

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 626

In the Matter of:

Rulemaking Regarding Certificate of Public
Convenience and Necessity.

IDAHO POWER COMPANY’S INITIAL
COMMENTS

I. INTRODUCTION

Idaho Power Company (“Idaho Power” or the “Company”) submits these comments in response to the draft proposed rules regarding the information requirements and decision criteria for petitions for certificates of public convenience and necessity (“CPCN”) circulated on March 31, 2022 (“March 2022 Proposed Rules”). Idaho Power appreciates that the Public Utility Commission of Oregon (“Commission”) has revised several aspects of the Proposed Rules in response to stakeholder comments. While the March 2022 Proposed Rules include improvements over the prior iterations, Idaho Power recommends further refinements to the March 2022 Proposed Rules. Specifically, Idaho Power is concerned that the March 2022 Proposed Rules:

- Lack flexibility for the Commission to address unreasonable delays and project scheduling constraints by requiring the petitioner to obtain all land use approvals prior to submission of the petition and issuance of the CPCN itself;
- Lack limiting language regarding the extent of the required alternatives analysis; and
- Require comparable cost data for alternative routes that may not be available in many cases.

With these concerns in mind, Idaho Power respectfully requests that the Commission incorporate Idaho Power’s proposed changes to the March 2022 Proposed Rules discussed below.

II. BACKGROUND

In September 2019, Staff recommended opening this rulemaking proceeding because the current CPCN rule, OAR 860-025-0030, is decades old and has not been updated to account for major changes in utility planning requirements.¹ Additionally, Staff noted its desire to consolidate the criteria on which a petition will be evaluated in the rules, and also proposed several potential changes to the rules, including expanding the alternatives that must be considered in the petition for CPCN and treating the CPCN as a “capstone” permit by requiring that all permits and land use approvals be obtained before filing a petition.

Staff has issued various drafts of proposed rules throughout this rulemaking process and Idaho Power has provided detailed comments on each draft. Additionally, the Commissioners have held workshops to discuss Staff’s draft rules and stakeholders’ comments on July 15, 2021, August 30, 2021, and November 2, 2021. On January 31, 2022, the Administrative Hearings Division (“AHD”) issued a revised draft of the proposed rules and recommended that the Commission issue a Notice of Proposed Rulemaking and begin the formal rulemaking process.² At its February 1, 2022 Public Meeting, the Commission adopted the revised draft with some modifications.³ The Commission then issued a subsequent iteration of the proposed rules on March 31, 2022 (as noted above, “March 2022 Proposed Rules”), seeking comments prior to the Commission’s rulemaking hearing on April 26, 2022.⁴

III. DISCUSSION

Idaho Power appreciates that the Commission has incorporated several changes that Idaho Power and other utilities proposed in earlier comments. However, Idaho Power is concerned that

¹ Docket AR 626, Order No. 19-311, App. A at 2 (Sept. 24, 2019).

² Docket AR 626, Order No. 22-061, Appendix A at 1 (Mar. 11, 2022).

³ Docket AR 626, Order No. 22-061 at 1.

⁴ Docket AR 626, Notice of Proposed Rulemaking at 2 (Mar. 31, 2022).

1 potentially inconsistent language in the rules regarding the required land use approvals indicates
2 that a petitioner must obtain all land use approvals prior to submitting a petition, and relatedly, the
3 March 2022 Proposed Rules seem to have eliminated the Commission’s flexibility to issue a CPCN
4 while land use approvals are outstanding. Additionally, Idaho Power still has concerns that the
5 rules do not clearly define the extent of the alternatives analysis. Finally, the rules require a
6 petitioner to provide comparable cost data for potential alternative transmission lines, but that data
7 may not be available in many cases.

