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

Regarding Statutes, Administrative Rules and Other)
Requirements Applicable to the Proposed)
BOARDMAN TO HEMINGWAY TRANSMISSION LINE)

PROJECT ORDER

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Issued by

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Oregon Department of Energy

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625 Marion Street NE

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Salem OR 97301-3742

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March 2, 2012

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1 **I. BACKGROUND**

2 On July 6, 2010, the Oregon Department of Energy (ODOE or Department) received a Notice of
3 Intent (NOI) from Idaho Power Company (IPC) to file an application for site certificate (ASC) for a new
4 500-kilovolt (kV) transmission line. The proposed Boardman to Hemingway (B2H) transmission line
5 would be approximately 300 miles long and extend from a substation to be constructed near Boardman,
6 Oregon to the existing Hemingway Substation located in Owyhee County, Idaho.¹ The proposed
7 transmission line would connect with other transmission lines at the two substations to transmit electricity
8 on a regional scale and serve IPC's native loads. As described in the NOI, the transmission line would
9 cross five Oregon counties and one Idaho county. Approximately 66 percent of the transmission line
10 corridor is privately-owned, 33 percent is managed by federal agencies, and two percent is owned by state
11 or municipal governments. The proposed facility requires a site certificate from the Oregon Energy
12 Facility Siting Council (EFSC or Council), as well as approval from federal land management agencies
13 for those portions of the proposed transmission line that are located on federally-managed lands.²

14 On July 16, 2010, the Department issued a public notice of the NOI to the EFSC mailing list and to
15 adjacent property owners as defined at OAR 345-020-0011(1)(f). This public notice was distributed
16 jointly with the Bureau of Land Management (BLM), the lead agency overseeing the NEPA process, to
17 satisfy both EFSC and NEPA requirements. The Department also published a notice in the following
18 newspapers:

- 19 • *The Observer* – La Grande, OR (July 16, 2010)
- 20 • *East Oregonian* – Pendleton, OR (July 16, 2010)
- 21 • *Baker City Herald* – Baker City, OR (July 14, 2010)
- 22 • *Blue Mountain Eagle* – John Day, OR (July 14, 2010)
- 23 • *Record Courier* – Baker City, OR (July 15, 2010)
- 24 • *Argus Observer* – Ontario, OR (July 16, 2010)
- 25 • *Idaho Press* – Tribune – Nampa, ID (July 16, 2010)
- 26 • *The Idaho Statesman* – Boise, ID (July 16, 2010)
- 27 • *Burns-Times Herald* – Burns, OR (July 14, 2010)
- 28 • *Independent Enterprise* – Payette, ID (July 14, 2010)
- 29 • *Malheur Enterprise* – Vale, OR (July 14, 2010)
- 30 • *Owyhee County Avalanche* – Homedale, ID (July 14, 2010)
- 31 • *Heppner Gazette-Times* – Heppner, OR (July 2010)
- 32 • *Hermiston Herald* – Hermiston, OR (July 14, 2010)
- 33 • *North Morrow Times* – Boardman, OR (July 2010)

34 The notices announced a series of public scoping meetings to be held in several cities along the
35 proposed transmission line route, and requested public comments on the NOI by September 20, 2010.
36 The public scoping meetings took place on the advertised dates at the following Oregon cities:

- 37 • La Grande (August 2, 2010)
- 38 • Baker City (August 3, 2010)

¹ The B2H NOI indicated that the grid interconnection would occur at a substation to be constructed southwest of Boardman. However, the Department is aware that IPC is now also considering alternative interconnection locations in the Boardman area. Regardless of which location(s) is or are ultimately proposed in the ASC, all requirements of this Project Order apply to any substation that is a related and supporting facility under Council rules.

² The Bureau of Land Management and the U.S. Forest Service are preparing an Environmental Impact Statement (EIS) for the B2H Transmission Line project as required by the National Environmental Policy Act (NEPA).

- 1 • Pendleton (August 4, 2010)
- 2 • Mount Vernon (August 5, 2010)
- 3 • Ontario (August 10, 2010)
- 4 • Boardman (August 11, 2010)
- 5 • Burns (August 12, 2010)

6 Numerous members of the public expressed concern about the proposed transmission line project
7 during the scoping period. At the close of the comment period, the BLM and the Department had
8 received 464 written and verbal comments (see Section VII for discussion of public comments).

9 In preparation for review of the project, the Council appointed each of the five potentially impacted
10 Oregon counties as a Special Advisory Group. On July 16, 2011, IPC distributed the NOI to the Special
11 Advisory Groups and other reviewing agencies identified by the Department. In accordance with OAR
12 345-020-0040, the NOI was sent with a memorandum from the Department requesting comments from
13 reviewing agencies on or before September 22, 2010. The following reviewing agencies submitted
14 comments to the Department (see Sections III, IV, and VIII for discussions of reviewing agency
15 comments):

- 16 • Baker County
- 17 • Malheur County
- 18 • Morrow County
- 19 • Umatilla County
- 20 • Union County
- 21 • Oregon Department of Forestry (ODF)
- 22 • Oregon Water Resources Department (OWRD)
- 23 • Oregon Department of Fish and Wildlife (ODFW)
- 24 • Oregon Department of Transportation (ODOT)
- 25 • Oregon Parks and Recreation (OPRD)
- 26 • Confederated Tribes of the Umatilla Indian Reservation (CTUIR)
- 27 • City of Boardman

28 The Department's list of reviewing agencies also included the following federal agencies:

- 29 • U.S. Department of Interior (Bureau of Land Management) (BLM)
- 30 • U.S. Department of Interior (Bureau of Reclamation) (BOR)
- 31 • U.S. Forest Service (Wallowa-Whitman National Forest) (USFS)
- 32 • National Oceanic and Atmospheric Administration (National Marine Fisheries Service) (NMFS)
- 33 • U.S. Army Corps of Engineers (USACE)
- 34 • U.S. Fish and Wildlife Service (USFWS)
- 35 • U.S. Department of Defense (United States Navy) (USN)

36 Most of the federal agencies chose to submit their comments directly to BLM, the lead federal agency
37 for the NEPA process. Although federal permitting requirements and enforcement of federal laws are
38 matters outside the Council's jurisdiction, IPC must comply with all federal requirements applicable to
39 the proposed facility.

40 The B2H NOI proposes to use a "phased study" approach for the Application for Site Certificate to
41 accommodate the need to conduct multi-year surveys to generate the level of data necessary to provide
42 evidence to support affirmative findings by the Energy Facility Siting Council. IPC presented the phased
43 study approach to the Council on December 17, 2010, an approach that is also being used by another
44 proposed transmission line under Council jurisdiction. To accommodate the need for phased surveys, this

1 project order addresses specific information requirements for the site certificate application for those
2 resources affected by the need for multi-year studies.

3 The Department issues this project order in accordance with Oregon Administrative Rule (OAR) 345-
4 015-0160, which requires the Department to specify the state statutes, administrative rules, and local,
5 state, and tribal permitting requirements applicable to the construction and operation of the proposed
6 facility (see Sections II through VI). This project order specifies the analysis areas for the proposed
7 facility (Section VII) and discusses comments received by the Department from reviewing agencies and
8 members of the public that address matters within the jurisdiction of the Council that the applicant shall
9 consider and discuss in the application for a site certificate (Section VIII). This project order also
10 includes sections concerning the use of the information developed for the environmental impact statement
11 (Section IX), expiration date of the Notice of Intent (Section X), discussion of project order amendments
12 (Section XI) and the applicant's duty to comply with applicable requirements (Section XII).

13 Oregon Revised Statute (ORS) 469.401(4) provides that a site certificate issued by the Council does
14 not govern certain matters. This project order does not consider matters outside the Council's jurisdiction.
15 The applicant must nevertheless comply with all statutes, regulations, and local ordinances applicable to
16 the proposed facility.

17 The definitions in ORS 469.300 and OAR 345-001-0010 apply to the terms used in this project order,
18 except where otherwise stated or where the context indicates otherwise. As used in this project order:

19 "*Energy facility*" means the proposed 500-kV transmission line.

20 "*Related or supporting facilities*" means any structure, proposed by the applicant, to be constructed or
21 substantially modified in connection with the construction of the energy facility, meaning that it would
22 not be built but for construction or operation of the energy facility.

23 "*Facility*" means the energy facility together with any related or supporting facilities, including upgrades
24 to existing infrastructure.

25 "*Site*" means all land upon which a facility, or related or supporting facility, is located or proposed to be
26 located.

27 "*Site boundary*" means the perimeter of the site of a proposed energy facility, its related or supporting
28 facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by
29 the applicant.

30 "*Corridor*" means a continuous area of land not more than one-half mile in width and running the entire
31 length of the proposed transmission line.

32 "*Micrositing corridor*" means a continuous area of land within which construction of facility components
33 may occur, subject to site certificate conditions.

34 Therefore, pursuant to ORS 469.330(3) and OAR 345-015-0160(1), the Department issues this order
35 establishing the requirements for a site certificate application for the Boardman to Hemingway
36 Transmission Line project. As provided in ORS 469.330(4), the Department or the Council may amend
37 this project order at any time.

38

1 **II. State Statutes, Administrative Rules, and Related Permit Requirements Applicable to**
2 **the Proposed Facility**

3 This section identifies the Oregon statutes and administrative rules that the applicant must
4 address in the application, and related state permits and approvals.

5 **(a) Energy Facility Siting Council**

6 **Statute and Rule References:** Statutes pertaining to the regulation of energy
7 facilities, starting at ORS 469.300, and administrative rules in OAR Chapter 345,
8 including the general provisions of Division 1 and the requirements of Divisions 21,
9 22, 23, 24, 26, and 27 (as discussed further below).

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

12 **Discussion:**

13 OAR Chapter 345, Division 21 (Application for Site Certificate)

14 See Section VI of this Project Order for a discussion of specific information to be
15 included in the application per the requirements of OAR 345-021-0010.³

16 OAR Chapter 345, Division 22 (General Standards for Siting Facilities)

17 All general standards in OAR Chapter 345, Division 22, apply to the proposed
18 facility. See Section VI of this Project Order for a discussion of information to
19 include in specific exhibits of the application to provide the evidence necessary to
20 demonstrate the applicant's ability to comply with each of the standards listed in
21 Division 22.

22 OAR Chapter 345, Division 23 (Need Standard for Nongenerating Facilities)

23 OAR 345-023-0005(1) requires the Council to find that the applicant has
24 demonstrated a need for the proposed facility. See Section VI(n) for further
25 discussion.

26 OAR Chapter 345, Division 24 (Specific Standards for Siting Facilities)

27 Siting Standards for Transmission Lines (OAR 345-024-0090) apply to the proposed
28 facility.

29 OAR Chapter 345, Division 26 (Construction and Operation Rules for Facilities)

30 If the Council issues a site certificate for the proposed facility, the certificate holder
31 must implement a compliance plan, as described in OAR 345-026-0048 and
32 periodically must submit reports as described in OAR 345-026-0080.

33 OAR Chapter 345, Division 27 (Site Certificate Conditions)

³ Section VI states which paragraphs of OAR 345-021-0010 apply to each exhibit, but does include the text of the requirement—the applicant should carefully review the exact language in each applicable paragraph of OAR Chapter 345, Division 21.

1 The site certificate will contain the mandatory conditions, applicable site-specific
2 conditions, and monitoring conditions described in OAR 345-027-0020, -0023 and
3 -0028.

