Project Order is issued has not
8 been submitted prior to July 26, 2010 or the date of any extension granted by the Council, a new
9 NOI must be submitted for the facility in order to satisfy ORS 469.330.
10

11 **X. AMENDMENT AND COMPLETENESS**

12

13 The Council or the ODOE may amend this Project Order at any time (ORS 469.330(4)).
14 Amendment may include changes to the analysis areas. To issue a site certificate, the Council
15 must determine that the proposed facility complies with Oregon statutes and administrative rules
16 identified in the Project Order, as amended, as applicable to the issuance of a site certificate for
17 the proposed facility (ORS 469.503(3)).
18

19 Under OAR 345-015-0190(4), when the ODOE determines the application contains adequate
20 information for the Council to make findings on all applicable Council standards, the ODOE
21 may determine the application complete, regardless of whether the application contains all
22 information required under OAR 345-021-0010. Notwithstanding a determination that an
23 application is complete, the ODOE may require additional information from the applicant if the
24 ODOE identifies a need for that information during its review of the application. OAR 345-015-
25 0190(7).
26

27 **XI. PUBLIC COMMENTS THAT THE APPLICANT SHOULD ADDRESS**

28

29 In addition to the applicable statutes, rules, and local land use requirements listed in Section II of
30 this Project Order, the application must address issues arising from public comments following
31 an Informational Meeting on a Notice of Intent (OAR 345-015-0130). Pursuant to OAR 345-
32 015-0160(1)(g), the issues raised in public comments are summarized in this Project Order.
33

34 ODOE and BLM heard public comments and concerns at the joint scoping meetings held on
35 October 22, 23, 28, 29, and 30 in Ontario, Baker City, La Grande, Pendleton, and Boardman,
36 respectively. The public comment period on the NOI extended from the date the NOI was
37 received until November 14, 2008. ODOE received over 300 comments electronically and via
38 US Mail. All comments were forwarded to the applicant and to BLM in their entirety and in their
39 original form.
40

41 Because there was considerable duplication among comments, ODOE has identified in the
42 summary below the issues raised that IPC should address in its Application for Site Certificate.
43 Not all issues and questions raised in the public comments are matters within EFSC jurisdiction;
44 however, ODOE expects IPC to work directly with the public and with local governments to
45 address comments to the extent practical. The enclosed summary below is not a substitute for the
46 original comments, nor do they represent the opinions of ODOE or EFSC.

1
2 **1. Comments Specific to Impacts on Farmland**

- 3 (a) The lines will prevent the aerial application of insecticides and herbicides on nearby
4 farmland.
5 (b) The lines will pose a danger to aerial applicators.
6 (c) Sprinkler lines are the required irrigation method, but pivot and wheel line sprinkler
7 (d) systems cannot be used close to the towers.
8 (e) Transmission towers will be a hazard to tractors, and some farm equipment is taller than
9 the transmission line minimum clearance.
10 (f) Transmission towers will disrupt gravity irrigation paths.
11 (g) The constant hum of high power voltage lines will disturb noise-sensitive dairy cattle.
12 (h) There is concern about gopher management along lines.
13 (i) There is concern about soil erosion from Right of Way construction and maintenance.
14 (j) Herbicides for noxious weeds will need to be compatible with adjacent crops.
15 (k) Induced currents from the powerline will cause a hazard on irrigation piping.
16 (l) Effect of transmission line on organic certification is unknown.

17 **2. Comments Related to Environmental/Cultural Impacts**

- 18 (a) The project will negatively impact the Oregon Trail and other historical area markings
19 and observation points.⁸
20 (b) Invasive plant species will grow along transmission lines.⁹
21 (c) Wildlife habitat concerns regarding the elimination, destruction or inhibition of areas
22 where animals live, hunt, or otherwise reside.⁵
23 (d) The corridor route is upon the territory of endangered, near endangered or sensitive
24 species of plants and/or animals.¹⁰
25 (e) The soils found in the Malheur and Snake River drainage are highly vulnerable to
26 erosion.¹¹
27 (f) The tower pads can impact water levels near artesian wells.⁷
28 (g) The possibility of groundwater contamination is of concern.⁷
29 (h) The removal of trees would impact soil and water temperatures, encourage erosion, and
30 negatively impact the soil's ability to absorb moisture.⁷

⁸ This issue needs to be addressed under the historic, cultural and archaeological resource standards of OAR 345-022-0090 in Exhibit S of the Application for Site Certificate.

⁹ This issue needs to be addressed under the fish and wildlife habitat standard of OAR 345-022-0060 in Exhibit P of the Application for Site Certificate.

¹⁰ This issue needs to be addressed under the threatened and endangered species standards of OAR 345-022-0070 in Exhibit Q of the Application for Site Certificate.

¹¹ This issue needs to be addressed under the soil protection standards of OAR 345-022-0022 in Exhibit I of the Application for Site Certificate.

