

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 5

In the Matter of

IDAHO POWER COMPANY

Petition for Certificate of Public
Convenience and Necessity.

ORDER

DISPOSITION: RULINGS AFFIRMED

In this order, we affirm two rulings made by Administrative Law Judge John Mellgren in this proceeding. First, we affirm the January 13, 2023, ruling denying a motion from STOP B2H Coalition regarding the notice provided to persons with interests in land impacted by the proposed route of the Boardman to Hemingway transmission line project. Second, we affirm the February 7, 2023, ruling granting a petition to intervene with conditions and denying a motion for an extension.

I. BACKGROUND**A. The January 13 Ruling**

On December 29, 2022, STOP B2H filed a motion “for proper notification of all persons who have interests, known or of record, in the land to be physically impacted or traversed by the proposed route OAR 860-025-0030(2)(f).”¹

STOP B2H asserted Idaho Power Company violated our Certificate of Public Convenience and Necessity (CPCN) rules regarding notice to landowners potentially impacted by a transmission line’s proposed route. STOP B2H contends Idaho Power “sent two letters to landowners with procedural schedules that were never accurate or correct” to comply with our rules.² STOP B2H states that because these letters were sent before the prehearing conference in this matter, and before a procedural schedule was set, they are deficient and do not comply with OAR 860-025-0030(2)(f).³ STOP B2H asked that the Commission require Idaho Power to send a new notice letter “to all persons who have interests, known or of record, in the land to be physically impacted or traversed by

¹ STOP B2H Coalition Motion (Dec. 29, 2022).

² *Id.* at 2.

³ *Id.* at 4.

the proposed route” and that Idaho Power pay a fine.⁴ Further, STOP B2H asked that this docket be suspended for at least 30 days.⁵

Idaho Power opposed the motion and asserted it complied with OAR 860-025-0030(2)(f) “by providing descriptions of impacted parcels in the Petition and Certificate of Service demonstrating that the [c]ompany mailed notice of the Petition to all potentially affected landowners.”⁶ Staff asked that the motion be denied and stated: “Idaho Power met the notice requirement of [the rule] and was not required to serve notice of its proposed schedule.”⁷

On January 13, 2023, ALJ Mellgren issued a ruling denying the motion. ALJ Mellgren concluded Idaho Power’s filing complied with OAR 860-025-0030(2)(f) and denied the motion. On January 17, 2023, Sam Meyers filed a document seeking to “appeal the motion of denial leveled against Stop B2H.”⁸ On January 27, 2023, ALJ Mellgren issued a memorandum stating he was construing Mr. Myers’ filing as a request to certify his ruling for the Commission’s consideration under OAR 860-001-0110. ALJ Mellgren granted the certification request.⁹

B. The February 7 Ruling

On January 31, 2023, Wendy King filed a petition to intervene in this matter. That same day, Ms. King filed public comments to Idaho Power’s petition for a CPCN. Although her petition to intervene had not yet been granted, Ms. King filed opening testimony on February 1, 2023, the deadline for intervenor opening testimony in this matter.

On February 3, 2023, Ms. King filed an extension request to the February 1, 2023, deadline for intervenor opening testimony in this matter. Ms. King asserted the extension was necessary because she rushed to file opening testimony by the February 1 deadline, and that if the extension request were granted, she would amend her testimony “to include exhibits and a more complete message.”¹⁰

Idaho Power opposed the extension request and noted it did not object to her participation as an intervenor in this matter.¹¹ Idaho Power explained it opposed the request because it believed the request would delay the proceedings and that it believed Ms. King did not provide good cause justifying the request.¹²

ALJ Mellgren granted Ms. King’s petition to intervene with conditions and denied the extension request on February 7, 2023. Because Ms. King sought to intervene in this

⁴ *Id.* at 4-5.

⁵ *Id.* at 5.

⁶ Idaho Power Company Response to Motion at 4 (Jan. 6, 2023).

⁷ Staff Response to Motion at 2 (Jan. 6, 2023).

