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VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, Oregon 97308-1088

Re: AR 626 –Rulemaking Regarding Certificate of Public Convenience and Necessity.

Attention Filing Center:

Attached for filing in the above-captioned docket are Idaho Power Company's Closing Comments.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 626

In the Matter of:

Rulemaking Regarding Certificate of Public
Convenience and Necessity.

IDAHO POWER’S CLOSING COMMENTS

I. INTRODUCTION

Idaho Power Company (“Idaho Power” or the “Company”) appreciates the Public Utility Commission of Oregon’s (“Commission”) consideration of the comments that have been provided in the AR 626 rulemaking to date and the opportunity to provide closing comments. Idaho Power submitted initial written comments on July 28, 2022 (“Initial Comments”) noting that the most recent iteration of the proposed certificate of public convenience and necessity (“CPCN”) rules that were filed with the Secretary of State on June 30, 2022 (“Proposed Rules”) provide additional flexibility in comparison with prior iterations of the draft rules, and Idaho Power proposed several discrete rule revisions to provide additional clarity, consistency, and flexibility in the rules. Idaho Power continues to recommend that the Commission incorporate the proposed revisions that Idaho Power submitted in its Initial Comments.

Idaho Power attended the August 4, 2022 Rulemaking Hearing (“Rulemaking Hearing”) and provides these additional closing comments (“Closing Comments”) to address certain issues raised in oral comments at the Rulemaking Hearing. Idaho Power’s Closing Comments are summarized as follows:

- **Importance of Flexibility Regarding Land Use Approvals.** In its Initial Comments, Idaho Power recommended that the Commission consider additional flexibility in the issuance of the CPCN, such that the Commission either consider eliminating the proposal

1 to delay final action on a CPCN until after the Energy Facility Siting Council (“EFSC”) issues a site certificate or consider further clarifying that the Commission may issue the CPCN while any appeals of the final land use approval may be pending. At the Rulemaking Hearing, certain commenters questioned why the Commission would need to act before the land use process is finalized, and in these Closing Comments, Idaho Power provides additional explanation and context supporting its proposal. In particular, Idaho Power discusses the various regulatory and permitting activities that may be needed to construct a transmission line, sequencing challenges associated with these activities, and why it is critical for the Commission to provide flexibility for these activities to be completed concurrently rather than sequentially and to avoid delaying approval of the CPCN pending completion of all land use approvals.

- 12 • **Siting Considerations Are Outside the Scope of the Commission’s Consideration for the CPCN.** At the Rulemaking Hearing, certain commenters suggested that the Commission should revise the Proposed Rules to explicitly address environmental justice considerations, and it appears that the commenter was suggesting that the Commission would consider the environmental justice considerations in the context of the siting of the transmission line. Given the narrow role of a CPCN in the extensive permitting process for a transmission line, concerns regarding the siting of a transmission line should be addressed in the land use approval process, not in the CPCN proceedings.
- 20 • **Idaho Power Supports Portland General Electric Company’s (“PGE”) Proposal to Include a Clear Timeline in the Proposed Rules.** In its oral comments at the Rulemaking Hearing, PGE explained that it expects to soon have an urgent need to construct transmission lines on an expedited schedule to meet load growth and decarbonization needs, such that it would be helpful to have a clear timeline for resolution of the CPCN proceedings in the rules. Idaho Power supports this proposal and recommends the Commission include such a timeline, which should be no longer than six months.

27 II. DISCUSSION

28 A. Idaho Power Proposes Clarifying that the Commission May Issue a CPCN Pending Final Land Use Approvals, Including Pending an Appeal of the Final Land Use Approval.

31 In its Initial Comments, Idaho Power proposed that the Commission delete the portion of
32 *proposed* OAR 860-025-0040(7) providing that, “the Commission will not take final action until
33 EFSC has issued a site certificate for the transmission line.” Idaho Power noted that the restriction
34 for EFSC-jurisdictional projects seemed inconsistent with the level of flexibility afforded to
35 projects relying on city and county land use approvals and the Land Use Compatibility Statement
36 (“LUCS”) provision in *proposed* OAR 860-025-0040(5). The LUCS approval process

1 contemplates that the Commission may proceed with issuing the CPCN before the land use
2 approvals are finalized, and may amend or withdraw the CPCN final order if the LUCS is
3 successfully appealed, revoked, or modified. In its Initial Comments, Idaho Power recommended
4 proposed rule revisions which would provide additional flexibility for the Commission to act on
5 the petition for CPCN while an EFSC site certificate is pending.

6 At the Rulemaking Hearing, certain commenters questioned the need for flexibility in the
7 rules, and asked why the Commission should proceed with issuing the CPCN before the land use
8 approval may be finalized. Idaho Power has provided comments on this issue throughout the
9 informal phase of the rulemaking process, and emphasizes again in these Closing Comments that
10 it is critical that the Commission maintain flexibility and avoid setting up unnecessary roadblocks
11 that will delay the development of needed infrastructure.