4 **(b) Oregon Department of Agriculture, Plant Division — Native Plant Conservation**
5 **Program**

6 **Statute and Rule References:** ORS Chapter 564 (Wildflowers; Threatened or
7 Endangered Plants); and OAR Chapter 603, Division 73 (Plants: Wildflowers and
8 Endangered, Threatened, and Candidate Species).

9 **Permit:** None required.

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

13 OAR 603-073-0070 contains the state list of endangered and threatened plant species.
14 OAR 603-073-0080 gives ODA the authority to designate candidate plants. If the
15 applicant finds any state-listed threatened or endangered plant species that may be
16 affected by the proposed facility, it must address the requirements of OAR 603-073-
17 0090(5)(d)(A)-(E) in the application for a site certificate.⁴ See Section VI(q) for
18 further discussion of application requirements.

19 **(c) Oregon Department of Environmental Quality — Water Quality Division**

20 **Statute and Rule References:** ORS Chapter 468B (Water Quality); OAR Chapter
21 340, Divisions 40 (Groundwater Quality Protection), 45 (Regulations Pertaining To
22 NPDES and WPCF Permits), and 71 (Onsite Wastewater Treatment Systems).

23 **Permits:** Individual National Pollutant Discharge Elimination System (NPDES)
24 Permit or NPDES Construction Storm Water 1200-C permit, Water Pollution Control
25 Facilities (WPCF) permit, Clean Water Act Section 401 Water Quality Certificate,
26 and onsite wastewater system permits, as applicable.

27 **Discussion:**

28 OAR Chapter 340, Division 45 (NPDES Permit)

29 The U.S. Environmental Protection Agency has delegated authority to ODEQ to issue
30 NPDES Storm Water Discharge permits for construction and operation activities.

31 In accordance with OAR 345-021-0000(7), the applicant must submit to the
32 Department one copy of all applications for federally-delegated permits (including
33 NPDES permits), or provide a schedule of the date by which the applicant intends to
34 submit the application. *Note that the Department will not be able to deem the*

⁴ OAR 345-022-0070 applies only to state-listed plant and animal species. Nevertheless, 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 *application for site certificate complete before receiving a copy of an NPDES permit*
2 *application and a response letter from the ODEQ. The ODEQ response letter must*
3 *state that the agency has received a permit application from the applicant, identify any*
4 *additional information the agency is likely to need from the applicant based on the*
5 *agency's review of the application as submitted, and provide an estimated date when*
6 *the agency will complete its review and issue a permit decision. The applicant may*
7 *incorporate this information into Exhibit I (Soils) of the site certificate application or*
8 *submit it separately in Exhibit BB. See further discussion in Section VI(i) of this*
9 *project order.*

10 Although the Council does not have jurisdiction over the federally-delegated permits,
11 the Council may rely on the determinations of compliance and the conditions in the
12 federally-delegated permit in making its determination about whether other standards
13 and requirements under the Council's jurisdiction are met.

14 OAR Chapter 340, Division 45 (WPCF Permits)

15 The NOI did not describe any gravel quarries or concrete batch plants as components
16 of the proposed energy facility. The site certificate application should include a
17 discussion of how the applicant intends to acquire these resources during construction
18 of the facility. If the applicant proposes gravel mining and concrete batch plants as
19 related and supporting facilities under Council rule, a WPCF-1000 permit is required
20 pursuant to OAR 340-045-0033(6).

21 OAR Chapter 340, Division 71 (Onsite Wastewater Treatment Systems)

22 The B2H NOI does not indicate if restrooms will be constructed at the substation to
23 be located in Oregon. If the substation is deemed to be a related and supporting
24 facility under Council rules and a restroom will be required, then an onsite septic
25 system might be required. If a WPCF permit is required, it is a state permit that is
26 under Council jurisdiction. The requirements for the WPCF permit are set forth in
27 OAR Chapter 340, Division 71. Regulations pertaining to WPCF permits are in OAR
28 Chapter 340, Division 45.

29 See further discussion related to incorporation of this information into the application
30 for site certificate in Section VI(v) of this project order.

31 **(d) Oregon Department of Environmental Quality — Land Quality Division**

32 **Statute and Rule References:** ORS Chapters 465 and 466 (Hazardous Waste and
33 Hazardous Materials I and II); and OAR Chapter 340, Divisions 100 through 122
34 (Hazardous Waste Management).

35 **Permit:** None required.

36 **Discussion:** The ODEQ Hazardous Waste program implements requirements of the
37 U.S. Environmental Protection Agency (EPA) and is a federally-delegated program.
38 The applicant must comply with ODEQ regulations concerning the storage and
39 management of hazardous materials and the clean up and disposal of hazardous
40 waste.

1 The requirement is incorporated in the Council’s general standard of review, OAR
2 345-022-0000. The application for site certificate must include information on
3 hazardous materials use and storage is important in determining the potential for
4 spills that could adversely affect soils and potentially affect the cost and success of
5 site restoration. See further discussion related to incorporation of this information
6 Section VI(v) of this project order.

7 **(e) Oregon Department of Environmental Quality — Noise Control Regulations**

8 **Statute and Rule References:** ORS 467.020 and ORS 467.030 (Noise Control); and
9 OAR Chapter 340, Division 35 (Noise Control Regulations).

10 **Permit:** None required.

11 **Discussion:** The proposed facility must comply with the noise control regulations
12 applicable to industrial facilities at OAR 345-035-0035. The requirement is
13 incorporated in the general standard of review, OAR 345-022-0000. See further
14 discussion related to incorporation of this information Section VI(x) of this project
15 order.

16 **(f) Oregon Department of Environmental Quality — Air Quality Division**

17 **Statute and Rule References:** 40 CFR Part 51 (Requirements for Implementation
18 Plans), 40 CFR Part 52 (Promulgation of Implementation Plans), 40 CFR Part 70
19 (State Operating Permit Programs) and 40 CFR Part 71 (Federal Operating Permit
20 Programs)

21 **Permit:** Prevention of Significant Deterioration (PSD) Permit, Federal Operating
22 Permit (Title V)

23 **Discussion:** On May 13, 2010 the US Environmental Protection Agency (EPA)
24 issued the greenhouse gas (GHG) “Tailoring Rule.” The rule is being phased in steps.
25 As of July 1, 2011, the Tailoring Rule applies to facilities that are otherwise minor for
26 criteria pollutants, but which would have GHG emissions above certain thresholds,
27 and Title V permits or PSD permits could be required.

28 The NOI states that the project will emit no pollutants during operation and does not
29 require permits from the ODEQ, the need for which are based on emissions of criteria
30 pollutants. However, the Department understands that sulfur hexafluoride may be
31 used at substations as a gaseous dielectric for high-voltage power applications. The
32 Tailoring Rule could require facilities to obtain an air quality permit based solely on
33 GHG emissions. Since sulfur hexafluoride has a high global warming potential
34 (23,900 carbon dioxide equivalents), permitting thresholds may be exceeded. If the
35 applicant believes that emissions of greenhouse gases from facility components will
36 not exceed permitting thresholds, include that discussion in Exhibit E.

37 EPA has delegated authority to ODEQ to administer the air quality Title V permit
38 program. In accordance with OAR 345-021-0000(7), if a PSD permit is required by
39 ODEQ for emissions from the proposed facility, the applicant must submit to the
40 Department one copy of the air permit application, or provide a schedule of the date
41 by which the applicant intends to submit the application. *Note that the Department*

1 *will not be able to deem the application for site certificate complete before receiving*
2 *a copy of the air permit application and a response letter from the ODEQ, if such an*
3 *application is required.* The applicant may incorporate this information into Exhibit
4 Y of the site certificate application. See further discussion in Section VI(y) of this
5 project order.

6 Although the Council does not have jurisdiction over the federally-delegated permits,
7 the Council may rely on the determinations of compliance and the conditions in the
8 federally-delegated permit in making its determination about whether other standards
9 and requirements under the Council's jurisdiction are met.

10 **(g) Oregon Department of Fish and Wildlife**

11 **Statute and Rule References:** ORS Chapter 496 (Application, Administration and
12 Enforcement of Wildlife Laws); ORS 497.308 (Wildlife Holding and Habitat
13 Removal Permits) ORS 498.301 through 498.346 (Screening and By-pass Devices for
14 Water Diversions or Obstructions); ORS 506.036 (Protection and Propagation of
15 Fish) and ORS 506.109 (Food Fish Management Policy); ORS 509.140 (Placing
16 Explosives in Waters) and ORS 509.580 through 509.910 (related to Fish Passage);
17 and OAR Chapter 635, Division 44 (Holding, Propagating, Protected Wildlife),
18 Division 100 (Wildlife Diversity Plan), Division 415 (Fish and Wildlife Habitat
19 Mitigation Policy), and Division 425 (In-Water Blasting Permits)

20 **Permit:** An In-Water Blasting Permit may be required if explosives would be used
21 during construction of the facility.

22 **Discussion:**

23 ODFW provides technical review and recommendations on compliance with Council
24 standards. ODFW will base its review and recommendations on state wildlife policy
25 and threatened and endangered species policy (Application, Administration and
26 Enforcement of Wildlife Laws, see ORS 496.012 and ORS 496.171 - .192). See
27 Section VI(p) of this project order for further discussion of information requirements
28 to address the regulations cited below.

29 OAR Chapter 635, Division 44 (Holding, Propagating, Protected Wildlife) states that
30 "it is unlawful for any person to hunt, trap, pursue, kill, take, catch, angle for, or have
31 in possession, either dead or alive, whole or in part," any of the species listed [see
32 OAR 635-044-0130(1)]. The application for site certificate should include
33 information related to the applicant's plan for protecting the listed species during
34 construction of the facility.

35 OAR Chapter 635, Division 100 (Wildlife Diversity Plan) provides authority for
36 adoption of the state sensitive species list and the Wildlife Diversity Plan and
37 contains the State list of threatened and endangered wildlife species. The application
38 for site certificate must include a list of both state-listed and federally-listed
39 threatened and endangered wildlife species and State Sensitive Species that have
40 potential to occur in the analysis area.

41 OAR Chapter 635, Division 415 (Fish and Wildlife Habitat Mitigation Policy)
42 classifies six habitat categories and establishes a mitigation goal for each category.

1 The applicant for a site certificate must identify the appropriate habitat category for
2 all areas affected by the proposed facility and provide the basis for each category
3 designation, subject to ODFW review. The applicant must show how it would
4 comply with the habitat mitigation goals and standards by appropriate monitoring and
5 mitigation.

6 OAR Chapter 635, Division 425 (In-Water Blasting Permits) contains requirements
7 for in-water blasting activities. In the event that construction of the facility would
8 require the use of explosives on, under, or in Oregon waters or in a location that
9 might affect fish or other wildlife or their habitat, an in-water blasting permit would
10 be required. An application for an in-water blasting permit must include the
11 information necessary to meet the requirements of ORS 509.140 and OAR 635-425-
12 0000 through 635-425-0050. *In-water blasting permit(s) are state permits under*
13 *Council jurisdiction.*

14 **(h) Oregon Department of Geology and Mineral Industries**

15 Statute and Rule References: OAR 345-022-0020 (Structural Standard)

16 Permit: None required.

17 **Discussion:** The Department of Geology and Mineral Industries (DOGAMI)
18 provides technical review and recommendations on compliance with the Council's
19 structural standard, OAR 345-022-0020. The applicant must provide evidence of
20 consultation with DOGAMI regarding the level of geologic and geotechnical
21 investigation practical for the application. See Section VI(h) of this project order for
22 additional discussion concerning application requirements.