8 **A. Idaho Power Appreciates the Revisions Incorporating Several of Idaho Power’s**
9 **Proposals.**

10 Idaho Power understands the Commission has received input from various viewpoints
11 throughout this process and it would be difficult to reconcile all the divergent opinions presented
12 thus far. With that in mind, Idaho Power appreciates the March 2022 Proposed Rules include
13 several of the changes that Idaho Power proposed in earlier comments. These changes include:

- 14 • The March 2022 Proposed Rules no longer prohibit amendments to a CPCN petition or
15 CPCN after it is issued to include additional parcels of land not addressed in the petition.
16 As Idaho Power previously commented, there may be legitimate reasons for discrete route
17 changes to occur late in the process—including after filing the petition or after the
18 Commission issues the CPCN—and allowing an amendment to a petition or CPCN to
19 recognize the route change and/or authorize a petitioner to seek condemnation of the newly
20 impacted parcels would create a more efficient method to reflect such discrete changes
21 rather than requiring the utility to file an entirely new petition for CPCN.
- 22 • The March 2022 Proposed Rules limited the catch-all provisions in *proposed* OAR 860-
23 025-0035. Prior drafts had stated that the Commission could consider any “other factors

1 deemed relevant” when assessing whether a petitioner has demonstrated the necessity,⁵
2 safety,⁶ practicability,⁷ and justification⁸ of the transmission line. Consistent with Idaho
3 Power’s earlier comments, the current rules clarify that the Commission will consider only
4 other factors deemed relevant “to the statutory criteria.”⁹

- 5 • The March 2022 Proposed Rules revised the required alternatives analysis to no longer
6 require a petitioner to analyze the possibility of reallocating its service territory to another
7 energy company.¹⁰
- 8 • Certain provisions of the March 2022 Proposed Rules indicate that a petitioner need not
9 obtain all land use approvals prior to filing a petition for CPCN, by allowing a petitioner
10 to explain “why petitioner did not obtain any pending or outstanding approvals or permits
11 before submitting a petition[.]”¹¹ However, as discussed below, Idaho Power is concerned
12 that other provisions of the March 2022 Proposed Rules appear to contradict this approach.
13 And further, the March 2022 Proposed Rules still seemingly limit the Commission’s ability
14 to *issue* a CPCN while land use approvals are still pending, which does not provide
15 sufficient flexibility and may result in unnecessary delay.

16 **B. Idaho Power Supports the New Proposals Regarding Land Use Approvals and the**
17 **Timing of CPCN Petitions for Transmission Lines Subject to the Energy Facility**
18 **Siting Council’s (“EFSC”) Jurisdiction.**

19 Throughout this proceeding, stakeholders have repeatedly raised concerns regarding the
20 proposed “capstone approach,” which would prohibit a petitioner from filing a petition for a
21 CPCN, and the Commission from issuing a CPCN, until *after* the petitioner obtains all required

⁵ Former proposed OAR 860-025-0035(1)(f).

⁶ Former proposed OAR 860-025-0035(2)(d).

⁷ Former proposed OAR 860-025-0035(3)(j).

⁸ Former proposed OAR 860-025-0035(4)(i).

⁹ Proposed OAR 860-025-0035(1)(e).

¹⁰ Proposed OAR 860-025-0030(2)(o).

¹¹ Proposed OAR 860-025-0030(2)(q).

1 land use approvals.¹² Idaho Power and other stakeholders explained that the capstone approach
2 may result in unnecessary delay and may potentially impact the utility's ability to construct the
3 transmission line in time to address the safety and reliability, or customer growth, demands for
4 which the transmission line project is proposed. Depending on the scope of the transmission line
5 project, the land use approval process may take several months or years—in the case of the
6 Boardman to Hemingway transmission line, Idaho Power has been pursuing federal and state land
7 use permits for over a decade now. Additionally, the land use approvals may include construction
8 deadlines limiting the amount of time the developer has to construct the transmission line after the
9 approval is secured, or construction work windows limiting the period of time when construction
10 may occur to protect sensitive resources. At the same time, the CPCN approval process may run
11 between eight and 23 months, based on recent dockets (PCN 1 and PCN 2)—which does not even
12 include the additional time required to carry out subsequent condemnation proceedings and other
13 pre-construction and construction-related activities. In planning their transmission line projects,
14 utilities attempt to budget the time needed to obtain all required permits and approvals, but given
15 the timelines for each process, and the cost and reliability ramifications of additional unnecessary
16 delay, the Commission should retain the flexibility to allow a petitioner to apply for and obtain a
17 CPCN before having obtained all required state and local land use approvals.¹³

