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January 6, 2022

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Filing Center
P.O. Box 1088
201 High Street S.E., Suite 100
Salem, OR 97308-1088

Re: Docket No. PCN-5 – In the Matter of IDAHO POWER COMPANY, Petition for Certificate of Public Convenience and Necessity.

Attention Filing Center:

In accordance with Administrative Law Judge (“ALJ”) John Mellgren’s December 19, 2022 Memorandum issued in the above-referenced docket, Idaho Power Company (“Idaho Power”) hereby provides its comments regarding the impact of the pending appeals of the Energy Facility Siting Council’s (“EFSC”) Site Certificate for the Boardman to Hemingway Transmission Line (“B2H”) on the schedule for Docket PCN 5 and the Public Utility Commission of Oregon’s (“Commission”) consideration of Idaho Power’s Petition for Certificate of Public Convenience and Necessity (“Petition”). Idaho Power urges the Commission to conclude that the appeals will not impact the schedule in this case and to continue processing the Petition.

Need for a Final Order by June 30, 2023

The B2H project is intended, in part, to serve the 2026 resource deficit identified in Idaho Power’s 2021 Integrated Resource Plan. In order to complete the B2H project by 2026, construction must begin in Summer 2023. And to begin construction in Summer 2023, the Company will need access to the affected parcels. Idaho Power anticipates it will need to initiate condemnation proceedings to gain access to certain parcels along the B2H project but cannot initiate those condemnation proceedings without first obtaining a certificate of public convenience and necessity (“CPCN”).

At the same time, Idaho Power did not initiate its CPCN proceeding any sooner than this because over the course of the recent AR 626 rulemaking proceeding, Commission Staff (“Staff”) made clear to Idaho Power that Staff had a strong preference that Idaho Power wait to file its petition for a CPCN until after the site certificate for B2H was issued and asked that Idaho Power wait to file its Petition until after the new CPCN rules were adopted by the Commission—both of which occurred in late September 2022. Idaho Power in good faith waited to initiate this proceeding so that it could file under the new CPCN rules. Additionally, the contested case regarding the EFSC Site Certificate was a long process—totaling approximately 27 months—which has left less time available before construction *must* commence. Thus, due to the need to file the Petition after receiving approval of

the Site Certificate and due to the need to start construction in Summer 2023, Idaho Power submitted the Petition on September 30, 2022 in order to obtain a final order in time to allow for the project to be placed in service by Summer 2026.

In this proceeding, Idaho Power initially proposed a schedule with a target final order date of May 5, 2023. After consulting with parties to PCN 5 in advance of the October 11, 2022 Prehearing Conference, Idaho Power agreed to a schedule modification adjusting the target final order date to June 16, 2023. Thereafter, due to further schedule modifications, required as a result of the Commission's availability for a hearing coinciding with dates on which Idaho Power's counsel was unavailable, the target date for the final order had to be moved out another two weeks, to June 30, 2023. At this point, the target final order date simply cannot slip any further. And if the Commission waits until the outstanding appeal has been resolved by the Supreme Court of Oregon before continuing to process this case, Idaho Power likely will not be able to meet the B2H project's 2026 in-service date.

Overview of Appeal of EFSC Final Order

On September 27, 2022, EFSC voted unanimously (6-0) to approve the Site Certificate for the B2H project. In accordance with the statutory time limitation for appeal of the final order, three parties timely filed appeals to the Supreme Court of Oregon in connection with EFSC's Final Order. Those parties include the STOP B2H Coalition ("STOP B2H"), Michael McAllister, and Irene Gilbert (collectively, "Appellants"). The schedule for the appeals is as follows:

Event	Date
Petitions for Review Filed	December 6, 2022
Petitioners File Opening Briefs	December 20, 2022
Respondents File Answering Briefs	January 3, 2023
Oral Argument	January 18, 2023
Decision	On or before June 6, 2023

