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January 6, 2023

**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’s Petition for Certificate of Public Convenience and Necessity.**

Attention Filing Center:

Attached for filing in the above-referenced docket is Idaho Power Company’s Response to STOP B2H’s Motion for Proper Notification.

Please contact this office with any questions.

Thank you,

Suzanne Prinsen  
Legal Assistant

Attachments

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**PCN 5**

In the Matter of:

IDAHO POWER COMPANY’S

Petition for Certificate of Public  
Convenience and Necessity.

**IDAHO POWER COMPANY’S RESPONSE  
TO STOP B2H’S MOTION FOR PROPER  
NOTIFICATION**

1           On December 29, 2022, the STOP B2H Coalition (“STOP B2H”) filed a Motion for Proper  
2 Notification of All Persons Who Have Interests, Known or of Record, in the Land to be Physically  
3 Impacted or Traversed by the Proposed Route OAR 860-025-0030(2)(f) (“Motion”).<sup>1</sup> In its Motion,  
4 STOP B2H asserts without support that Idaho Power Company (“Idaho Power” or “Company”)  
5 failed to comply with the requirements for the contents of an application for a petition for a  
6 Certificate of Public Convenience and Necessity (“CPCN”) under OAR 860-025-0030(2)(f) and  
7 confused—or even intentionally misled—landowners by sending out proposed procedural  
8 schedules for this docket on September 1, 2022<sup>2</sup> and September 30, 2022.<sup>3</sup> STOP B2H therefore  
9 requests as relief that: (1) Idaho Power provide another letter to landowners explaining the  
10 Company’s previously proposed procedural schedules, informing interested persons how they  
11 can participate in the proceeding for the Petition, and providing STOP B2H’s contact information  
12 and website; (2) Idaho Power allow landowner intervenors in this docket editorial input into the  
13 letter; (3) Idaho Power pay a fine for “intentionally misleading” landowners and that such fine be  
14 payable to a special fund administered by STOP B2H or another independent entity; and (4) that

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<sup>1</sup> *In re Idaho Power Certification of Public Convenience and Necessity*, Docket PCN 5, STOP B2H Coalition 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) (Dec. 29, 2022) [hereinafter, “STOP B2H Motion”].

<sup>2</sup> Docket PCN 5, Idaho Power Company’s Notice of Intent to File a Petition for Certificate of Public Convenience and Necessity at 3 (Sept. 1, 2022).

<sup>3</sup> Docket PCN 5, Idaho Power’s Notice of Petition for Certificate of Public Convenience and Necessity at 2 (Sept. 30, 2022).

1 this docket be suspended for 30 days.<sup>4</sup> As discussed further herein, STOP B2H fails to provide  
2 any evidence that Idaho Power failed to comply with OAR 860 025-0030(2)(f), much less the  
3 suggestion that Idaho Power may have acted in bad faith. Therefore, there is no support for  
4 STOP B2H's requested relief and STOP B2H's Motion should be denied.

5 **I. BACKGROUND**

6 On September 1, 2022, Idaho Power submitted to the Public Utility Commission of Oregon  
7 ("Commission") a Notice of Intent to File the Petition and a courtesy copy was also mailed to all  
8 landowners for which condemnation may be necessary. In addition, as part of that notice, Idaho  
9 Power included a proposed schedule for processing the Petition. On September 30, 2022,  
10 consistent with the Company's Notice of Intent, Idaho Power submitted the Petition to the  
11 Commission.<sup>5</sup> On that same day, pursuant to the requirements of OAR 860-025-0030(2)(f), Idaho  
12 Power also mailed a notice to all landowners for which condemnation may be necessary informing  
13 them of Idaho Power's submittal of the Petition. In the September 30, 2022 notice, Idaho Power  
14 further provided as a courtesy a revised proposed procedural schedule, ***noted that the proposed***  
15 ***procedural schedule was subject to Commission approval***, and informed landowners that the  
16 Commission had scheduled a Prehearing Conference regarding the Petition for October 11, 2022.  
17 The Prehearing Conference was held on October 11, 2022, and Administrative Law Judge ("ALJ")  
18 John Mellgren adopted an initial procedural schedule on October 17, 2022 after "considering the  
19 proposed schedule from Idaho Power and Staff as well as comments from the Parties and other  
20 individuals."<sup>6</sup> Due to timing constraints for one or more parties, ALJ Mellgren adopted a revised  
21 procedural schedule on October 28, 2022.<sup>7</sup>

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<sup>4</sup> STOP B2H Motion at 4-5.  
<sup>5</sup> Docket PCN 5, Idaho Power Company's Petition for Certificate of Public Convenience and Necessity (Sept. 30, 2022).  
<sup>6</sup> Docket PCN 5, Prehearing Conference Memorandum at 1-2 (Oct. 17, 2022).  
<sup>7</sup> Docket PCN 5, Memorandum (Oct. 28, 2022).

