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July 28, 2022

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 Initial Comments.

Please contact this office with any questions.

Sincerely,

A handwritten signature in black ink that reads "Alisha Till". The signature is written in a cursive, flowing style.

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 INITIAL 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. The most recent iteration of the proposed certificate of public convenience and necessity (“CPCN”) rules, filed with the Secretary of State on June 30, 2022 (“Proposed Rules”), include many revisions that provide additional flexibility in the rules. Even so, to provide additional clarity, consistency, and flexibility in the rules, Idaho Power has several discrete proposals for improving the Proposed Rules, which are summarized as follows:

- Idaho Power supports the Commission’s proposal to allow petitioners flexibility to pursue land use approvals and a CPCN concurrently, but the Proposed Rules suggest that an applicant may do so only if the petitioner “cannot or will be unable to obtain” documentation of land use approvals, which is ambiguous and inconsistent with language in another portion of the rules indicating that a waiver may be sought where there may not be rigid obstacles to obtaining such documentation but other special circumstances warrant a waiver where the documentation “has not yet been obtained;” and
- Idaho Power suggests that the Commission consider additional flexibility in the issuance of the CPCN, such that the Commission either consider eliminating the proposal 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.

II. DISCUSSION

A. Idaho Power Proposes Clarifying the Application of the Waiver Rules.

The Commission has included new provisions allowing for waiver of the requirement to provide documentation of land use approvals with the initial petition for CPCN. However, there is no reference to the waiver option in the rule that requires such documentation in *proposed* OAR 860-025-0030(3). To clarify the availability of the waiver option, Idaho Power proposes adding to OAR 860-025-0030(3) a reference to the waiver rules in OAR 860-025-0030(4), as shown below in red:

OAR 860-025-0030(3) A petition may not be filed under this rule unless the petitioner includes with the petition all necessary documentation to support a finding under OAR 860-025- 0040(2) or (7) or files a request for a waiver as described in OAR 860-025-0030(4).

Additionally, the standard for obtaining a waiver is unclear. In the waiver provision, OAR 860-025-0030(4) and (4)(a), the proposed language provides that a petitioner may request a waiver if the petitioner “cannot” or “will be unable to” include all necessary documentation to support the land use findings. These terms should be clarified for the following reasons. First, the terms appear to present a distinction without a difference. That is, both terms appear to require a showing of the same thing—that there is a rigid obstacle to obtaining the land use approval documentation. Second, the strictness of the two terms is inconsistent with OAR 860-025-0030(4)(b), which indicates the petitioner may support a waiver request by a showing either that the required land use documentation “cannot be obtained,” *or* where there may not be rigid obstacles to obtaining such documentation but other special circumstances warrant a waiver where the documentation “*has not yet been obtained.*”¹ To clarify the waiver may be available in special

¹ *Proposed* OAR 860-025-0030(4)(b) (“An explanation that clearly and comprehensively explains the grounds for the waiver, including a narrative of why the required documentation cannot be obtained, *or has not yet been obtained*, along with any reliable evidence to support and verify the petitioner's claim that such documentation cannot be obtained or demonstrates when the petitioner expects to obtain all land use approvals, permits or

circumstances other than where there is a strict obstacle, and for consistency throughout, Idaho Power proposes that the language in OAR 860-025-0030(4) and (4)(a) be revised consistent with (4)(b), as shown below in red:

OAR 860-025-0030(4) If the petitioner cannot ~~obtain, or has not yet obtained, will be unable to include~~ all necessary documentation to support a finding under OAR 860-025-0040(2) or (7), the petitioner must submit a request for a waiver of section (3) of this rule in advance of or concurrent with the petition. If filed concurrently, the petitioner will provide notice that the petition includes a request for waiver at the time of filing. The OAR 860-025-0030(3) waiver request must include:

(a) The identification of whether the waiver request pertains to OAR 860-025-0040(2) or (7), and a list of all necessary documentation that cannot ~~be obtained or has not yet been obtained will not be able to be submitted~~ at the time of filing;

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

For EFSC jurisdictional projects, *proposed* OAR 860-025-0040(7) provides “the Commission will not take final action until EFSC has issued a site certificate for the transmission line.” In prior comments, Idaho Power proposed that the Commission delete this language to allow the Commission to move forward with issuing a CPCN while EFSC approval for a site certificate is pending. Idaho Power continues to urge the Commission to retain the flexibility to issue a CPCN while the land use approval is still pending. Indeed, it appears that the Commission intends to allow this level of flexibility for city and county land use approvals through the Land Use Compatibility Statement (“LUCS”) provision in *proposed* OAR 860-025-0040(5), which contemplates that the Commission may amend or withdraw the CPCN final order if the LUCS is appealed, revoked, or modified. It would be helpful to include similar language in the provision addressing EFSC-jurisdictional projects to clarify that the Commission may issue a CPCN while

equivalent before the Commission makes its final decision on the petition. and that the petitioner is requesting that the Commission consider the petition concurrently with the identified approval and permit processes.”) (emphasis added).

an appeal is pending, and the result of a successful appeal would be the modification or possible revocation of the CPCN. Accordingly, Idaho Power proposes the following revisions to *proposed* OAR 860-025-0040(7), as shown below in red:

OAR 860-025-0040(7) If a proposed transmission line is subject to the jurisdiction of the Energy Facility Siting Council (EFSC), ~~the Commission will not take final action until EFSC has issued a site certificate for the transmission line, and the site certificate has been issued prior to the Commission's final action,~~ the Commission will adopt the findings made as a part of the EFSC-issued site certificate, and the requirements of OAR 860-025-0040, (2) - (6) shall not apply. ~~If the site certificate has not yet been issued at the time of final Commission action or is subject to an appeal and the site certificate is subsequently successfully appealed, revoked or modified to include a finding that the transmission line is incompatible with an acknowledged comprehensive plan or implementing regulations after the Commission has issued a CPCN, the Commission may amend or withdraw the CPCN final order.~~

Based on information shared at the workshops over the past year, Idaho Power understands that the Commission has previously delayed issuing a CPCN pending resolution of outstanding appeals. As an alternative to its prior proposal, Idaho Power asks that the Commission consider at least clarifying that it may issue a CPCN while an appeal is pending.

OAR 860-025-0040(7) If a proposed transmission line is subject to the jurisdiction of the Energy Facility Siting Council (EFSC), the Commission will not take final action until EFSC has issued a site certificate for the transmission line. The Commission will adopt the findings made as a part of the EFSC-issued site certificate, and the requirements of OAR 860-025-0040, (2) - (6) shall not apply. ~~The Commission may take final action during the pendency of an appeal of the site certificate.~~

III. CONCLUSION

Idaho Power appreciates the Commission's willingness to work with stakeholders and coordinate with other agencies throughout these proceedings. Idaho Power supports the Commission's more flexible approach that would allow a petitioner to seek land use approvals concurrently with the CPCN proceedings. However, Idaho Power believes that the Proposed Rules

- 1 would benefit from further clarification as described herein. Idaho Power looks forward to further
- 2 discussing these Proposed Rules at the Commission's rulemaking hearing on August 4, 2022.

DATED this 28th day of July, 2022.

Respectfully submitted,

MCDOWELL RACKNER GIBSON PC



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