12 The requirement to obtain a CPCN applies to all overhead transmission lines where
13 condemnation of private property may be required, and applies equally regardless of the voltage
14 or length of the proposed transmission line. Accordingly, the Commission may consider a petition
15 for CPCN for a 5-mile long, 69-kilovolt (“kV”) transmission line, or it may consider a 300-mile
16 long, 500-kV transmission line. Further, the requirement to obtain a CPCN is in addition to a
17 myriad of other permitting and regulatory requirements that may be involved in planning and
18 developing a transmission line project—depending on the size, location, and ownership of the
19 transmission line project—which include but are not limited to:

- 20 • Integrated Resource Planning (“IRP”) (for some transmission lines);
- 21 • Local land use approval;
- 22 • Energy Facility Siting Council (“EFSC”) site certificate;
- 23 • Federal right of way authorization, including the National Environmental Policy

1 Act review;

- 2 • Environmental permitting and state and federal agency coordination (e.g., Oregon
3 Department of State Lands Removal-Fill Permit, Oregon Department of Fish and
4 Wildlife Habitat Mitigation Policy, etc., Oregon Department of Environmental
5 Quality National Pollution Discharge Elimination System Permit, etc.);
- 6 • Cost recovery / prudence review by the Commission after the project is completed.

7 Given the variety of transmission line projects that may come before the Commission, the
8 Proposed Rules should allow the flexibility to address the differing cases that may require a CPCN.

9 Depending on the scope of the transmission line project, the land use approval process may
10 potentially take several months or several years. Additionally, the land use approvals may include
11 construction deadlines, limiting the amount of time that the developer has to construct the
12 transmission line project after the approval is secured, or construction work windows, limiting the
13 period of time when construction may occur to protect sensitive resources. At the same time, the
14 CPCN approval process must be completed—which does not even include the additional time
15 required to carry out subsequent condemnation proceedings and other pre-construction and
16 construction-related activities. In planning their transmission line projects, utilities make best
17 efforts to budget the time needed to obtain all required permits and approvals, but given the
18 timelines for each process, and the cost and reliability ramifications of additional unnecessary
19 delay, it is critical that the Commission retain the flexibility to allow a petitioner to—when
20 necessary—submit a petition for CPCN before having obtained its state and local land use
21 approvals, and to avoid holding up approval of the CPCN until after the land use approvals or
22 EFSC site certificate are finalized.

1 Additionally, there are legitimate reasons for discrete route amendments to occur late in
2 the process—including while a petition for CPCN is under review—which could mean that the
3 land use approval would not be “final” for some portion of the route. For example, during
4 preconstruction or construction activities, the petitioner may encounter unforeseen circumstances,
5 such as cultural or archaeological resources, or difficult construction conditions. Additionally, a
6 petitioner may seek to alter the route to accommodate requests from landowners that are more
7 willing to negotiate an easement without requiring the petitioner to go through condemnation
8 proceedings—which may reduce the amount of land for which condemnation would ultimately be
9 required. The Commission should ensure that its rules will allow enough flexibility for the
10 Commission to issue the CPCN even if the land use approval or EFSC site certificate is not
11 finalized, or if there is an amendment to the land use approval that is pending.

12 **B. The Commission’s CPCN Process is Not an Appropriate Venue to Consider Siting.**

13 At the Rulemaking Hearing, certain commenters suggested that the Commission should
14 include environmental justice considerations in the CPCN rules, and it appears that the purpose of
15 the comment was to suggest that the Commission should weigh in on transmission line siting—
16 even though the inquiry for the CPCN is the necessity of the transmission line and not siting. Idaho
17 Power respectfully recommends that the Commission avoid expanding the inquiry for the CPCN
18 beyond its statutory authority, which is to determine “the necessity, safety, practicability and
19 justification in the public interest for the proposed transmission line.”¹

20 Idaho Power recognizes that the Commission’s authority to consider “environmental
21 justice”² was recently expanded in House Bill (“HB”) 2475 to allow the Commission to authorize

¹ ORS 758.015(2).

² The Commission’s statutes define the term “environmental justice” as “equal protection from environmental and health hazards and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality and play.” ORS 756.010(4).

1 differential rates for low income customers, and to authorize intervenor funding for environmental
2 justice groups to participate in Commission proceedings.³ However, HB 2475 did not expand the
3 inquiry for a CPCN in ORS Chapter 758. Thus, while the Commission may have an increased
4 focus on environmental justice in the ratemaking context—and in particular, in setting differential
5 rates—there is no similar nexus for the CPCN.

6 At the Rulemaking Hearing, there were also questions raised as to whether the Commission
7 should interpret its statutory obligation to consider the public interest as inclusive of environmental
8 justice considerations. To the extent the Commission is inclined to do so, Idaho Power would urge
9 that the Commission focus on participation of environmental justice groups rather than expanding
10 its inquiry to include siting.