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## II. DISCUSSION

STOP B2H's requested relief should be denied for several reasons. First, OAR 860-025-0030(2)(f) does not require that the petitioner notify interested persons of its proposed schedule for the petition review proceeding or provide ongoing notifications as requested by STOP B2H, and Idaho Power provided the September 1, 2022 and September 30, 2022 proposed schedules as a courtesy. Second, Idaho Power is neither required—nor would it be appropriate for the Company—to provide advice (especially legal advice) on how interested persons can participate in the Petition process. Third, as Idaho Power has complied with OAR 860-025-0030(2)(f), a fine would be inappropriate—especially with monies being payable to a special fund administered by STOP B2H. Finally, STOP B2H has not provided any support for its claim that the proceeding should be delayed. Because construction for B2H is scheduled to begin in Summer 2023 in order to meet an identified resource deficit in 2026, further delay in the procedural schedule cannot occur without risking significant reliability issues in the future or requiring Idaho Power to procure alternative resources.

**A. Idaho Power Has Complied with OAR 860-025-0030(2)(f), Which Does Not Require Ongoing Notifications to Interested Persons.**

Contrary to STOP B2H's unsupported assertions, Idaho Power complied with OAR 860-025-0030(2)(f). That rule does not require that the petitioner notify interested persons of its proposed schedule for the petition review process or provide ongoing notifications as requested by STOP B2H, including providing interested persons contact information for other intervenors. Rather, OAR 860-025-0030(2)(f) provides that the petition must include:

A description of the parcels of land that petitioner determines it should obtain an interest in and for which condemnation is assumed to be necessary at the time of the petition, a full explanation of the intended use, and the specific necessity and convenience of each. The description must be accompanied by 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 petitioner has not yet acquired the interest, rights of way or option therefor. *Petitioner must include with the petition certification verifying that notice of the petition has been mailed to said persons[.]*

1 (Emphasis added). Idaho Power complied with OAR 860-025-0030(2)(f) by providing descriptions  
2 of impacted parcels in the Petition and a Certificate of Service demonstrating that the Company  
3 mailed notice of the Petition to all potentially affected landowners.<sup>8</sup>

4 While not required by OAR 860-025-0030(2)(f), Idaho Power went above and beyond the  
5 minimum requirements by providing interested landowners the Company’s proposed procedural  
6 schedules in the September 1, 2022 and September 30, 2022 notice filings as a courtesy, and by  
7 including links to the Commission’s website for more information. In these filings, Idaho Power  
8 **clearly** disclosed that the schedules were “proposed” by the Company and that the proposed  
9 schedules were “subject to Commission approval[.]”<sup>9</sup> Moreover, Idaho Power provided the  
10 proposed schedules in the notices so that landowners could be prepared to provide input on the  
11 Company’s proposed schedule prior to or at the Prehearing Conference. Accordingly, STOP  
12 B2H’s inflammatory allegation that Idaho Power intentionally misled parties is not only without  
13 merit, but clearly refuted by the language used in the notices filed in the record in this case.  
14 Moreover, while STOP B2H claims to be acting on behalf of landowners that have not yet opted  
15 to participate in the case, STOP B2H has not provided any evidence or testimony that in fact any  
16 landowners exist who wish to participate but have not done so because they were confused about  
17 the procedural schedule based on the contents of the notices sent out in September 2022. Finally,  
18 regardless of Idaho Power’s notices, the Commission also provided notice of public comment  
19 hearings in this docket to the service lists as well as various local newspapers in impacted areas.<sup>10</sup>

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<sup>8</sup> Docket PCN 5, Idaho Power Company’s Petition for Certificate of Public Convenience and Necessity at 25-26 & Attachment 10 (Sept. 30, 2022).

<sup>9</sup> See, e.g., Docket PCN 5, Idaho Power’s Notice of Petition for Certificate of Public Convenience and Necessity at 2.

<sup>10</sup> Docket PCN 5, Notice of In-Person Public Comment Hearing (Oct. 27, 2022) (Notice of Public Comment Hearing Notice Served to the service list and the electric list on 10/27/2022. Notice Issued in the following papers with the following run dates: Malheur Enterprise on 10/26/2022 and 11/2/2022 Argus Observer on 10/28/2022 and 11/4/2022 Eastern Oregonian on 11/1/2022 and 11/8/2022 Baker City Herald on 11/1/2022 and 11/8/2022 La Grande Observer on 11/1/2022 and 11/8/2022 Confederated Umatilla Journal on 11/3/2022); see also Notice of Virtual Public Comment Hearing (Nov. 8, 2022) (Served to the service list and the electric list on 11/8/2022 Notice Issued in the following papers with the

1 To the extent that landowners were interested in participating in the PCN 5 proceeding, they have  
2 been made aware of the proceeding and provided with information about how to participate, as  
3 well as contact information for the Commission. In short, there is no evidence that participation  
4 of potentially affected landowners was in any way curtailed. For these reasons, Idaho Power  
5 complied with OAR 860-025-0030(2)(f), and it would be inappropriate to compel Idaho Power to  
6 provide ongoing notifications, fine the Company, or delay the procedural schedule further.