23 **(i) Oregon Parks and Recreation Department – State Historic Preservation Office**

24 **Statute and Rule References:** ORS 97.745 (Indian Graves and Protected Objects);
25 ORS 358.920 (Archaeological Objects and Sites); ORS 390.010 (Outdoor
26 Recreation); ORS 390.235 (Archaeological Sites and Historical Material); and OAR
27 Chapter 736, Division 51 (Archaeological Permits).

28 **Permit:** An archaeological permit may be required to conduct archaeological
29 investigations.

30 **Discussion:** OPRD-SHPO provides technical review and recommendations related to
31 the Council's Historic, Cultural and Archaeological Resources Standard (OAR 345-
32 022-0090). See Section VI(s) of this project order for additional discussion
33 concerning application requirements.

34 **(j) Oregon Parks and Recreation Department – Scenic Waterways Program (SWP)**

35 **Statute and Rule References:** ORS 390.805 through 390.925 (Scenic Waterways)

36 **Permit:** Unknown

37 **Discussion:** OPRD administers the state's Scenic Waterways Program. The
38 application for a site certificate should include all of the information required by ORS
39 390.845 regarding the crossing of Scenic Waterways designated by rule. See Section

1 VI(l) of this project order for additional discussion concerning application
2 requirements.

3 **(k) Oregon Department of State Lands — Removal-Fill Authorizations**

4 **Statute and Rule References:** ORS 196.800-990 (Removal of Material; Filling); and
5 OAR Chapter 141, Division 85 (Administrative Rules Governing the Issuance and
6 Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including
7 Wetlands).

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-
10 0520). *Removal-fill permit(s) are state permits under Council jurisdiction.*

11 **Discussion:** The applicant should include in its application information to support a
12 finding on whether removal-fill permits will be required. See Section VI(j) of this
13 project order for additional discussion concerning application requirements.

14 **(l) Oregon Department of State Lands — Easement Authorizations**

15 **Statute and Rule References:** ORS Chapter 273 (State Lands Generally); and OAR
16 Chapter 141, Division 122 (Rules for Granting Easements on Trust and Non-Trust
17 Land).

18 **Permit:** Easement to construct transmission line on state land.

19 **Discussion:** Written authorization in the form of an easement from DSL is required
20 for development activities on state land. The easement(s) must be obtained prior to
21 the start of facility construction. The DSL easement is not under Council jurisdiction.
22 The applicant should contact DSL directly to determine the requirements for
23 easement applications.

24 **(m) Oregon Department of Land Conservation and Development**

25 **Statute and Rule References:** ORS Chapter 469, Division 504 (Facility Compliance
26 with Statewide Planning Goals); OAR 345-022-0030

27 **Permit:** None required.

28 **Discussion:** The proposed facility must comply with the Council's General Standard
29 regarding Land Use (OAR 345-022-0030) to ensure the facility complies with
30 statewide planning goals adopted by the Land Conservation and Development
31 Commission. The NOI indicates that the applicant intends to seek a Council
32 determination under ORS 469.504(1)(b) for compliance with applicable statewide
33 planning goals. The final election of the process by which the applicant shall
34 establish compliance with the land use standard need not be made until the
35 application for site certificate is submitted. However, once made in the application,
36 the election is final.

37 The Department of Land Conservation and Development (DLCD) issues no permit
38 but may provide additional review for compliance with statewide planning goals and
39 with directly applicable DLCD rules. See Section VI(k) of this project order for

1 additional discussion concerning application requirements to demonstrate compliance
2 with the land use standard.

3 **(n) Oregon Department of Forestry**

4 **Statute and Rule References:** ORS 527.610-.770 (Oregon Forest Practices Act),
5 527.990(1) (Criminal Penalties), and 527.992 (Civil Penalties); and OAR Chapter
6 629, Divisions 600-680

7 **Permit:** Permit to Operate Power Driven Machinery

8 **Discussion:** Some of the proposed project appears to be located on forest land, which
9 will require a Permit to Operate Power Driven Machinery from the Oregon
10 Department of Forestry (ODF). This permit is not under Council jurisdiction. The
11 applicant should contact ODF to determine the requirements for obtaining the permit.

12 If the removal of trees would be necessary as part of the proposed project, and such
13 removal is part of a commercial operation, that activity may be subject to the Oregon
14 Forest Practices Act. Information regarding these permits, and analysis of whether
15 the proposed project is subject to the requirements of the Oregon Forest Practices Act,
16 should be included in Exhibit BB of the application for site certificate (if not already
17 addressed elsewhere in the application). See Section VI(bb) of this project order for
18 additional discussion.

19 **(o) Oregon Department of Transportation**

20 **Statute and Rule References:** OAR Chapter 734, Division 51 (Highway Approaches
21 and Access Control), and Division 55 (Pole Lines, Buried Cables, and Miscellaneous
22 Operations)

23 **Permit:** Access Management Permit and Utility Facility Permit

24 **Discussion:** Any utility installations within the right of way of a state highway in
25 Oregon will require a Utility Facility Permit issued by the Oregon Department of
26 Transportation (ODOT). The applicant should review the requirements of OAR 734-
27 055-0080 concerning installation of utilities within interstate highway rights of way
28 and provide adequate evidence to demonstrate the need for longitudinal installations,
29 if such installations will be proposed.

30 Any access from Oregon state highways would require State Highway Approach
31 Permit. There are two components to state highway approach permitting process –
32 the Permit to Construct a State Highway Approach and the Permit to Operate,
33 Maintain and Use a State Highway Approach (POMU). Review and approval of the
34 permitting requirements for the Permit to Construct a State Highway Approach may
35 be within the Council’s jurisdiction, in which case the requirement to obtain a POMU
36 from ODOT would become a condition of approval for the site certificate. ODOT
37 does not typically allow access to utilities from an interstate highway. The applicant
38 should contact ODOT directly to determine the requirements for obtaining an access
39 permit, if any are needed.

1 **(p) Oregon Water Resources Department – Water Rights/Adjudications Division**

2 **Statute and Rule References:** ORS Chapters 536 through 540 (Water
3 Resources/Water Rights); and OAR Chapter 690 (Water Resources Department),
4 Divisions 1 through 410.

5 **Permit:** A Limited License for construction use or other Water Right Permits are
6 required if new water rights are necessary for the project.

7 **Discussion:** The applicant must identify the sources of water to be used during
8 construction and operation of the proposed facility. See Section VI(o) of this project
9 order for additional discussion.

10
11 **III. NATIVE AMERICAN TRIBES**

12 **Statute and Rule References:** None

13 **Permit:** The proposed route is adjacent to land owned and managed by the Confederated Tribes
14 of Umatilla Indian Reservation (CTUIR). Any permits or easements required by the CTUIR are
15 outside of the Council jurisdiction and are the responsibility of the applicant.

16 **Discussion:** The NOI listed the following tribes as “being expected to have an interest in the
17 Project’s Proposed Corridor”: Burns-Paiute Tribe, Shoshone-Paiute Tribes of Duck Valley
18 Indian Reservation, Confederated Tribes of the Umatilla Indian Reservation (CTUIR),
19 Confederated Tribes of Warm Springs Reservation, Nez Perce Tribe, Confederated Tribes of the
20 Colville Reservation, Fort McDermitt Shoshone-Paiute Tribes, Shoshone-Bannock Tribes of Fort
21 Hall Indian Reservation, and the Klamath Tribes.

22 The applicant should contact the Legislative Commission on Indian Services about potentially
23 affected tribes and include the response from the Commission as an attachment to Exhibit S.
24 The affected tribes, as identified by the Commission, provide technical review and
25 recommendations in reference to the Council’s Historic, Cultural and Archaeological Resources
26 Standard (OAR 345-022-0090). The application should include evidence of consultation with
27 affected tribes regarding archaeological and cultural sites and materials that may be found on the
28 proposed site of the facility.

29 The Department understands that the project will require approval from federal agencies, and
30 that federal agencies are engaging in formal government-to-government consultation with
31 affected Indian tribes under the requirements of the National Historic Preservation Act (NHPA).
32 To the extent it aids in establishing compliance with the applicant’s obligations under this siting
33 process, the applicant may rely on the evidence resulting from the extensive tribal consultations
34 required by the NHPA.

35 The CTUIR provided detailed written comments to the NOI regarding impacts to First Food
36 resources, habitat fragmentation, introduction of weed species, effects to historic properties,
37 insufficient noise and visual analysis in the application, cumulative impacts, cultural resource
38 impacts, and Umatilla Indian Reservation impacts. If a concern expressed by the CTUIR is
39 under Council jurisdiction and not elsewhere addressed in the application for site certificate, the
40 applicant may address the issue in Exhibit BB.

1 **IV. APPLICABLE LOCAL GOVERNMENT ORDINANCES**

2 **Statute and Rule References:** ORS 215.283(1)(d), ORS 215.275, and OAR 660, Divisions 6
3 and 33, as those statutory and rule provisions are implemented through applicable substantive
4 criteria from County Code and Comprehensive Plans of Malheur, Baker, Union, Umatilla and
5 Morrow Counties; and additional applicable substantive criteria from the comprehensive plans
6 and land use ordinances of those affected counties.

7 ORS 215.283(1)(d) and ORS 215.275, and OAR 660-033-0130 are directly applicable to the
8 location of the facility on EFU-zoned land in Baker, Morrow and Union Counties. In the other
9 affected counties, those statutory and rule requirements are implemented in Malheur County
10 through MCC Chapter 3, Article A, Section 6-3A-2(A) (14) and in Umatilla County through
11 UCDC Sections 152.059(C) and 152.617(II)(7). Compliance with the requirements of ORS
12 215.283(1), ORS 215.275 and OAR 660-033-0130 will establish compliance with these
13 implementing criteria.

14 Umatilla and Union Counties also identify the potential applicability of 660-006-0025 (Uses
15 Authorized in Forest Zones). To the extent the proposed facility will cross any forest-zoned
16 land, compliance with these administrative rules is required.

17 Baker and Umatilla Counties identify the following Comprehensive Plan policies applicable
18 to the proposed facility:

19 Baker County:

- 20 Goal V (Open Space, Scenic and Historic Areas and Natural Resources)
- 21 Goal V Open Spaces and Scenic Areas Findings
- 22 Goal V Natural Areas Policies
- 23 Goal V Historic and Cultural Sites, Structures, Districts

24 Umatilla County:

- 25 Chapter VIII, Findings and Policy 37
- 26 Chapter XIV, Findings and Policy 19
- 27 Chapter XV, Findings and Policy 20

28
29 Baker, Umatilla and Union Counties identify the following Resource Overlay zones, which
30 may be applicable to the proposed facility:

31 Baker County:

- 32 BCZSO 83-3; Section 412 Historic/Cultural and Natural Area Protection

33 Umatilla County:

- 34 UCDC Section 152.016; Riparian Impacts
- 35 UCDC Section 152.456 Wildlife
- 36 UCDC Technical Report D-63; Habitats of Rare, Threatened and Endangered
37 Species

38 Union County:

- 39 UCZPSO Section 20.08 Riparian Zones
- 40 UCZPSO Section 20.09 Significant Goal 5 Resource Areas
- 41 Significant Aggregate Sites

- 1 Wetlands and Natural Areas
- 2 Big Game Winter Range and Big Game Critical Habitat
- 3 Avian Habitat
- 4 Designated Scenic Waterways
- 5

6 Baker, Umatilla and Union Counties identify the following siting and development standards,
7 which may be applicable to the proposed facility:

8 Baker County:
9 Section 401; Setbacks and Frontage Requirements

10 Umatilla County:
11 UCDC Section 152.010 Access; Private Driveways and Easements
12 UCDC Section 152.625 Additional Conditional Use Restrictions
13 UCDC Section 152.017 Conditions for Development Proposals

14 Union County
15 UCZPSO Section 2.07 Development Standards
16 UCZPSO Section 5.07 Siting Standards
17 UCZPSO Section 5.08 Development and Fire Siting Standards
18 UCZPSO Section 20.10 Site Plan Requirements
19 UCZPSO Section 21.06 General Standards Governing Conditional Uses
20 UCZPSO Section 25.09 General Design and Improvement Standards

21 Baker County identifies the following additional plans and criteria, which may be applicable
22 to the proposed facility:

23 Baker County:
24 Baker County Noxious Weeds Management Plan

25 Union County identifies the following additional procedures and criteria, which may be
26 applicable to the proposed facility:

27 Union County:
28 UCZPO Section 30.03 Variance Procedure

29 **Permit:** Conditional Use Permits and other required Land Use Approvals.