18 In section (2) of OAR 860-025-0030, the Commission appears to have added the requested
19 flexibility that allows a petitioner to file a petition for a CPCN prior to obtaining land use
20 approvals, so long as a petitioner explains in its petition the reason for not obtaining the approvals
21 before filing. Idaho Power supports these changes. However, as discussed below, Idaho Power is

¹² See, e.g., *former proposed* OAR 860-025-0030(3) (May 12, 2020) (“A petition may not be filed under this rule until all required land use planning approvals have been issued for construction of the transmission line.”).

¹³ Idaho Power's Informal Comments on May 5, 2021 Draft Proposed Rules at 8-9 (Aug. 13, 2021).

1 concerned that the waiver rule in section (3) of OAR 860-025-0030 creates a conflict with this
2 approach, because it assumes the petition must, in the first place, include documentation of all land
3 use approvals prior to filing. Furthermore, the Commission should clarify that it is retaining its
4 flexibility to issue a CPCN while land use approvals are outstanding, if necessary.

5 **1. The Waiver Rule Should Be Amended Consistent with Other Provisions of the**
6 **March 2022 Proposed Rules That Allow a Petition to Be Filed Before All Land**
7 **Use Approvals Have Been Obtained.**

8 Certain provisions of the March 2022 Proposed Rules appear to allow a petitioner to submit
9 a petition prior to receiving all land use approvals, but the waiver rule seems to contradict that
10 approach. Under section (2) of OAR 860-025-0030, a petitioner must identify all necessary land
11 use approvals but, instead of requiring a petitioner to obtain all approvals prior to filing the petition,
12 a petitioner may provide an explanation of why it has not obtained certain approvals.¹⁴ Idaho
13 Power supports this change. The change still ensures that the Commission will be aware of all
14 regulatory requirements for the proposed transmission line by requiring identification of all
15 relevant land use approvals, while also granting petitioners flexibility to pursue land use approvals
16 and a CPCN simultaneously, if necessary.

17 However, the newly proposed waiver rule in section (3) of OAR 860-025-0030 requires a
18 petitioner to seek a waiver of OAR 860-025-0040 if, at the time of filing, the petitioner cannot
19 provide documentation to support a finding of compliance with all Statewide Planning Goals.¹⁵
20 OAR 860-025-0040(2), in turn, requires that the Commission base its finding of compliance with
21 Statewide Planning Goals on either (1) a copy of each land use permit stating that the petitioner
22 has received the jurisdiction's approval; (2) a copy of a letter from each local planning agency,
23 building department, or governing body stating that the proposed transmission line is permissible

¹⁴ *Proposed* OAR 860-025-0030(2)(q).

¹⁵ *Proposed* OAR 860-025-0030(3).

1 but does not require any permit; or (3) other written or oral land use information and documentation
2 equivalent to the documentation listed above.¹⁶ As a result, notwithstanding the flexibility in
3 section (2) of OAR 860-025-0030, the waiver rule appears to still require a petitioner to obtain all
4 land use approvals *before* filing.¹⁷