Consistent with the ALJ's December 19, 2022 Memorandum, Idaho Power has filed copies of all briefs and scheduling memoranda filed with the Supreme Court of Oregon in this docket. As described in the briefing, the issues raised on appeal by STOP B2H include: (1) EFSC's decision to grant limited party status to interested parties rather than full party status; (2) whether EFSC acted within its authority to grant a variance and exception as part of determining compliance with the Oregon Department of Environmental Quality's Noise Program; (3) whether EFSC permissibly modified the analysis area for the noise analysis; and (4) whether Idaho Power was required to consider subjective constituent input in its visual impacts assessment. The single issue raised by Mr. McAllister on appeal is whether EFSC was required under ORS 469.370(13) to evaluate a route that was included in the federal Environmental Impact Statement (specifically, the Glass Hill Alternative) but was not included in Idaho Power's Application for Site Certificate. The issues raised by Ms. Gilbert on appeal include concerns about EFSC's review of historic, cultural, and archaeological resources; and modifications to one of EFSC's mandatory conditions addressing site control for beginning construction. Idaho Power filed Answering Briefs on January 3, 2023, and Oral Argument has not yet occurred, but is scheduled for January 18, 2023. Pursuant to ORS 469.403(6), the Oregon Supreme Court must render a decision within six months of the petitions for review, or in this case, on or before June 6, 2023.

In accordance with ORS 469.403(4), the filing of a petition for judicial review does not stay the Council's Final Order—and no party has requested stay—and thus, the EFSC Final Order and EFSC

Site Certificate remain in effect pending judicial review. Accordingly, Idaho Power may begin construction in areas where it has site control and where all pre-construction conditions have been met, notwithstanding the appeal.

Implications of Appeal on PCN 5

The Appellants seek remand of the EFSC Final Order on the issues raised in their Opening Briefs. However, the challenges raised in the appeals have limited implications for the Commission's review of the Petition. The issues raised on appeal do not bear on EFSC's land use-related findings, which in accordance with OAR 860-025-0040(7), the Commission relies upon for evaluating compliance with Statewide Planning Goals. Additionally, the appeals do not implicate the Commission's consideration of the need, safety, or justification for the B2H project. The only evaluation criterion that is implicated is the practicability of the project. Given the limited overlap in scope between the Commission's review of the CPCN and the issues raised on appeal, Idaho Power urges that the Commission should continue its review of the Petition in Docket PCN 5.

Moreover, Idaho Power is confident in the merits of its positions in its Answering Briefs and that the Court will affirm the EFSC Final Order. That said, Idaho Power recognizes that the Commission may perceive some risk that the EFSC Final Order would be remanded to address Appellants' concerns. In that event—which Idaho Power perceives as unlikely—Idaho Power would then need to return to EFSC to resolve any deficiencies in the Final Order, and Idaho Power would seek an expedited process to do so. Even in that case, Idaho Power would still need a CPCN, so while there may be a risk of the review of the Petition becoming iterative as it relates to the consideration of practicability, the effort expended in review of the Petition in Docket PCN 5 would not be in vain.

Conclusion

Notably, in the AR 626 rulemaking proceeding, the Commission declined to adopt a bright line rule that would stay the review of a case pending an appeal, instead concluding that such circumstances would be evaluated on a case-by-case basis.¹ Considering the urgency of beginning construction of B2H in Summer 2023 and the fact that the appeals do not implicate the Commission's consideration of the need, safety, justification, or land-use aspects of the project, the circumstances in this case weigh in favor of the Commission proceeding with its review of the Petition in this docket. Moreover, the EFSC Final Order and EFSC Site Certificate have not been stayed, and remain in effect even with the appeals pending. Idaho Power respectfully urges the Commission to find that the schedule constraints in this case justify proceeding with review of the Petition while an appeal of the Site Certificate is pending, and further, to the extent there may be any risk of administrative inefficiency associated with review of the Petition before the appeal of the EFSC Final Order is resolved, it is a calculated risk that the Commission will have to make.

¹ *In re Certificate of Public Convenience and Necessity Update*, Docket No. AR 626, Order No. 22-351 at 5 (Sept. 26, 2022) (“We do not address, in the rules we adopt, whether we will issue our orders while an EFSC site certificate is being appealed; the rules neither require nor prohibit us from doing so, and we will consider this on a case-by-case basis, likely with reference to the nature and scope of the issues under appeal.”).

Respectfully submitted,



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DOCKET PCN 5 - CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2023 Idaho Power Company's Comments re Impact of EFSC Appeals on Schedule was served by USPS First Class Mail to said person(s) at his or her last-known address(es) as indicated below:

By: USPS First Class Mail:

John C. Williams
PO Box 1384
La Grande, OR 97850

DATED: January 6, 2023

/s/ Suzanne Prinsen

Suzanne Prinsen
Legal Assistant