30 **Discussion:** The applicant should contact each County Planning Department to confirm the
31 currently applicable local criteria that are required to establish goal compliance, and the
32 requirements for any required land use approvals. The applicant should include information
33 necessary to demonstrate compliance with the substantive criteria from each County code and
34 comprehensive plan that are applicable to issuance of any required permits or approvals.

35 Umatilla County, Morrow County, Malheur County, Union County and Baker County have
36 provided written comments on the Boardman to Hemingway NOI with applicable rules,
37 ordinances, and comprehensive plan goals and policies. Note that local comprehensive plans and
38 land use ordinances may have been amended since local comments were provided. The
39 applicant should confirm currently applicable criteria with each county. As provided in ORS
40 469.401(3), if the Council issues a site certificate, the counties will be bound to issue all required
41 permits and other land use approvals, subject to the conditions set forth in the site certificate.

1 **V. OTHER CONSTRUCTION-RELATED REGULATIONS**

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

5 OAR 345-027-0020(5) requires that an applicant have construction rights on the property
6 before beginning construction. Construction rights include all legal rights to engage in
7 construction activities, including the legal right to access the property. If one or more partition
8 approvals are necessary for IPC to obtain construction rights, IPC may request Council approval
9 of the partition(s) and include information supporting the partition pursuant to the standards of
10 the relevant County’s zoning ordinance in the application for site certificate. To the extent the
11 applicant proposes a phased approach to construction, the applicant should propose a
12 methodology for identifying construction segments and ensuring construction rights for each
13 segment prior to construction on that segment.

14
15 **VI. APPLICABLE REQUIREMENTS FROM OAR CHAPTER 345, DIVISION 21**

16 IPC must adhere to the general requirements under OAR 345-021-0000, particularly the
17 submittal of information in sections (6) and (7) regarding the status of non-federally-delegated
18 and federally delegated permits. OAR 345-021-0010(1) identifies the required contents of an
19 application for a site certificate. Each of the paragraphs below indicates which provision(s) of
20 OAR 345-021-0010(1)(a) – (dd) will apply to the Boardman to Hemingway Transmission Line
21 project. The application should also include the information described in OAR 345-021-0010(2)
22 and (3).

23 **(a) Exhibit A – General Information about the Applicant**

24 Paragraphs (A) through (D) apply.

25 Note that paragraph (B) calls for a list of “participating persons, other than
26 individuals.” “Person” is defined in OAR 345-001-0010(45). Include in the
27 application information about all third-party entities (persons other than individuals)
28 that are important to the project.

29 **(b) Exhibit B – General Information about the Proposed Facility**

30 All paragraphs apply except (A)(vi), (vii), and (viii).

31 The description of the proposed facility in the application will form the basis for the
32 description of the facility in the site certificate. The site certificate will require that
33 IPC will build the facility “substantially as described.” Exhibit B will also provide the
34 basis for the project description in the notice of application that ODOE will issue to
35 reviewing agencies and public. Therefore, Exhibit B should describe the project in
36 enough detail for members of the public and reviewing agencies to make informed
37 comments. It should describe the project sufficiently for ODOE staff to verify that the
38 constructed project will meet any representations that are the basis for any findings of
39 compliance with applicable regulations for standards, but need not include descriptive
40 material that IPC would not want to be held to in a condition.

1 The application must clearly describe the width of the corridor in which the
2 micrositing corridor right-of-way would be sited along the length of the proposed
3 line. The application must specify the width of the permanent right-of-way IPC will
4 request, and must justify that width. The Council may direct IPC to acquire a
5 narrower right-of-way in areas that are important for agriculture or for habitat, and it
6 may allow a wider right-of-way at certain locations for staging areas. The application
7 must also explain in detail what limitations would be placed on the property owner in
8 the transmission line right-of-way.

9 The alternatives analysis described in section OAR 345-021-0010(1)(b)(D) must be
10 consistent with the analysis required by ORS 215.275 and the required information in
11 this rule. The Council recognizes that some of the factors in this rule compete with
12 one another (for example, the requirements to both avoid habitat land and avoid farm
13 land), but expects the application to demonstrate that all required factors were
14 considered.

15 **(c) Exhibit C – Location**

16 All paragraphs apply.

17 Maps included in Exhibit C should provide enough information for property owners
18 potentially affected by the facility to determine whether their property is within or
19 adjacent to the site. Maps should indicate the “site boundary” as defined in OAR
20 345-001-0010(53). Major roads should be named. The application for a site
21 certificate should include identification of lands enrolled in the Conservation Reserve
22 Program and lands currently zoned for Exclusive Farm Use. IPC should include
23 maps drawn to a scale of 1 inch = 2,000 feet or smaller when necessary to show
24 detail.

25 Maps should clearly show the boundaries of the proposed corridor within which the
26 transmission line would be constructed, and should include familiar landmarks such
27 as roads and existing power lines that reviewing agencies and affected landowners
28 may use to readily identify the proposed route. Aerial photographs with all roads
29 identified are helpful for public interpretation and review. All proposed access roads,
30 temporary laydown areas, substations, and other related or supporting facilities and
31 their site boundaries must be identified.

32 Exhibit C should contain a table listing the approximate land areas for both temporary
33 disturbance associated with construction and permanent footprint of structures
34 associated with facility operation for each type of disturbance or structure. This
35 information should be consistent with information provided in other exhibits,
36 including in particular Exhibit B, Exhibit P, and Exhibit W.

37 **(d) Exhibit D – Organizational Expertise**

38 All paragraphs apply.

39 Regarding the ability to successfully construct the project “in accordance with site
40 certificate conditions,” the Council’s review is not limited to IPC’s ability to
41 construct a transmission line. The application must also demonstrate that IPC can
42 honor all commitments and conditions regarding minimization and mitigation of

1 impacts on the resources protected by Council standards and applicable regulations of
2 other agencies.

3 Exhibit D should include a safety and environmental regulatory compliance history
4 for the last three years that is focused on similar facilities owned or operated by the
5 applicant, such as transmission lines and substations. If possible, evidence of
6 successful completion of mitigation projects should also be provided.

7 **(e) Exhibit E – Permits**

8 All paragraphs apply.

9 State permits within the Council’s jurisdiction, and permits that are necessary but
10 outside the Council’s jurisdiction, should be described and discussed separately.
11 Although the Council does not review for compliance with federal permits, the
12 application should describe federal permits particularly as federal permitting
13 requirements are often relied on as evidence of compliance with EFSC or local
14 standards.

15 Ensure that Exhibit E identifies and discusses all the possible permits listed in Section
16 I of this project order.

17 **(f) Exhibit F – Property Owners**

18 As explained in OAR 345-021-0010(F), the notification requirements differ based on
19 the zoning along the length of the proposed transmission line (and any proposed
20 alternative routes). The Council’s notification requirement is for notice to all owners
21 of record, as shown on the most recent property tax assessment roll,-within the
22 specified distance from the proposed site boundary. In addition, the applicant should
23 consult the notification requirements for other agency permit(s) under the council’s
24 jurisdiction (for example, a DSL removal-fill permit), to ensure the most inclusive
25 notification requirements are met for purposes of any special mailing list necessary
26 for compliance with OAR 345-015-0220.

27 Changes to the proposed transmission line routes could result in changes to property
28 owners requiring notification. It is the responsibility of IPC to monitor such changes
29 and update notification lists that will be provided to the Department. Due to the
30 extended timeline of the application and review process for a proposed project of this
31 scope, properties may change hands and owners of record listed on the property tax
32 rolls may change. Consequently, Exhibit F in the Preliminary Application for Site
33 Certificate should indicate that, pursuant to direction by the Department, the property
34 owner list will be generated prior to the Department’s determination of application
35 completeness and in coordination with the Department, to ensure the application
36 issued for public comment has the most up-to-date property owner list.

37 The Department requests that the property owner list be broken down by county, as
38 the county will be asked to verify the list provided in the application (unless the
39 application includes evidence that the list provided was generated by the county in the
40 first place). The property owner notification list must be accompanied by one or
41 more maps that include the site boundary, a buffer from the site boundary consistent
42 with OAR 345-021-0010(1)(f) site distance, and the properties/tax lots that are within

1 the applicable site distance. The list should also be annotated to indicate property
2 owners that are included on the list to meet the notification requirements of other state
3 agencies that will be issuing required permits.

4 **(g) Exhibit G – Materials Analysis**

5 All paragraphs apply.

6 See discussion in Section I(d) of this project order regarding ODEQ Land Quality
7 Division’s requirements for hazardous materials used and stored at the facility, or at
8 temporary access and laydown areas. The Department also uses the materials
9 analysis to identify any hazardous materials whose management and storage could
10 affect the cost of site restoration because of the possibility of spills. The applicant
11 should ensure that the application addresses any proposed fuel storage areas, vehicle
12 maintenance areas, or other areas that will be utilized for activities that could result in
13 a spill of a hazardous substance.

14 **(h) Exhibit H – Geology**

15 All paragraphs apply except (E).

16 The Department understands that detailed site-specific geotechnical investigation for
17 the entire site boundary is not practical in advance of completing the final facility
18 design and obtaining full site access. However, the rule requires evidence of
19 consultation with the Oregon Department of Geology and Mineral Industries
20 (DOGAMI) prior to submitting the application if the applicant proposes to base
21 Exhibit H on limited pre-application geotechnical work. Exhibit H should include
22 written evidence of consultation with DOGAMI regarding the level of geologic and
23 geotechnical investigation determined to be practical for the application submittal.

24 Any geotechnical reports included in Exhibit H as supporting evidence that the
25 proposed facility will meet the Council’s structural standard should follow the
26 guidelines of DOGAMI’s “Open File Report 00-04 “Guidelines for Engineering
27 Geologic Reports and Site Specific Seismic Hazard Reports.”

28 Note that OAR 345-021-0010(1)(h), paragraphs (A), (F)(i), and (F)(iv) contain
29 references to outdated guidelines and codes. Until such time that the Council rules
30 can be revised to reflect current standards, the Department requests that applicants
31 consult directly with DOGAMI, determine the most current structural standards that
32 apply to its facility, then use those codes to prepare Exhibit H. The application
33 should clearly note which codes and guidelines were used to prepare the information
34 in Exhibit H. Exhibit H should also provide evidence that the current codes are
35 equivalent to or more stringent than those cited in the Council’s rules, and that the
36 applicant agrees to construct the facility in accordance with the current codes and
37 guidelines.