5 Again, a requirement to obtain all land use approvals before filing a petition for CPCN is
6 overly rigid and unnecessarily requires a petitioner to wait to file a petition until after completing
7 all other regulatory processes. The Commission partially addressed the Company's concerns about
8 necessary flexibility through the revisions to section (2) of OAR 860-025-0030 as discussed above.
9 To ensure that the flexibility added in that section is effectively executed through the other
10 proposed rules, Idaho Power proposes amending the waiver rule consistent with section (2) of
11 OAR 860-025-0030. AHD incorporated the waiver provision "to allow the review of a submitted
12 petition to continue, rather than rejecting it for being incomplete, in the event it was not possible
13 for the petitioner to include documentation demonstrating compliance with the Statewide Planning
14 Goals."¹⁸ However, as discussed above, the proposed waiver rule language appears to result in
15 the opposite result than was intended. To clarify that the waiver rule is not intended to subvert
16 OAR 860-025-0030(2)(q), Idaho Power proposes the following edits to the waiver rule:

17 (3) At the time of filing, if the petitioner cannot include documentation to support
18 a finding under OAR 860-025-0040(2) or (4), the petitioner must submit a request
19 for a waiver concurrent with the petition. The petitioner will provide notice that the
20 petition includes a request for waiver at the time of filing. The waiver request must
21 include:

22 . . .

¹⁶ *Proposed* OAR 860-025-0040(2)(a)-(c). A petitioner may also demonstrate compliance with the Statewide Planning Goals by obtaining a site certificate from the Energy Facility Siting Council, but under the March 2022 Proposed Rules the Commission will not take final action on the petition until the petitioner obtains the site certificate. *Proposed* OAR 860-025-0040(4).

¹⁷ *Proposed* OAR 860-025-0040(4).

¹⁸ Docket AR 626, AHD Report at 4 (Jan. 31, 2022).

(b) An explanation that clearly and comprehensively explains the need for the waiver, including a narrative of why the required documentation can has not been obtained, ~~along with any reliable evidence to support and verify the petitioner's claim that such documentation cannot be obtained;~~

...

(g) Nothing in this section (3) is intended to require that the petitioner obtain all land use approvals or permits required for construction of the transmission line in order to satisfy the section (2) petition content requirements. As provided in subsection (2)(q), if a petitioner has not obtained all land use approvals or permits at the time of filing, the petitioner may provide an explanation as to why petitioner did not obtain any pending or outstanding approval or permits.

2. The Commission Should Provide Clear Flexibility Allowing It to Issue a CPCN Prior to a Petitioner Obtaining All Land Use Approvals or Permits.

For the reasons discussed throughout this proceeding and again above, the Commission should provide flexibility in the rules to allow it to issue a CPCN prior to the petitioner obtaining all land use approvals or permits. Today, an expanded transmission network is more important than ever, as it is essential to the integration of renewable energy which will allow the State, the region, and the country to move away from fossil fuels toward a cleaner energy future. However, limiting the Commission's ability to issue a CPCN while the petitioner simultaneously pursues land use approvals or permits threatens the timely development of much needed transmission projects. For example, proposed OAR 860-025-0040(4) states that, for projects subject to EFSC jurisdiction, the Commission will not issue a CPCN until EFSC issues the site certificate.¹⁹ However, to avoid unnecessary delay and allow transmission projects to be developed in Oregon, the Commission should make it clear in the rules that the Commission may issue a CPCN despite pending land use approval or permit processes. In fact, the existing regulatory framework provides that petitioners can demonstrate that the applicable land use requirements either have been met *or*

¹⁹ See Proposed OAR 860-025-0040(4) ("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 requirements of OAR 860-025-0040(1), (2), and (3) shall not apply.").

1 *can be met* for the proposed transmission line.²⁰ Specifically, in Docket PCN 1, the Commission
2 considered a case in which a petitioner demonstrated its compliance with land use regulations by
3 showing that the transmission line project could be approved if the petitioner follows the proper
4 procedures²¹—and concluded that the petitioner’s showing was sufficient and granted the
5 petition.²² The Commission should make it clear in the new rules that it is retaining this
6 flexibility.²³