⁸ Sam Myers Request for Certification at 2 (Jan. 17, 2023).

⁹ ALJ Ruling re Certification (Mar. 14, 2023)

¹⁰ Wendy King Extension Request (Feb. 3, 2023).

¹¹ Idaho Power Response at 1 (Feb. 6, 2023).

¹² *Id.* at 3-4.

matter more than six weeks after the requested deadline for petitions to intervene, ALJ Mellgren concluded granting the petition to intervene with the condition that she comply with the existing procedural schedule was appropriate and therefore denied the extension request to avoid delaying the proceedings.¹³ On February 7, 2023, Ms. King filed an appeal of ALJ Mellgren’s ruling. ALJ Mellgren granted the certification request.¹⁴

II. DISCUSSION

A party may request certification of an ALJ’s written or oral ruling for the Commission’s consideration. If a party requests certification, then the ALJ must certify the ruling to the Commission if: (a) the ruling may result in substantial detriment to the public interest or undue prejudice to a party; (b) the ruling denies or terminates a person’s participation; or (c) good cause exists for certification.¹⁵ In this case, the ALJ certified the January 13 and February 7, 2023, rulings for good cause.¹⁶

An ALJ is delegated the authority under our rules to manage contested cases and, where assigned, non-contested case proceedings to facilitate efficient use of Commission resources and lead to the presentation of issues to the Commission with records that can support Commission consideration and decision.¹⁷ In exercising such authority, the ALJ must do so in a manner that is consistent with rule and law, including due process protections.

A. The January 13 Ruling

Proper public notice must occur for all Commission proceedings. This responsibility is of great importance, as we are committed to robust public participation.

In September 2022, we promulgated new rules addressing how we would review petitions for a CPCN.¹⁸ An important component of those rules was to ensure that individuals with an interest in land potentially affected by the proposed route of a transmission line project received notice of the CPCN proceedings so that those individuals could decide whether to participate in the relevant proceedings. During the formal rulemaking process, we received extensive public comment regarding the proposed CPCN rules, including comments on the notice provisions of the rules.¹⁹ We

¹³ ALJ Ruling re Extension at 1-2 (Feb. 7, 2023).

¹⁴ ALJ Ruling re Certification.

¹⁵ OAR 860-001-0110.

¹⁶ ALJ Ruling re Certification.

¹⁷ See OAR 860-001-0090 and ORS 756.055 (“Except as provided in subsection (2) of this section, the Public Utility Commission may designate by order or rule any commissioner or any named employee or category of employees who shall have authority to exercise any of the duties and powers imposed upon the commission by law. The official act of any commissioner or employee so exercising any such duties or powers is considered to be an official act of the commission.”).

¹⁸ See OAR 860-025-0030 – OAR 860-025-0040; *In the Matter of Rulemaking Regarding Certificate of Public Convenience and Necessity Rule*, Docket No. AR 626, Order No. 22-351 (Sept. 26, 2022).

¹⁹ *Id.*

made amendments to the notice rules in response to those comments.²⁰ These rules require that a petition for CPCN include:

the names and addresses of all persons who have interests, known or of record, in the land to be physically impacted or traversed by the proposed route from whom petitioners has not yet acquired the interest, rights of way or option therefore. Petitioner must include with the petition certification verifying that notice of the petition has been mailed to said persons[.]²¹

Here, ALJ Mellgren reviewed Idaho Power's petition for CPCN in light of our new rules and concluded the company had complied with OAR 860-025-0030(2)(f). We agree with ALJ Mellgren's findings and conclusion. Idaho Power met our notice requirements and had no continuing obligation to keep potentially affected individuals notified of updates to the procedural schedule. Through the initial notice of Idaho Power's petition for CPCN, such individuals had notice that a proceeding involving a proposed transmission line potentially impacting their property interests had been initiated. Idaho Power included its proposed procedural schedule in its notices, which gave potentially affected individuals more information than the minimum notice required. Although an alternative schedule was ultimately adopted, we do not agree that this impacted the sufficiency of Idaho Power's notice.