38 **(i) Exhibit I – Soils**

39 All paragraphs apply.

1 The applicant should include information describing the impact of construction and
2 operation of the proposed facility on soil productivity in affected farm and forest
3 zones. Describe all measures proposed to maintain soil productivity during
4 construction and operation. The applicant should consult with local farmers,
5 landowners, soil conservation districts, and federal land managers regarding
6 mitigation of impacts to farm and forest lands. Specific discussion should include
7 weed encroachment, interference with irrigation equipment, and the potential for
8 restrictions to aerial applications caused by the proximity of transmission towers.

9 Exhibit I should also include the required evidence related to the federally-delegated
10 National Pollutant Discharge Elimination System (NPDES) 1200-C permit
11 application (alternatively, the NPDES information could be incorporated into Exhibit
12 BB—Other Information). As stated in Section I(c) of this project order, OAR 345-
13 021-0000(7) requires the applicant to submit one copy of all applications for
14 federally-delegated permits, or provide a schedule of the date by which the applicant
15 intends to submit the application. In addition to a copy of the federally delegated
16 permit application, the applicant must also provide a letter or other indication from
17 the ODEQ stating that the agency has received a permit application from the
18 applicant, identifying any additional information the agency is likely to need from the
19 applicant based on the agency’s review of the application, and estimating the date
20 when the agency will complete its review and issue a permit decision.

21 The applicant should emphasize discussion of erosion control in Exhibit I, especially
22 for impacted forestland to minimize and mitigate damage to forest soils and streams.
23 A draft erosion and sediment control plan must be provided for review (if not already
24 incorporated into an attached NPDES permit application).

25 **(j) Exhibit J – Jurisdictional Waters**

26 All paragraphs apply.

27 The Department understands that the phased study approach is presenting challenges
28 to the applicant’s ability to obtain the information necessary to prepare a Joint Permit
29 Application to DSL and the Corps of Engineers. To the extent possible, the
30 preliminary application should include identification of wetlands and waters of the
31 State for all areas to be affected by the proposed facility, including access roads and
32 temporary laydown areas.

33 The applicant should include in Exhibit J as much of the information required by
34 OAR 345-021-0010(1)(j) as possible, and the proposed path forward to obtain the
35 information necessary for the Council to find that the requirements for a removal-fill
36 permit have been met. Information would include an itemized demonstration of each
37 applicable provision of ORS 196.825 (Criteria for Issuance of a Permit) and OAR
38 141-085-0550 (Application Requirements for All Authorizations). DSL requires a
39 compensatory wetland, compensatory non-wetland, and temporary impacts mitigation
40 plan be submitted with a removal-fill application.

41 Written authorization in the form of an easement from DSL is required for
42 development activities on state land, including use or crossing of the John Day and
43 Deschutes Rivers. The easement(s) must be obtained prior to the start of facility

1 construction. The DSL easement is not under Council jurisdiction. The applicant
2 should consult with DSL to determine requirements and review timelines.

3 NOTE: OAR Chapter 140, Division 85 (“Administrative Rules Governing the
4 Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon
5 Including Wetlands”) has been revised since the last time the Council’s rules were
6 updated. The citation in OAR 345-021-0010(1)(j) to rules in Division 85 of OAR
7 Chapter 141 are no longer valid. For example, reference to OAR 141-085-0010
8 should now be 141-085-0510 (Definitions). The citation to OAR 141-085-0018
9 should now be to OAR 141-085-0520. The applicant should consult directly with the
10 Oregon Department of State Lands if there are any questions regarding the applicable
11 regulations. The applicant should also note that the Removal-Fill rules, including the
12 notification rules, are currently being revised to reflect recent changes approved by
13 the 2001 Legislative Assembly.

14 **(k) Exhibit K – Land Use (Statewide Planning Goals)**

15 Paragraphs (A), (C), and (D) of the rule apply.

16 The NOI indicates that there is federal land within the site boundary, therefore the
17 applicant should include in its application the information required under Paragraph
18 (D).

19 The NOI states that applicant will seek a Council determination of compliance with
20 the Council’s land use standard under ORS 469.504(1)(b). The applicant should
21 review the comments received from each county and contact each affected county
22 planning department to ensure that the application addresses the most current land use
23 criteria in each jurisdiction.

24 Exhibit K must include information necessary to demonstrate compliance with the
25 substantive criteria from each county code and comprehensive plan that are
26 applicable to issuance of the required permits and approvals. Due to the number of
27 land use jurisdictions through which the project is proposed to cross, there may be
28 substantive criteria applicable in more than one jurisdiction. The applicant is
29 encouraged to work with the ODOE to develop a framework for identifying and
30 responding to all local land use criteria in a coordinated manner.

31 Exhibit K should also provide evidence that the proposed facility would comply with
32 the applicable statutory requirements related to the proposed facility, including ORS
33 215.283 and 215.275, and specifically including all requirements regarding the
34 location of the proposed facility within EFU zones.

35 **(l) Exhibit L – Protected Areas**

36 All paragraphs apply.

37 The applicant should thoroughly research all of the protected areas listed at OAR
38 345-022-0040 to ensure that the application addresses the potential impacts to
39 protected areas within the Analysis Area identified in Section VI.

40 Note that OAR 345-022-0040(1)(H) generally prohibits siting of transmission lines
41 through protected areas, which include state parks. However, under OAR 345-022-

1 0040(2), EFSC may approve a route that passes through a protected area if the
2 council determines that other routes outside the protected area would “have greater
3 impacts.” If the transmission line routing proposed by the applicant will pass through
4 a protected area, the applicant should describe in detail the alternative routes it
5 studied and provide analysis in the application to support a finding that routing the
6 transmission line through the protected area would have less impacts than the
7 alternatives.

8 Where OAR 345-022-0040(3) is applicable, ensure that the application provides
9 evidence that the proposed line is routed within 500 feet of an existing utility right of
10 way containing at least one transmission line with a voltage rating of 115 kV or
11 higher.

12 Ensure that each potentially impacted state scenic waterway listed in ORS 390.826 is
13 addressed in Exhibit L and that the evidence to address the requirements of ORS
14 390.845 is also included. Provide an analysis of the evidence to support a finding by
15 the Council that the requirements of the Oregon Parks and Recreation Department
16 related to the siting of a utility facility in a scenic waterway have been met.

17 **(m) Exhibit M – Financial Capability**

18 All paragraphs apply.

19 **(n) Exhibit N – Need for the Facility**

20 All paragraphs apply.

21 The Council requires applicants to demonstrate public need for an electric
22 transmission line facility under the least-cost plan rule (OAR 345-023-0020), the
23 system reliability rule for transmission lines (OAR 345-023-0030), or by
24 demonstrating that the transmission line is proposed to be within a “National Interest
25 Electric Transmission Corridor” designated by the US Department of Energy under
26 Section 216 of the Federal Power Act. The applicant may provide evidence
27 demonstrating the need for the facility under one or more of the methods described in
28 Division 23.

29 **(o) Exhibit O – Water Use**

30 All paragraphs apply except (D).

31 Exhibit O of the application must identify the sources of water to be used during
32 construction and operation of the proposed facility, the water right under which the
33 water would be provided, the quantity of water needed, and the means of disposal of
34 all water discharges from the proposed facility. The application should provide
35 evidence and analysis to determine whether a new water right or water right transfer
36 is required, and if so, evidence that supports a finding by the Council that the water
37 right should be issued. [See ORS Chapter 537 (Appropriation of Water Generally) or
38 transfer of a water use under ORS Chapter 540 (Transfer or Forfeiture of Water
39 Rights), including a discussion and evaluation of all relevant factors, including those
40 factors listed in ORS 537.153(2) and (3), ORS 537.170(8) and OAR Chapter 690,

1 Divisions 310 (Water Right Application Processing) and 380 (Water Right
2 Transfers).]

3 Water not obtained from a municipal supplier would require a Limited License.
4 Because such licenses cannot authorize use or discharge of water outside a single
5 basin, multiple Limited Licenses may be required. Limited Licenses are also under
6 Council jurisdiction.

7 If a new water right, water right transfer, or Limited License is required, Exhibit O
8 must include adequate evidence for the Council to evaluate and make findings
9 approving the required permit or license. The applicant should consult with the
10 Oregon Water Resources Department to ensure that all information otherwise
11 required by OWRD is included in the site certificate application.

12 **(p) Exhibit P – Fish and Wildlife Habitat**

13 All paragraphs apply.

14 Please refer to Section I(f) of this project order for a discussion of ODFW habitat
15 mitigation goals and policies, and Section VII for agency comments specific to the
16 proposed transmission line.

17 The applicant has proposed a “phased survey” approach for data collection during the
18 site certificate review process. The Department understands that the entire length of
19 the proposed transmission line corridor has not yet been surveyed, mapped for
20 vegetation types, and categorized under ODFW’s habitat categorization guidance.
21 (Nor has the applicant defined the exact locations of some related and supporting
22 facilities, such as laydown areas, fly yards, or access roads, all of which also requires
23 completion of surveys prior to construction). Nevertheless, Exhibit P should include
24 as much information as possible about the results of the field surveys conducted to
25 date for various biological resources on state, private, and federal lands, and the
26 schedule for future surveys.

27 The information should include the survey methodology, exact survey areas, and the
28 results of all surveys for listed wildlife species, raptor nests, aquatic species, and other
29 biological resources. Surveys must be performed by qualified survey personnel
30 during the season or seasons appropriate to the detection of the species in question.
31 The applicant should also include in Exhibit P its preliminary habitat categorization
32 and tables depicting the estimated temporary and permanent impacts, broken down by
33 habitat categories.

34 If particular fish and/or wildlife habitat are identified within the analysis area that
35 could be significantly affected as a result of the proposed transmission line, the
36 applicant shall include description of the nature, extent and duration of potential
37 adverse impacts and a description of any proposed mitigation measures.

38 At the time of this writing, the applicant has formed several workgroups related to
39 conducting biological resource surveys. Include in Exhibit P (or as attachments to
40 Exhibit P), the description of each workgroup, its membership, its purpose, and
41 copies of any workplans that the workgroup has developed governing survey

1 methodologies. Provide a copy of any programmatic agreements or memorandums of
2 understanding related to biological resources.

3 Exhibit P should include analysis of how the evidence provided supports a finding by
4 the Council that the proposed facility meets the Council's fish and wildlife protection
5 standard. Provide proposed site certificate conditions for the Council's consideration
6 related to requirements for the applicant to complete all unfinished surveys within the
7 project's site boundary prior to construction. The proposed site certificate conditions
8 should also address submittal requirements for reporting future survey results,
9 adjustment of previously calculated impact areas (if necessary), and the applicant's
10 proposed approach to document approval of final results by agencies or the Council
11 prior to commencing construction activities.

12 OAR 635-044-0130(1) [Nongame Wildlife Protected] states that "it is unlawful for
13 any person to hunt, trap, pursue, kill, take, catch, angle for, or have in possession,
14 either dead or alive, whole or in part," any of the species listed. Exhibit P should
15 include information about the applicant's survey and salvage plan to protect the listed
16 species during construction of the facility. This information may be incorporated into
17 a wildlife monitoring and mitigation plan as an attachment to Exhibit P.