- 1 (i) The transmission line would reverse efforts by property owners to manage their property
2 for habitat value¹²

3 **3. Comments Related to Public Safety and Wellbeing**

- 4 (a) The power lines are dangerous to airplane traffic from local airports.¹³
5 (b) The proposed alternate route along Highway 203 will conflict with an existing
6 approach/departure corridor to an existing private use airport.⁸
7 (c) The power lines will cause health problems for inhabitants.⁸
8 (d) Transmission lines may interrupt telephone reception, creating a hazard for residences in
9 need of emergency assistance.⁸
10 (e) There will be offensive noise that will never quit.¹⁴
11 (f) Loss of property value will reduce local property taxes, causing a shortfall in county tax
12 revenue that cannot be made up from other sources¹⁵

13 **4. Comments Specific to Proposed Corridor Selection**

- 14 (a) Corridors already established for this type of utility should be used.¹⁶
15 (b) Exclusive Farm Use land should not be used.
16 (c) Most commenters prefer a corridor other than those proposed (some commenters prefer
17 the proposed corridor; some commenters prefer the alternate route).
18 (d) Alternate proposed route would create excess waste/emissions during construction (does
19 not meet Waste Minimization Standard).

20 **5. Comments Suggesting Specific Alternate Routes or Adjustments**

- 21 (a) IPC should consider bringing the transmission line across the Snake River near other
22 power facilities and take it down the Idaho side through the Midvale, Idaho area.
23 (b) IPC should move the line one mile west from a point north of the town of Adrian to a
24 point a few miles north of the proposed Hemingway substation.¹⁷
25 (c) Transmission lines would be less disruptive if they were placed west of Highway 201 on
26 BLM land.
27 (d) The transmission lines should be placed underground.

¹² See for example comments of Kitchen Creek Ranch, Elk Song Ranch and others. This issue would be addressed under the Habitat Standard and the Recreational Standard.

¹³ This issue needs to be addressed in Exhibit AA (electric transmission line) of the Application for Site Certificate.

¹⁴ This issue needs to be addressed under the noise standards of OAR 340-35-0035 in Exhibit X of the Application for Site Certificate.

¹⁵ This issue needs to be addressed under the Council's Public Services Standard.

¹⁶ These issues need to be addressed as required in OAR 345-021-0010(1)(b)(D) in Exhibit B (corridor selection assessment) of the Application for Site Certificate.

¹⁷ Please refer to the map attached to the November 14, 2008 letter from Jeffery and Linda Hess.

- 1 (e) The lines should go through the rangeland east of Magpie Peak along the Salt Creek
2 drainage and then through the uninhabited range land up toward the Keating cutoff. The
3 line can then travel toward Pleasant Valley.
- 4 (f) The lines should be sited along the railroad tracks or on the north side of I-84, where old
5 Idaho Power lines exist in Baker County.
- 6 (g) The lines should be buried in between the north and southbound lanes of I-84 or along
7 either shoulder of the freeway from Hemingway to Boardman.
- 8 (h) The transmission lines should be placed near Hwy 203 between Baker Valley and Salt
9 Creek with the existing generators near Telocaset.
- 10 (i) The lines should take a more direct route from Durkee to the Hemingway substation or
11 move the route across the Snake River and take it down the Idaho side to the Hemingway
12 substation.¹⁸
- 13 (j) A more direct route from Umatilla County to the Sandhallow Substation is proposed.¹⁹
- 14 (k) Three alternative routes are proposed from Union County, Durkee or near Huntington to
15 the Hemingway substation.²⁰
- 16

17 **6. Comments Related to Recreational Uses**

- 18 (a) Cycling paths will be no longer available or appealing.²¹
- 19 (b) Private use of land will decrease as public (utility) use of land increases.
- 20 (c) Transmission lines may inhibit the use of land for recreational 4-wheel driving.

21 **7. Comments Related to Aesthetics**

- 22 (a) Transmission lines and towers will obstruct views and impact historical or otherwise
23 aesthetically valuable land, such as Malheur Butte, Mitchell Butte, Chalk Butte, the
24 Oregon Trail, the Starvation Camp site and others.^{4, 11}

25 **8. Other Comments**

- 26 a. The need for a new power line should be reassessed in light of the recession.
- 27 b. If an advisory council is created, the council must have representatives from each
28 affected area that do not hold a personal stake in the project's success.

29 **9. Other Comments²²**

¹⁸ Please refer to the maps attached to the November 9, 2008 letter from Rod and Patti Price.

¹⁹ Please refer to the map attached to the November 7, 2009 comment form from Joanne Voile.

²⁰ Please refer to the map attached to the letter from Roger and Jean Findley.

²¹ This issue needs to be addressed under the recreation standards of OAR 345-022-0100 in Exhibit T of the Application for Site Certificate.

²² Although these comments are not tied directly to an EFSC standard, the applicant should address these comments to minimize public uncertainty about the proposed project. Include these issues in Exhibit BB of the Application for Site Certificate.