We note Mr. Meyers' concerns about the difficulties of engaging in our processes, his desire to meet with Commissioners in person, and his concerns that some of his neighbors living near the transmission line's proposed route were not aware of our proceedings. We do not minimize the concerns about the difficulties in participating in our proceedings, especially more formal ones like this docket. We attempt to make our processes accessible, and to afford individuals trying to participate the opportunity to do so, showing leniency and openness where appropriate in order to receive their points of view. In this instance, we cannot, however, impose requirements on Idaho Power to notify individuals that are not required to be noticed under our rules, and we do not meet individually with parties to a contested case proceeding such as docket PCN 5. We appreciate Mr. Meyers' intervention and look forward to continued participation by all parties in this case.

Accordingly, we affirm ALJ Mellgren's January 13, 2023, ruling denying STOP B2H's motion.

B. The February 7 Ruling

Through our rules, we have delegated authority to the presiding ALJ to engage in a variety of activities and make certain decisions in matters pending before the

²⁰ *Id.*

²¹ OAR 860-025-0030(2)(f).

Commission.²² One area of delegated authority relates to scheduling in contested cases and deciding procedural matters.²³

Here, ALJ Mellgren considered a petition to intervene filed at a late stage of the proceedings and a subsequent request from that potential party to extend a deadline that had already passed.²⁴ ALJ Mellgren concluded Ms. King had sufficient interest in the proceedings but expressed concern that her participation may delay the proceedings.²⁵ Our rules allow petitions to intervene to be granted with appropriate conditions when warranted.²⁶ As such, ALJ Mellgren granted the petition to intervene with the condition that Ms. King abide by the procedural schedule to which all other parties are bound.²⁷ In the same ruling and, in light of his decision granting the petition to intervene with conditions, ALJ Mellgren denied Ms. King's extension request on the grounds that extending the schedule would unreasonably delay the proceedings.²⁸

We agree with ALJ Mellgren's reasoning. Ms. King sought to intervene in this matter at a late stage. Although our rules allow parties to seek to intervene in our matters at any point before "the final taking of evidence," late arriving requests are subject to reasonable conditions to ensure proceedings continue towards resolution in an expeditious manner.²⁹ We note that Ms. King was able to file testimony by the February 1, 2023, deadline for intervenor testimony,³⁰ and that Ms. King will have an opportunity to participate in future rounds of testimony and the other events in this case. Although we understand that her intent and goal was to provide more robust testimony than she was able to provide, we are appreciative of her efforts that allowed the filing of testimony within the deadlines and look forward to the remaining steps in the case where all intervenors can continue to participate. We recognize that it can be difficult and time-consuming to participate in our processes, and we value the contributions that intervenors can and have made in this proceeding, understanding that we must strike a balance in moving the case forward toward resolution.

In balancing the interests of robust public participation with the interest in finality regarding Idaho Power's petition for a CPCN, we affirm ALJ Mellgren's ruling granting the petition to intervene with conditions and denying the motion for an extension.

²² OAR 860-001-0090.

²³ OAR 860-001-0090(a), (g), (m).

²⁴ See Wendy King Petition to Intervene (Jan. 31, 2023); Wendy King Motion for an Extension to File Opening Testimony (Feb. 3, 2023).

²⁵ ALJ Ruling re Extension at 1.

²⁶ OAR 860-001-0300(6).

²⁷ ALJ Ruling re Extension at 1-2.

²⁸ *Id.* at 2.

²⁹ ORS 756.525(1), (2); OAR 860-001-0300(6).

³⁰ We also note that the February 1, 2023, intervenor opening testimony deadline was already an extended deadline. See ALJ Ruling re Extending Deadlines at 1-2 (Jan. 27, 2023).

III. ORDER

IT IS ORDERED that the January 13 and February 7, 2023, ALJ rulings are affirmed.

Made, entered, and effective Mar 20 2023.

Megan W. Decker

Megan W. Decker
Chair

Letha Tawney

Letha Tawney
Commissioner

Mark R. Thompson

Mark R. Thompson
Commissioner