18 **(q) Exhibit Q – Threatened and Endangered Species**

19 All paragraphs apply.

20 OAR Chapter 635, Division 100 (Wildlife Diversity Plan) and ODFW's website
21 contain the State list of threatened and endangered wildlife species. The applicant
22 should include in its application for a site certificate a list of both state-listed and
23 federally-listed threatened and endangered wildlife species and State Sensitive
24 Species that have potential to occur in the analysis area. The applicant should
25 identify these species based on a review of literature, consultation with
26 knowledgeable individuals, and reference to the list of species published by the
27 Biodiversity Information Center.⁵

28 As discussed in Section V(p) above, the applicant has proposed a "phased survey"
29 approach for data collection during the site certificate review process, and the
30 Department understands that the applicant's data at the time of application submittal
31 might be incomplete. Nevertheless, Exhibit Q should include as much information as
32 possible about the results of the field surveys conducted to date for threatened and
33 endangered species and state sensitive species on state, private, and federal lands.
34 The schedule for future surveys, and the estimated date that results will be available,
35 should also be incorporated into Exhibit Q.

36 As for other biological resources, the information should include the survey
37 methodology, exact survey areas, and the results of all surveys. Surveys must be
38 performed by qualified survey personnel during the season or seasons appropriate to
39 the detection of the species in question.

⁵ Formerly the Oregon Natural Heritage Information Center

1 Exhibit Q should include analysis of how the evidence provided supports a finding by
2 the Council that the proposed facility meets the Council’s threatened and endangered
3 species standard. Provide proposed site certificate conditions for the Council’s
4 consideration related to requirements for the applicant to complete all unfinished
5 surveys within the project’s site boundary prior to construction. The proposed site
6 certificate conditions should also address submittal requirements for reporting future
7 survey results, and the applicant’s proposed approach to document approval of final
8 results by agencies or the Council prior to commencing construction activities.

9 **(r) Exhibit R – Scenic Resources**

10 All paragraphs apply.

11 The application should include visual depictions (photo-simulations) of the project’s
12 impact on scenic resources within the analysis area, especially protected areas
13 identified in Exhibit L. Photo-simulations and visual impacts assessments of
14 permanent structures should include substations, in addition to transmission
15 lines/towers, and roads. For the purposes of Exhibit R, “local” land use plans include
16 state, county, and city planning documents or inventories. The applicant should also
17 describe the measures it will take to minimize significant adverse impacts to
18 important scenic resources identified by reviewing agencies (see Section VII of this
19 order).

20 If the applicant engages a multi-agency workgroup to inventory scenic resources or to
21 assess visual impacts to scenic resources, incorporate into Exhibit R a description of
22 the workgroup, its purpose, its membership, and any agreements made by the
23 involved parties related to potential visual impacts of the proposed facility.

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

25 All paragraphs apply.⁶ The application should include map(s) showing important
26 historic trails, including the Oregon Trail, and discuss measures to avoid or mitigate
27 for impacts to historic trails. SHPO has advised that the proposed transmission line
28 crosses many land forms that are generally perceived to have a high probability for
29 possessing archaeological sites and buried human remains.

30 The applicant has proposed a “phased survey” approach for data collection during the
31 site certificate review process. The Department understands that the entire length of
32 the proposed transmission line corridor has not yet been surveyed for cultural
33 resources, nor has the applicant defined the exact locations of some related and
34 supporting facilities, such as laydown areas, fly yards, or access roads (which also
35 require surveys prior to construction). Nevertheless, Exhibit S should include as
36 much information as possible about the field surveys conducted to date for cultural
37 resources on state, private, and federal lands, and the schedule for future surveys.

⁶ Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.501(11). Specific location information about cultural resources should not be included in the text of application for a site certificate. Such information, including archaeological survey reports, should be provided confidentially under separate cover after consultation with the Department.

1 The information should include the survey methodology, qualifications of survey
2 personnel, exact survey areas, and the results of all surveys. At the time of this
3 writing, the applicant and state and federal agencies have been participating in a
4 cultural resources workgroup. Include in Exhibit S (or as attachments to Exhibit S),
5 the description of the workgroup, its membership, its purpose, and copies of any
6 workplans that the workgroup has developed governing survey methodologies.
7 Provide a copy of any programmatic agreements or memorandums of understanding
8 related to cultural resources.

9 Exhibit S should include analysis of how the evidence provided supports a finding by
10 the Council that the proposed facility meets the Council's cultural resources
11 protection standard. Provide proposed site certificate conditions for the Council's
12 consideration related to requirements for the applicant to complete all unfinished
13 surveys within the project's site boundary prior to construction. The proposed site
14 certificate conditions should also address submittal requirements for reporting future
15 survey results, obtaining SHPO's approval of pre-construction cultural resource
16 survey documents, and the applicant's proposed approach to document approval of
17 final results by agencies or the Council prior to commencing construction activities.

18 **(t) Exhibit T – Recreation**

19 All paragraphs apply.

20 The application should analyze the importance of recreational opportunities using the
21 factors listed in OAR 345-022-0100(1), and describe any significant potential adverse
22 impacts to important recreational opportunities, and measures proposed to avoid,
23 minimize or mitigate those impacts. The application should include proposed efforts
24 to avoid such impacts by route adjustments or project design, or describe why
25 alternate alignments were not available. The application should address all
26 recreational resources cited in public comments (see Section VII of this order).

27 **(u) Exhibit U – Public Services**

28 All paragraphs apply.

29 The application should include an analysis of the impact of the proposed transmission
30 line on all public and private services listed in OAR 345-022-0110, within the
31 analysis area, including estimated facility-related traffic during construction and
32 operation and the potential impact on traffic safety. Description of traffic impacts
33 should include proposed transportation routes for the transport of heavy equipment
34 and shipments of facility components during construction, including proposed ground
35 and air transportation routes within the analysis area. The application must
36 demonstrate that the proposed facility will not result in significant adverse impact to
37 the ability of public and private providers within the analysis area to provide those
38 services.

39 **(v) Exhibit V – Solid Waste and Wastewater**

40 If an onsite septic system is constructed in conjunction with a related and supporting
41 facility for the proposed project, it may require a WPCF permit from ODEQ. The

1 applicant should provide information demonstrating that the proposed septic system is
2 exempt from the WPCF permit requirement or, if it is not exempt, that it meets the
3 requirements for a permit.

4 Exhibit V must include all information that would otherwise be required by ODEQ in
5 an application for the WPCF permit (See OAR Chapter 340, Division 71). This
6 includes providing evidence that the applicant has verified that the site is suitable for
7 an onsite sewage disposal system by applying to ODEQ or its designated agency for a
8 site evaluation of groundwater and soil conditions.

9 The applicant must comply with ODEQ regulations concerning the storage and
10 management of hazardous materials and the clean up and disposal of hazardous
11 waste. Exhibit V must include a list of all hazardous materials that potentially would
12 be stored or used at the facility site during construction and operation, and a
13 description of the applicant's plans and programs for storage of hazardous materials
14 and management of hazardous waste. If the applicant proposes any on-site fuel
15 storage during construction, the fuel storage areas and management plan should be
16 described in detail in the application.

17 The proposed project will entail clearing activities through forested lands. Exhibit V
18 must contain information on how the applicant will manage or dispose of the debris
19 generated by clearing activities, including brush disposal, and excess material from
20 road cut and fill operation.

21 **(w) Exhibit W – Facility Retirement**

22 All paragraphs apply.

23 The Department's *Facility Retirement Cost Estimating Guide* (2005) was recently
24 updated with an example calculation for determining the decommissioning costs of a
25 transmission line (which has been provided to the applicant). Should the applicant
26 elect to apply a different cost estimate methodology it must discuss the method with
27 the Department prior to submitting its application. The Council's Retirement
28 Standard requires a reasonable engineering estimate of the cost to retire the facility.
29 To that end, the application should explain and justify the methodology used to
30 estimate retirement costs, including (but not limited to) pertinent information related
31 to facility components. The information regarding these factors can be placed in
32 Exhibit B or in Exhibit W of the application, but should be clear enough for ODOE
33 staff to review it. At a minimum, facility information should include quantities and
34 detailed proposed unit costs for the following:

- 35 • Types and sizes of transmission line support structures, including height,
36 width, and weight of steel in the structures;
- 37 • Amount of concrete above three feet below grade included in transmission
38 line support structure foundations;
- 39 • Spacing of transmission line support structures;
- 40 • Number of conductors to be mounted on the transmission line support
41 structures;
- 42 • Length, width, and surfacing of new (or modifications to existing) access
43 roads;

- Scope, size, and types of related or supporting facilities;
- Estimated area of temporary disturbance during construction of the proposed facility; and
- Estimated area of permanent disturbance during operation of the proposed facility.

The Council’s Retirement Standard also requires evidence that the site can be restored – following facility retirement – to a useful, non-hazardous condition consistent with site’s zoning. For example, where the proposed transmission line is sited on Exclusive Farm Use land, the application must include evidence that the site can be restored to a condition suitable for the agricultural use prevalent in the surrounding vicinity.

(x) Exhibit X – Noise

All paragraphs apply.

The application must contain a noise analysis and information to support a Council finding that the proposed facility, including any alternative routes proposed, will comply with the requirements of OAR 340-035-0035. Exhibit X should address each of the following:

- Identify all noise sensitive receptors on aerial and topographic maps in Exhibit X within one-half mile of the site boundary from the transmission line and any related and supporting facilities. Provide the distance between facility components and the nearest noise sensitive receptors (as that term is defined by ODEQ). Each noise sensitive receptor should be uniquely identified on all maps, and tables should be provided within Exhibit X that show the receptor identification number, identification of noise sources evaluated, the distance to the noise source(s), and the modeled results.
- If the applicant elects to conduct ambient baseline sound measurements at one or more locations, provide a draft noise monitoring protocol for Department review and approval prior to conducting any monitoring. The protocol should include a description of the sound survey methodology and assumptions, areas to be surveyed, and the measurement parameters needed to best respond to concerns of the applicable agencies and the public.
- Predicted noise levels resulting from construction and operation of the proposed facility. Where appropriate, perform noise modeling using the procedures identified in ISO 9613-2 (1996)⁷ accounting for the specialized sound propagation conditions associated with elevated sound sources, i.e. high voltage power lines. For each noise source, specify whether the “general method of calculation” or the “alternate method of calculation” in ISO 9613-2 was used to predict the sound level radiating from the source to a receptor and explain why the method was used.

⁷ ISO 9613-2 (1996): Acoustics – Attenuation of sound during propagation outdoors – Part 2: General method of calculation

- 1 • Include information on the noise levels predicted to radiate from the transmission
2 line during late-night and early-morning hours under a range of weather
3 conditions including those that typically result in greater noise production (e.g.
4 high wind and high humidity conditions). Sound propagation calculations should
5 apply meteorological conditions consistent with assumptions as used in source
6 level calculations of corona noise or alternatively site specific meteorological
7 conditions conducive to long range sound propagation.

- 8 • The input data for noise modeling of the transmission line should be developed
9 from standardized engineering technical guidelines and literature sources that
10 reflect *actual* measurements of existing transmission lines of similar design under
11 similar weather conditions. All reference data and its source shall be provided in
12 the application materials.

- 13 • Base the analysis on conservative assumptions allowing for possible deviations in
14 preferred alignment that may occur within the designated right of way during
15 project construction. The transmission line will be placed nearest the most
16 limiting noise sensitive receptors as would be allowed under applicable safety
17 requirements or other design constraints. Provide a table listing all input
18 parameters used to perform the noise modeling.