7 **C. The Alternatives Analysis Still Lacks Clear Limitations.**

8 Throughout this rulemaking process, Idaho Power has raised concerns that the proposed
9 rules do not provide adequate clarity regarding the extent of the required alternatives analysis. As
10 provided in both ORS 758.015 and the *current* OAR 860-025-0030, a petitioner for a CPCN must
11 consider alternative routes for a proposed transmission line.²⁴ The Commission has made clear
12 that it intends to expand the required alternatives analysis to also include analysis of *alternatives*
13 *to* developing a transmission line.²⁵ *Proposed* OAR 860-025-0030(2)(o) in the March 2022
14 Proposed Rules requires a petitioner to include:

15 (o) An evaluation of available alternatives to construction of the transmission line,
16 including but not limited to conservation measures, non-wires alternatives, and
17 construction of one or more lower-voltage single or multi-circuit lines. The
18 petitioner may make reference to relevant sections of its most recent integrated

²⁰ *In the Matter of Umatilla Electric Cooperative, Petition for Certification of Public Convenience and Necessity*, Docket PCN 1, Order No. 17-111 at 2 (Mar. 21, 2017); *In the Matter of Tillamook People’s Utility District, Petition for Certificate of Public Convenience and Necessity*, Docket PNC 2, Order No. 19-293 at 5 (Sept. 10, 2019).

²¹ Order No. 17-111 at 3.

²² *Id.* at 7

²³ While the historic Commission precedent on this issue is sparse, there is an example in a prior case in which petitioners filed for the CPCN relatively early in the planning process before securing the right of way, making final routing determinations, and obtaining other mandatory land use approvals. *See In the Matter of the Application of Pac. Power & Light Co. for a Certificate of Public Convenience and Necessity for the Midpoint-Medford 500 kV Transmission Line*, Docket UF 3182, Order No. 78-375 at 1–2 (June 1, 1978) (Commission granted petition for CPCN before the utility finalized the route and before the Bureau of Land Management completed its Environmental Impact Statement for the portions of the proposed line that would cross federal lands).

²⁴ ORS 758.015(1) (a petition shall include “the availability of alternate routes”); OAR 860-025-0030(1)(c)(B) (petitions shall contain a map or maps showing, among other things, “[a]vailable alternate routes”).

²⁵ *Proposed* OAR 860-025-0030(2)(o).

1 resource plan (IRP) filed under OAR 860-027-0400, or a planning document
2 substantially equivalent to an IRP.

3 In prior comments during the informal stage of the rulemaking, Idaho Power stated its concern that
4 the proposed rules did not provide sufficient clarity regarding the alternatives that a petitioner must
5 analyze in its petition.²⁶ Specifically, because prior drafts included a non-exhaustive list of
6 examples, the rule would seemingly require utilities to consider an endless combination of
7 alternatives, which would be burdensome not only to the utility but to the Commission and Staff
8 as well.²⁷ The March 2022 Proposed Rules still include the non-exhaustive list of potential
9 alternatives, and Idaho Power continues to believe that the rules must include some limitations to
10 guide petitioners' analysis of alternatives. For example, in an earlier round of informal comments,
11 Idaho Power proposed that the rules should be revised to require a petitioner to consider
12 "commercially reasonable" alternatives.²⁸ The March 2022 Proposed Rules incorporated a similar
13 "commercially reasonable" limitation into *proposed* OAR 860-025-0035(1)(c), requiring a
14 petitioner to prove that a transmission line is feasible by showing that it "will be effectively and
15 efficiently constructed in a commercially reasonable manner." For the same reasons stated in the
16 Company's prior comments, Idaho Power believes that that limitation should be incorporated into
17 the required alternatives analysis.

18 Moreover, although Idaho Power supports the proposal to allow a petitioner to offer
19 relevant portions of its IRP for the alternatives analysis, Idaho Power continues to believe that the
20 robust alternatives analysis in the IRP should be sufficient to satisfy the requirement that a
21 petitioner assess alternatives to construction of the transmission line.²⁹ In other words, if the

²⁶ Idaho Power's Informal Comments on May 5, 2021 Draft Proposed Rules at 15.