- 1 (a) Transmission towers (and associated access roads) placed on private property will
- 2 facilitate trespassing.
- 3 (b) Light pollution caused by future wind projects resulting from transmission lines
- 4 (c) The transmission lines may be targeted by terrorists.
- 5 (d) Transmission lines and the general project may have adverse effects on the inhabitants'
- 6 psychological state.
- 7 (e) There are concerns that property values will decline due to transmission lines.
- 8 (f) Grants may no longer be awarded by organizations such as Cycle Oregon which funds
- 9 areas that it utilizes for rides/events.
- 10 (g) Tourist revenue will drop due to lack of aesthetic appeal.
- 11 (h) Power lines may interfere with 2-way radio, AM/FM radio, and television signals.

12 **XII. USE OF INFORMATION IN THE ENVIRONMENTAL IMPACT STATEMENT**

13 Pursuant to ORS 469.370(13), EFSC will review the application for site certificate, to the extent
14 feasible, in a manner that is consistent with and does not duplicate BLM's review under NEPA.
15 This includes elimination of duplicative study and reporting requirements and EFSC use of
16 information prepared for the federal review.
17

18
19 Many EFSC standards and rules of other state agencies in Oregon require field work to gather
20 the information needed to demonstrate compliance. ODOE is working with DOGAMI, ODFW,
21 SHPO, CTUIR and county planners to ensure that the field work required for the site certificate
22 application and for the NEPA review can be done concurrently and by the same teams of field
23 scientists. A single technical report describing the results of site investigations for each subject
24 should be able to cover the requirements of both NEPA and EFSC.
25

26
27 However, the NEPA requirements and EFSC standards are different, and compliance with NEPA
28 does not necessarily ensure compliance with an EFSC standard. For example, the ODFW Habitat
29 Mitigation Policies implement a "no net loss" standard for high quality habitats. ODOE is not
30 aware that NEPA requires no net loss. The level of geotechnical investigation required by the
31 EFSC Structural Standard appears to also exceed NEPA requirements. Farm land protection is a
32 third example where Oregon requirements in the Soil Standard and Land Use standard appear to
33 exceed NEPA requirements. On the other hand, the SHPO has advised that the Section 106
34 process required by the National Historic Preservation Act could well be adequate to meet
35 Oregon SHPO requirements.
36

37 Some apparent differences between NEPA and EFSC requirements include:

- 38
- 39 (a) Habitat assessment – In addition to characterizing habitat, endangered species,
- 40 wetland areas, and other information required for the EIS, the Application for Site
- 41 Certificate must address ODFW habitat protection and mitigation standards (as
- 42 described in OAR 635-415-0025) and meet the Council's no-net-loss standards.
- 43

- 1 (b) It is not clear to what extent farm land and soils are protected in the NEPA review.
2 We assume the EIS will address erosion issues, but it is not clear that soil productivity
3 and compatibility with existing farm practices are addressed in NEPA adequately to
4 meet the Council's Soil standard.
5
- 6 (c) Recreation may be addressed in the EIS but it is unclear as to whether the information
7 that will be provided in the EIS will be enough to meet the Council "no significant
8 adverse impact" standard.
9
- 10 (d) We understand that private land easements may not be acquired until late in the EIS
11 process, and biological/cultural resource studies may therefore lag behind the NEPA
12 process. However, the application must provide evidence of compliance with EFSC
13 standards for all lands, public and private.
14

15 For this reason, work plans for drafting the EIS should be written to ensure that one set of ground
16 studies collects all the information needed for both the EIS and the Application for Site
17 Certificate. Where mitigation is proposed, the scientists drafting the mitigation plans should be
18 made aware that it will be more efficient if they propose a single mitigation plan that meets both
19 BLM and EFSC requirements. This may increase the scope of the EIS, but it will avoid having to
20 write completely separate sets of studies and mitigation plans for the federal and state reviews.
21

22 To the extent that IPC will rely on the draft EIS for evidence of compliance with EFSC
23 standards, ODOE suggests that IPC develop a document that cross references the information
24 you will collect for the EIS with the information that you understand to be needed for the EFSC
25 application. This document could be prepared before the application for site certificate is
26 submitted. This would help identify areas where the EIS alone will not have enough information
27 for a complete EFSC application, so that IPC can supply the needed additional information in the
28 application for site certificate.
29

30 **XIII. APPLICABILITY**

31
32 Failure to include an applicable statute, rule, ordinance, permit or other requirement in this
33 Project Order does not render that statute, rule, ordinance, permit or other requirement
34 inapplicable, nor in any way relieve applicant from the duty to comply with the same.
35
36

37 **OREGON DEPARTMENT OF ENERGY**

38
39
40
41 _____
42 Thomas M. Stoops, Siting Manager
43 Oregon Department of Energy

44 Date of Issuance: _____, 2009