- 19 • Describe any measures the applicant proposes to reduce noise levels or noise
20 impacts or to address public complaints about noise from the facility.

- 21 • Describe any measures the applicant proposes to monitor noise generated by
22 operation of the facility.

- 23 • The applicant retains the option to request further consultation with the ODOE to
24 maintain flexibility within the prescribed Project Order as the technical and
25 regulatory compliance approaches are developed during the ASC process.

26 **(y) Exhibit Y – Carbon Dioxide Emissions**

27 The NOI states that the project will emit no pollutants during operation and does not
28 require air permits from the ODEQ’s federally-delegated air program. However, if
29 not otherwise addressed in Exhibit E, Exhibit Y should address whether the May
30 2013 “Tailoring Rule” promulgated by the EPA applies to the emissions of green
31 house gases (including sulfur hexafluoride) from facility components. If so, provide
32 evidence that emission sources included in the proposed facility do not exceed
33 permitting thresholds. If the evidence shows that a PSD permit will be required,
34 include a copy of the permit application to ODEQ in Exhibit Y, or provide a schedule
35 of the date by which the applicant intends to submit the application.

36 In addition to a copy of the federally delegated permit application, the applicant must
37 also provide a letter or other indication from the ODEQ stating that the agency has
38 received a permit application from the applicant, identifying any additional
39 information the agency is likely to need from the applicant based on the agency’s
40 review of the application, and estimating the date when the agency will complete its
41 review and issue a permit decision.

1 **(z) Exhibit Z – Cooling Tower Impacts**

2 Exhibit Z does not apply.

3 **(aa) Exhibit AA – Electric and Magnetic Fields**

4 All paragraphs apply.

5 The information provided by the rule should address public concerns expressed
6 during the scoping period about electric and magnetic fields (EMF) generated by the
7 proposed transmission facility (see Section VII of this order). Although the Council
8 does not have an “EMF Standard,” it does have a statutory mandate to adopt any
9 conditions needed to ensure public health and safety. This mandate provides the
10 regulatory basis for any findings or conditions, including setbacks, based on EMF
11 considerations.

12 **(bb) Exhibit BB – Other Information**

13 To the extent that the following issues were not addressed in other exhibits, include
14 information in Exhibit BB related to:

- 15 (1) The evidence and analysis discussed in Section I(f) of this project order
16 related to the use of equipment that emits sulfur hexafluoride or other
17 greenhouse gases that might trigger the application of the “Tailoring Rule” to
18 one or more components of the proposed facility.
- 19 (2) The proposed project will require the removal of trees in forested areas, and
20 such removal could be classified as a commercial operation. As discussed in
21 Section I, provide evidence and analysis in Exhibit BB for a determination of
22 whether the construction of the proposed facility is a commercial operation
23 and subject to the requirements of the Oregon Forest Practices Act. If the Act
24 applies, the applicant should consult with ODF to ensure that the application
25 for site certificate contains adequate evidence for the Council to find that
26 construction of the project will meet the requirements of the Oregon Forest
27 Practices Act. Evidence could be provided in the form of written plans
28 developed in consultation with ODF.
- 29 (3) As stated in Section III of this Order, if a concern expressed by the CTUIR is
30 under Council jurisdiction and not elsewhere addressed in the application for
31 site certificate, the applicant may address the issue in Exhibit BB.

32 **(cc) Exhibit CC – Other Law**

33 Exhibit CC applies.

34 **(dd) Exhibit DD – Specific Standards**

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

37 **VII. ANALYSIS AREAS FOR THE PROPOSED FACILITY**

38 The analysis areas are the minimum areas that IPC must study for potential impacts from the
39 construction and operation of the proposed facility. The analysis areas described in this Project

1 Order do not limit the applicant’s responsibility to assess the potential impacts of the facility.
 2 They are the areas in which significant adverse impacts from the proposed facility are likely to
 3 occur. If significant impacts could occur beyond the analysis areas described here, then IPC
 4 must assess those impacts in the application for a site certificate and show how the facility would
 5 comply with the applicable standard with regard to the larger area where impacts could occur.

6 For all potential impacts, the analysis area includes all the area within the site boundary,
 7 as defined in OAR 345-001-0010(53) and in this order. The application for site certificate must
 8 specifically describe the site boundary and provide a map showing the proposed site boundary,
 9 including the transmission line corridor and all related and supporting facilities. All
 10 environmental impact analysis requirements and analysis areas apply to the entire site boundary,
 11 which by definition includes all corridors under consideration, including alternatives. The
 12 minimum required analysis areas are presented in the table below.

13 The minimum required analysis areas are as follows:

| Affected Standard or Resource | Exhibit | Analysis Area ⁸ |
|---------------------------------------|---------|---|
| 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. |
| Threatened and Endangered Species | Exh. Q | The area within the site boundary and one-half 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 | Exh. S | The area within the site boundary. |

⁸ The applicant should note that Analysis Areas defined in this Project Order are to be used for the assessment of impacts to the associated resource. Analysis Areas are not the equivalent to “survey areas” that are being developed for field work involving biological, cultural, and visual resources. However, the area within the site boundary as it is defined in the Site Certificate must be completely surveyed prior to construction for biological and cultural resources using methodologies approved by ODOE and related state agencies. Consequently, the applicant should be mindful when developing survey workplans for field work that the resource with the narrowest survey corridor will be controlling when determining the site boundary of the project along any particular linear section.

| | | |
|-----------------------------|---------|---|
| Resources | | |
| Recreational Opportunities | Exh. T | The area within the site boundary and two miles from the site boundary. |
| Public Services | Exh. U | The area within the site boundary and 10 miles from the site boundary. |
| Noise | Exh. X | The area within the site boundary and one-half mile from the site boundary. |
| Electric Transmission Lines | Exh. AA | The area within the site boundary. |

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VIII. COMMENTS FROM THE PUBLIC AND REVIEWING AGENCIES

(a) Public Comments

In addition to the applicable statutes, rules, and local land use requirements listed in Section II of this order, the application must address issues arising from public comments following an informational meeting on the Notice of Intent (OAR 345-015-0130). Pursuant to OAR 345-015-0160(1)(g), the issues raised in public comments during the joint ODOE-BLM scoping meetings (referenced in the Background section of this document) are summarized in this order.

The project received over 450 comments electronically, by mail, phone, and fax. All comments have been forwarded to IPC and the BLM. The Department has summarized the issues addressed in the public comments according to applicable Council standards; however, the enclosed summary is not meant to serve as a substitute for the original comments, nor do they represent the opinions of the Council or ODOE. The Department expects IPC to work directly with the public, stakeholders, and local governments to the extent practicable to address comments that are outside EFSC jurisdiction.

Comments Related to General Standard of Review (OAR 345-022-0000)

1. Noise impacts, both from construction and operation of the proposed transmission line. Applicant should address noise impacts and compliance with state noise standards in Exhibit X. Potential noise impacts to wildlife should be addressed in Exhibits P and Q.
2. Impacts to water sources should be addressed in Exhibit I (especially erosion and sediment control and impacts of herbicide use); on above- and below-ground water supplies), Exhibit O (Water use and sources), Exhibit P (especially impacts to fish-bearing streams from construction activities and herbicide use).

Comments Specific to Structural Standards (OAR 345-024-0090)

1. Geological hazards, including seismic hazards, steep terrain, and landslides, should be addressed in Exhibit H.
2. A commenter expressed concern about “thermal vents” on Lindsey Mountain—if the proposed route is in the area and might be impacted by such vents, it should be addressed in Exhibit H.

- 1 3. A commenter expressed concern about “27 recognized fault lines” present in the John
2 Day Valley. The applicant should address identified fault lines in Exhibit H.
3

4 **Comments Specific to Soil Protection (OAR 345-022-0022)**

- 5 1. Road construction and facility operation impacts that have the potential to affect soils
6 should be addressed in Exhibit I. The applicant should ensure that, at a minimum,
7 Exhibit I of the ASC addresses impacts of road construction and long-term facility
8 operation, including sedimentation and runoff to water bodies; soil compaction; potential
9 impacts to farming operations or to fish; revegetation of disturbed sites; and weed
10 control.
- 11 2. A commenter expressed a desire to limit use of roads during wet weather. Exhibit I
12 should address whether the applicant proposes to limit the use of a road (or roads) during
13 construction and operations during wet weather conditions.
- 14 3. A commenter expressed concern that there will adverse impacts on the soil conservation
15 activities being conducted in upper Kitchen Creek Valley (Baker County) and its
16 drainages. Exhibit I should address potential impacts to active soil conservation projects
17 in the project area, and proposed mitigation measures.
18

19 **Comments Specific to Land Use (OAR 345-022-0030)**

- 20 1. Exhibit K of the ASC should address the compliance with applicable zoning ordinances
21 and comprehensive land use plans.
- 22 2. A commenter expressed concern that the proposed route of the transmission line will
23 impact mining claims and reduce the ability of holders of such claims to conduct
24 operations. The ASC should address impacts to valid mining claims.
- 25 3. A commenter expressed concern that the transmission line right of way will allow access
26 to off-highway vehicles (OHVs). The ASC should address how the site certificate holder
27 will control access to the right of way to prevent unauthorized use by OHVs.
- 28 4. A commenter expressed concern that the proposed project may adversely affect U.S.
29 Geothermal, Inc.’s existing Neal Hot Springs Geothermal Project. Impacts to this
30 facility, if any are identified, should be addressed in the ASC.
31

32 **Comments Specific to Protected Areas (OAR 345-022-0040)**

- 33 1. Commenters expressed concern about a variety of areas that the commenter believed
34 should be protected, including the Nature Conservancy area near the Boardman Bombing
35 Range, Virtue Flat (Union County), the Area of Critical Environmental Concern at Horn
36 Butte, and the upper Kitchen Creek valley. Exhibit L should evaluate potential impacts
37 to protected areas (as defined in Council rules) identified in the analysis area.
38

39 **Comments Specific to Fish and Wildlife Habitat (OAR 345-022-0060)**

- 40 1. Numerous commenters expressed concern about potential impacts to fish and wildlife
41 habitat, including habitat fragmentation and loss of connectivity (especially between
42 summer and winter range for big game); disruption of migratory patterns; stream impacts
43 from sedimentation, vegetation clearing, and herbicide use; introduction of invasive
44 species; and impacts to vegetation important for forage and browsing (especially winter
45 range areas). A commenter also expressed concern about impacts to ongoing

1 conservation projects for riparian areas, wetlands, and native grasslands in the Virtue Flat
2 and Keating areas. Exhibit P must address temporary and permanent impacts to fish and
3 wildlife habitat and to fish and wildlife species.

- 4 2. Numerous commenters expressed concern about wildlife impacts, including disruption of
5 elk, mule deer, bighorn sheep, and pronghorn migration routes, breeding areas, and
6 feeding areas. Concern about potential impacts to fish (steelhead, bull trout, and salmon),
7 birds (sage grouse, owls, bald eagle, golden eagle, swans, cranes, and waterfowl), and bat
8 species were also mentioned frequently in the comments. Exhibit P must address
9 temporary and permanent impacts to fish, birds, bats, and other wildlife species.
- 10 3. Commenters expressed concern about long-term maintenance of the transmission line
11 corridor and the need for early detection and rapid response procedures to limit
12 establishment of invasive species, control invasive species, and respond to wildfires. The
13 ASC should include a revegetation and weed control plan both for construction activities
14 and for long-term operation of the proposed facility. This information may be included
15 in Exhibit P, or as part of soil protection measures discussed in Exhibit I.