²⁷ *Id.*

²⁸ *Id.*

²⁹ At the workshop on July 15, 2021, several utility representatives indicated that transmission lines are not often assessed in an IRP. Although this is true, Idaho Power continues to support this provision in the rules because it will ensure consistency in cases where a proposed transmission line is reviewed in an IRP.

Commission has acknowledged the proposed transmission line in an IRP, the range of alternatives to the transmission line analyzed in the IRP should be deemed adequate and no further alternatives analysis should be required in the petition for CPCN. The March 2022 Proposed Rules state that a petitioner may reference the alternatives analysis in the IRP process, but does not clarify whether further alternatives analysis will be necessary.

For these reasons, Idaho Power proposes adding appropriate limiting language providing that a petitioner must analyze in its petition only commercially reasonable alternatives to construction of the transmission line and also clarifying that an acknowledged IRP is sufficient for purposes of considering alternatives in a petition for CPCN. Idaho Power recommends the following changes to *proposed* OAR 860-025-0030(2)(o):

(o) An evaluation of available commercially reasonable alternatives to construction of the transmission line, including but not limited to conservation measures, non-wires alternatives, and construction of one or more lower-voltage single or multi-circuit lines. The petitioner may make reference to relevant sections of its most recent integrated resource plan (IRP) filed under OAR 860-027-0400, or a planning document substantially equivalent to an IRP, and if the Commission has acknowledged the proposed transmission line in an IRP proceeding, no further analysis of alternatives to construction of the transmission line will be required.

D. The Proposed Rules Continue to Require a Cost Comparison of Routes That May Not Be Available in Many Cases.

Staff's prior drafts of the proposed rules would have required a petitioner to include data regarding the costs and financial feasibility of "possible alternative routes" comparable to the data supporting the petitioner's proposed route.³⁰ Idaho Power commented that, as a practical matter, providing a comparable level of cost data for possible alternative routes that a petitioner studied may not be possible in all cases, because rejected alternative routes or route segments may not have been studied at the same level of detail, and if a route is rejected earlier in the process for

³⁰ Former *proposed* OAR 860-025-0030(2)(h).

1 non-cost related reasons (for example, permitting difficulties in connection with historic and
2 archaeological resources discovered along the proposed route), there would likely be limited cost
3 data available for that route.³¹ To address this concern, Idaho Power proposed revising the rule to
4 require a petitioner to provide comparable cost and financial feasibility for alternative routes “if
5 such data is available.”³²

6 The March 2022 Proposed Rules require comparable cost data for all routes “analyzed by
7 petitioner,”³³ and Idaho Power continues to suggest that this rule be revised to require a petitioner
8 to provide only available data. Additionally, Idaho Power proposes adding language indicating
9 that a petitioner may submit data for route segments, instead of wholly distinct routes, when
10 appropriate. Idaho Power proposes the following revisions to *proposed* OAR 860-025-0030(2)(g):

11 (g) A statement and explanation with supporting data comparable to that described
12 in subsections (d) and (e) of this section for possible alternative routes or route
13 segments analyzed by petitioner, if such data is available.

14 IV. CONCLUSION

15 Idaho Power appreciates the Commission’s willingness to work with stakeholders and
16 adopt several of the changes that stakeholders have proposed throughout this rulemaking docket.
17 However, the Company is concerned that there is still not sufficient flexibility regarding land use
18 approvals and the impact delaying the CPCN may have on project timing, that the alternatives
19 analysis lacks limiting language, and that the March 2022 Proposed Rules require a petitioner to
20 provide comparable cost data for all analyzed alternatives when such data may not be available for

³¹ Idaho Power’s Informal Comments on May 5, 2021 Draft Proposed Rules at 21.

³² *Id.*

³³ *Proposed* OAR 860-025-0030(2)(g).

- 1 all potential routes. Idaho Power looks forward to continuing to work collaboratively with the
- 2 Commission and stakeholders to address these concerns.

DATED this 19th day of April, 2022.

Respectfully submitted,

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