11 The Commission’s role in a CPCN proceeding is to evaluate the necessity of the
12 transmission line, and not to choose from among various alternative options to meet the need. In
13 a recent CPCN order, the Commission clarified that, when a petitioner identifies multiple potential
14 alternatives to address a transmission need, the Commission’s “task is not to decide between” those
15 identified alternatives, but rather to weigh the alternatives when “decid[ing] whether the request
16 to construct the transmission line was necessary, safe, practicable, justified and in the public
17 interest.”⁴ For the reasons discussed below, Idaho Power believes that the Commission should
18 continue to limit the analysis in the CPCN proceedings to an assessment of whether the petitioner’s
19 proposed transmission line is needed. Importantly, the CPCN serves as proof only that the
20 transmission line “is a public use and necessary for public convenience.”⁵

³ ORS 757.072; ORS 757.230.

⁴ *In re Tillamook People’s Util. Dist., Petition for Certificate of Pub. Convenience and Necessity*, Docket PCN 2, Order No. 19-293 at 7 (Sept. 10, 2019).

⁵ ORS 758.015(2).

1 Given the narrow role of the CPCN and the fact that the utility must also obtain approvals
2 from land use and environmental permitting agencies, the hearings before those agencies will
3 provide a more appropriate venue for challengers to raise issues relating to a utility’s proposed
4 route. Not only do those agencies have expertise in their fields, they also apply standards
5 specifically requiring a petitioner to consider various constraints when selecting a proposed
6 route—for example, in the EFSC context: historic and cultural resources,⁶ fish and wildlife
7 habitat,⁷ and important recreation opportunities,⁸ among others. As a result, the land use and
8 environmental permitting approval hearings provide the venue for consideration of siting
9 constraints, and the CPCN process should not be expanded to duplicate or re-litigate the siting of
10 a project under the veil of environmental justice considerations.⁹

11 Additionally, as it relates to the federal right of way approval, Executive Order 12898,
12 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income
13 Populations, requires each federal agency to make the achievement of environmental justice part
14 of its mission by identifying and addressing disproportionately high and adverse human-health or
15 environmental effects of its programs, policies, and activities on minority and low-income
16 populations—and thus, environmental justice considerations may also be addressed as part of the
17 NEPA review. On the other hand, the Commission does not have any specific standards relating
18 to siting constraints or the application of environmental justice considerations to siting. To avoid
19 duplication of regulatory proceedings, the Commission should defer to the land use and
20 environmental permitting agencies’ processes for assessing the adequacy of proposed transmission

⁶ See, e.g., OAR 345-022-0090.

⁷ See, e.g., OAR 345-022-0060(1).

⁸ See, e.g., OAR 345-022-0100.

⁹ See OAR 345-020-0011(1)(d), (e) (requiring an applicant seeking a site certificate to identify in its Notice of Intent (1) “at least two proposed corridors”; (2) “an explanation of the basis for selecting the proposed corridors”; and (3) “all federal, state and local government permits related to” those corridors).

1 line routes. Finally, because the inquiry required for the CPCN does not require the Commission
2 to balance competing constraints or competing preferences, the Commission should instead
3 continue to focus on the statutory purpose of a CPCN, which is to conclusively prove that a
4 proposed transmission line “is a public use and necessary for public convenience.”¹⁰

5 **C. Idaho Power Supports PGE’s Proposal to Include a Timeline for CPCN Proceedings**
6 **in the Proposed Rules.**

7 Idaho Power shares PGE’s concern regarding the duration of prior CPCN proceedings and
8 desire for clarity regarding the timeline for Commission review of a petition for CPCN. Like PGE,
9 Idaho Power is planning to build new transmission to meet its resource needs and the remaining
10 window for development is short. Idaho Power and other utilities will benefit from having clarity
11 regarding the time that it will take for the Commission to review and process a CPCN. The
12 Commission’s statutory period for review of a general rate revision case is 10 months,¹¹ and the
13 issues presented in a petition for CPCN are significantly fewer than in a rate case. Accordingly,
14 the timeline for review of a petition for CPCN should be shorter than for a rate case, and Idaho
15 Power recommends that the Commission clarify that the review process will take no longer than
16 six months.

17 **III. CONCLUSION**

18 Idaho Power appreciates the Commission’s willingness to work with stakeholders and
19 coordinate with other agencies throughout this proceeding. Idaho Power supports the
20 Commission’s more flexible approach that would allow a petitioner to seek land use approvals
21 concurrently with the CPCN proceedings. However, Idaho Power believes that the Proposed Rules
22 would benefit from further clarification as described in the Company’s Initial Comments. Idaho

¹⁰ ORS 758.015(2).

¹¹ ORS 757.215(1).

- 1 Power further recommends that the Commission include a clear six-month timeline for review of
- 2 a petition for CPCN, and that the Commission avoid expanding its inquiry to include siting
- 3 considerations, as described herein.

DATED this 11th day of August, 2022.

Respectfully submitted,

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