16 17 **Comments Specific to Threatened and Endangered Species (OAR 345-022-0070)**

- 18 1. Commenters expressed concern about numerous state- and federally-listed threatened or
19 endangered species, including sage grouse, bull trout, steelhead, Washington ground
20 squirrel, western burrowing owl, and the grasshopper sparrow. Exhibit Q must address
21 impacts and proposed mitigation measures for threatened and endangered species.
22

23 **Comments Specific to Scenic and Aesthetic Values (OAR 345-022-0080)**

- 24 1. Commenters expressed concern about the visual impacts of towers and lights associated
25 with the transmission line towers and related and supporting facilities. Exhibit R should
26 address potential visual impacts of the proposed facility, and should discuss proposed
27 mitigation measures (including the use of lattice versus monopole structures, co-location
28 with existing lines, coating/painting options, placement of transmission towers below
29 ridgelines, and a discussion about the use of underground installation in areas of high
30 sensitivity).
- 31 2. Commenters expressed particular concern about avoiding visual impacts in the area of the
32 National Oregon Historic Trail Interpretive Center in Baker County. Exhibit R should
33 address this area specifically and discuss proposed alternative routes and mitigation
34 measures to reduce visual impacts.
- 35 3. Commenters also expressed concern about visual impacts on the John Day River,
36 wilderness and roadless areas, and designated scenic byways. Exhibit R should include
37 analysis of visual impacts and proposed mitigation measures for these areas, unless visual
38 impacts to a particular area are already included in Exhibit L (Protected Areas).
39

40 **Comments Specific to Historic, Cultural, and Archaeological Resources** 41 **(OAR 345-22-0090)**

- 42 1. Numerous commenters expressed concern about visual and other impacts on national and
43 Oregon historic trails in general, and to the National Oregon Historic Trail Interpretive
44 Center in Baker County in particular. Exhibit S should discuss potential impacts and
45 proposed mitigation measures for the project's potential effects on historic trails.

- 1 2. Commenters also expressed concern for the project's impact on fossil beds and areas
2 where artifacts have been discovered, including Lindsey Mountain the Kitchen Creek
3 valley. Exhibit S should include discussion of the results of cultural resource surveys,
4 potential impacts during construction and operations, proposed mitigation measures, and
5 cultural resource protection plans for cultural resources under Council jurisdiction (Note
6 that the actual survey reports should be submitted as confidential material under separate
7 cover).
- 8 3. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) commented that
9 the project should avoid resources of cultural and religious significance to CTUIR,
10 including tribal trails, CTUIR-named places, villages, camps, traditional hunting areas,
11 gathering and digging areas, and archaeological sites. Exhibit S should include
12 discussion of the potential impacts to resources of concern to the CTUIR and other tribes
13 identified by the Commission on Indian Services. To the extent that protection of those
14 resources is under Council jurisdiction, Exhibit S should also include proposed mitigation
15 and protection measures.

16 **Comments Specific to Recreation (OAR 345-022-0100)**

- 17 1. Commenters expressed concern about the proposed facility's impacts to recreation areas
18 along the entire route. Exhibit T should address potential impacts to recreational
19 opportunities in the analysis area, including, but not limited to, construction and
20 operation impacts from roads, increased traffic, new access routes (such as to all-terrain
21 vehicles), noise. Visual impacts should also be considered.

22 **Comments Specific to Public Services (OAR 345-022-0110)**

- 23 1. A commenter expressed concern that the proposed facility will impact the Owyhee
24 Project 69 kV transmission line. Other comments were received from operators of
25 transmission lines, communication lines, and pipelines was concerned about possible line
26 crossings and interference with existing right of ways (commenters included Chevron
27 Pipe Line Company, Frontier Telephone, and MCI). Exhibit U of the ASC should
28 address impacts to any such existing facilities, especially when crossing existing right of
29 ways, and provide evidence of consultation with the public utilities or private providers
30 operating such lines.
- 31 2. Commenters expressed concern about the proposed project's impacts on the ability of
32 service providers to respond to wildfires due to interference with aerial firefighting;
33 limited accessibility in remote areas especially susceptible to wild fires; and lack of
34 equipment available to rural fire protection districts. Exhibit U of the ASC must identify
35 the fire protection service providers within the analysis area for public services and
36 provide evidence of consultation with the providers concerning fire protection and
37 response plans during construction and operations. Potential impacts to such providers,
38 and proposed mitigation for such impacts, should also be included in Exhibit U.
- 39 3. Commenters expressed concern that local emergency responders and service providers
40 are ill-equipped to respond to security threats to the transmission line. Exhibit U must
41 identify local emergency response agencies within the analysis area for public services
42 and provide evidence of consultation with the providers concerning security response
43 plans during construction and operations. Potential impacts to such providers, and
44 proposed mitigation for such impacts, should also be included in Exhibit U.
- 45
46

1
2 **Comments Specific to Need Standard for Nongenerating Facilities (OAR 345-023-0005)**

- 3 1. Numerous commenters expressed concern that the applicant has not adequately
4 demonstrated the need for the proposed facility and that the applicant should explain why
5 existing power sources, energy conservation efforts, and construction of energy sources
6 in Idaho cannot be utilized in lieu of building a new transmission line. The applicant
7 must provide evidence of its ability to meet the Council's Need Standard in Exhibit N of
8 the ASC.
9

10 **Comments Specific to Siting Standards for Transmission Lines (OAR 345-024-0090)**

- 11 1. Numerous commenters expressed concern about potential human health impacts of a high
12 voltage transmission line from electromagnetic fields, corona effects, and induced
13 currents. Exhibit AA of the ASC must include evidence that the proposed facility can
14 meet the Council standards specific to transmission lines, and include mitigation
15 measures proposed by the applicant to reduce or eliminate threats to human health and
16 safety during construction and operation of the transmission line.
- 17 2. Many commenters expressed concern about the possibility that the transmission line will
18 interfere with the normal operations of radios, telephones, and other electronic devices in
19 the vicinity of the line. Exhibit AA should include discussion and mitigation measures to
20 reduce or eliminate interference with electronic devices. This is especially important in
21 farm use zones, where farmers often use a variety of electronic locating devices on
22 mechanical equipment during planting and harvesting and other farming activities.
23

24 **Comments Not Directly Related to an EFSC Standard**

- 25 1. Numerous commenters expressed concern that the project will adversely affect property
26 values and cause other types of economic loss to property owners in the vicinity of the
27 proposed project, including lost income caused by removal of productive land from the
28 agriculture base, interference with usual farming practices, or disruption of land
29 development. The ASC should address these concerns to the extent that such concerns
30 are part of the evaluation of the applicant's ability to comply with any given Council
31 standard. For example, impacts on farming practices should be addressed in Exhibit K.
- 32 2. Commenters expressed many concerns about specific routes proposed in the NOI. The
33 Department understands that the route proposed in the ASC might differ from that
34 ultimately proposed in the ASC, but the applicant should ensure that the corridor
35 selection analysis is included in Exhibit B.
36

37 (b) Reviewing Agency Comments

38 The Department received comments from numerous reviewing agencies. All of the reviewing
39 agency comments have been provided under separate cover to the applicant and are incorporated
40 by reference in this order. The applicant must address the concerns of the reviewing agencies
41 (that are under the jurisdiction of the Council) within the applicable exhibit of the ASC.
42

1 **IX. USE OF INFORMATION IN THE ENVIRONMENTAL IMPACT STATEMENT**

2 Pursuant to ORS 469.370(13), EFSC will review the application for site certificate, to the
3 extent feasible, in a manner that is consistent with and does not duplicate BLM review under
4 NEPA. This includes elimination of duplicative study and reporting requirements and EFSC use
5 of information prepared for the federal review.
6

7 Many EFSC standards and rules of other state agencies in Oregon require field work to
8 gather the information needed to demonstrate compliance. The Department is working with state
9 agencies and county planners to ensure that the field work required for the site certificate
10 application and for the NEPA review can be done concurrently and by the applicant's teams of
11 field scientists. Technical reports describing the results of site investigations for each resource
12 area under NEPA may be used to provide evidence of the ability to meet the Council's standards.
13 However, the NEPA requirements and EFSC standards are different, and compliance with NEPA
14 does not necessarily ensure compliance with an EFSC standard. Some apparent differences
15 between NEPA and EFSC requirements include:
16

- 17 • In addition to characterizing habitat, endangered species, wetland areas, and other
18 information required for the EIS, the application must address ODFW's Fish and
19 Wildlife Habitat Mitigation Policy (OAR 635-415-0025) and meet the Council's no-
20 net-loss standards. The Department is not aware that NEPA requires no net loss for
21 high-quality habitat.
22
- 23 • It is not clear to what extent farm land and soils are protected in the NEPA review. For
24 example, the EIS will address erosion issues, but it is not clear that soil productivity is
25 addressed in NEPA adequately to demonstrate compliance with the Council's Soil
26 Standard and Land Use Standard.
27
- 28 • The level of geologic reporting and geotechnical investigation required by the EFSC
29 Structural Standard may exceed NEPA requirements.
30
- 31 • Recreation may be addressed in the EIS but it is unclear as to whether the information
32 that will be provided in the EIS will be adequate to demonstrate compliance with the
33 Council's "no significant adverse impact" standard.
34
- 35 • The Department understands that private land easements may not be acquired until
36 late in the EIS process, and biological/cultural resource studies may therefore lag
37 behind the NEPA process. However, the application must provide evidence of
38 compliance with EFSC standards for all lands, public and private.
39

40 For this reason, work plans for resource reports that support the NEPA EIS should be
41 written to ensure that one set of ground studies collects all the information needed for both the
42 EIS and the application for site certificate. Where mitigation is proposed, the applicant may draft
43 a single mitigation plan that meets both BLM and EFSC requirements.
44

45 To the extent that IPC will rely on the draft EIS (or its supporting resource reports) for
46 evidence of compliance with EFSC standards, ODOE suggests that IPC develop a document that

1 cross references the information from the resource reports and the EIS with the information that
2 is understood to be needed for the EFSC application. This document may be prepared before the
3 application for site certificate is submitted to assist the applicant and ODOE with identifying
4 areas where the NEPA process alone may not require enough information for a complete EFSC
5 application. IPC can then supply the needed additional information in the application for site
6 certificate.

7 **X. EXPIRATION DATE OF THE NOTICE OF INTENT**

8 In accordance with OAR 345-20-0060, the Boardman to Hemingway Transmission Line
9 NOI expires on July 6, 2012, unless IPC petitions the Council for an extension. If IPC does not
10 submit an application for a site certificate before the expiration of the NOI, then IPC must submit
11 a new NOI to satisfy ORS 469.330.

12 **XI. PROJECT ORDER AMENDMENT AND APPLICATION COMPLETENESS**

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

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

26 **XII. APPLICABILITY AND DUTY TO COMPLY**

27 Failure to include an applicable statute, rule, ordinance, permit or other requirement in this
28 project order does not render that statute, rule, ordinance, permit or other requirement
29 inapplicable, nor in any way relieves applicant from the duty to comply with the same.

30 OREGON DEPARTMENT OF ENERGY

31
32
33 /s/ Ken Niles

34 Ken Niles, Acting Administrator
35 Energy Facility Siting Division
36 Oregon Department of Energy

37
38 Date of Issuance: March 2, 2012