7 **B. It is Neither Required Nor Appropriate for Idaho Power to Provide Advice to Other**  
8 **Parties on How to Participate in this Docket.**

9 STOP B2H requests as relief that Idaho Power provide another letter to potentially affected  
10 landowners explaining why the Company provided proposed procedural schedules in the  
11 September notices, informing interested persons how they can participate in the proceeding to  
12 review the Petition, and providing STOP B2H's contact information and website. As discussed  
13 above, Idaho Power is not required to provide ongoing notifications or advice on how to participate  
14 in the Petition process. Such relief is not only *not* required, but also would be inappropriate as  
15 any such instructions provided by Idaho Power could be viewed as providing legal advice to third-  
16 parties. Finally, Idaho Power has no obligation to provide interested persons the contact  
17 information of other intervenors in this docket. That information is publicly available on the service  
18 list for Docket PCN 5 if a landowner chooses to seek it out. For the above reasons, STOP B2H's  
19 requested relief should be denied.

20 **C. A Fine Against Idaho Power Would be Inappropriate.**

21 STOP B2H requests as relief that Idaho Power pay a fine for "intentionally misleading"  
22 landowners by publishing the proposed schedules, and that the fine should be payable to a special  
23 fund administered by STOP B2H or another independent entity to assist landowners in finding

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following run dates: Malheur Enterprise Run Info November 16th and November 30th Argus Observer  
November 20th and November 27th Eastern Oregonian November 22nd and 29th Baker City Herald  
November 22nd and 29th La Grande Observer November 22nd and 29th).

1 legal representation. STOP B2H mistakes Idaho Power’s efforts to provide additional information  
2 as a courtesy as “intentionally misleading,” and provides no basis to support its proposal for the  
3 Commission to fine Idaho Power.

4 Even more inappropriate is STOP B2H’s proposal that it or another independent entity  
5 should administer the funds from the fine with the purpose of covering landowners’ litigation costs.  
6 There is no basis in law or the Commission’s rules providing that Idaho Power may be fined in  
7 order to fund Stop B2H’s legal costs, and therefore, Stop B2H’s inflammatory and baseless  
8 proposal must be rejected.

9 **D. STOP B2H Provides No Basis For Its Requested 30-Day Delay, and the Commission**  
10 **Should Reject This Request.**

11 STOP B2H requests as relief that this docket be suspended for 30 days as STOP B2H  
12 asserts that time is needed for Idaho Power to draft the requested additional notification letter and  
13 incorporate edits from landowners.<sup>11</sup> First, as discussed above, an additional notification letter is  
14 neither required by the rules nor necessary. Moreover, while STOP B2H asserts that its  
15 comments are on behalf of other landowners, there was no single impacted landowner that filed  
16 any comments regarding notification by the deadline established by the ALJ. Instead, the only  
17 party to file any comments was STOP B2H—a party that has clearly had notice of this proceeding  
18 since August 30, 2022, when it filed its Petition to Intervene.

19 Second, as Idaho Power explains in comments filed today in response to the December  
20 19, 2022 Memorandum from ALJ Mellgren, there is no room for further delay in this schedule.  
21 The target date for the Commission decision has already been moved to June 30, 2023 from  
22 Idaho Power’s originally proposed May 5, 2023 date<sup>12</sup>—hitting very close to the Company’s

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<sup>11</sup> STOP B2H Motion at 5.

<sup>12</sup> Idaho Power had 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 result of the Commission’s availability for a

1 proposed timeline for beginning construction of the project. The B2H project is intended, in part,  
2 to serve the 2026 resource deficit identified in Idaho Power’s 2021 Integrated Resource Plan, and  
3 to meet the 2026 in-service date, construction must begin in summer 2023. At this point, even a  
4 30-day delay is significant and the target final order date simply cannot slip any further.

5 Finally, STOP B2H has publicly stated that its “[o]verall strategy is to DELAY as much as  
6 possible.”<sup>13</sup> This strategy—if allowed to succeed—could jeopardize the Company’s ability to meet  
7 its in-service date for B2H, and therefore, its ability to meet its load obligations with this much  
8 needed resource. Given these facts, and lack of support for STOP B2H’s claims, the Commission  
9 should reject STOP B2H’s request to delay this proceeding.

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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.

<sup>13</sup> See Docket PCN 5, *et al.*, Idaho Power’s Response to STOP B2H’s Request to Be Found Eligible for Intervenor Funding, Attachment 1 at 9 (Dec. 28, 2022).



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2                   **III. CONCLUSION**  
3                   For the foregoing reasons, Idaho Power respectfully requests that the Commission deny  
3                   STOP B2H's Motion.

Respectfully submitted this 6<sup>th</sup> day of January 2023.

**McDOWELL RACKNER GIBSON PC**



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Attorneys for Idaho Power Company

**DOCKET PCN 5 - CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2023 Idaho Power Company's Response to STOP B2H's Motion for Proper Notification 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*  
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Suzanne Prinsen  
Legal Assistant