PACIFIC POWER
A DIVISION OF PACIFICORP

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October 15, 2025

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398

Re: UM 2394—PacifiCorp's Response Comments

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its Response Comments.

If you have any questions about this filing, please contact Amira Thompson, State Regulatory Affairs Manager, at (503) 260-4420.

Sincerely,

Robert Meredith
Director, Regulation

Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2394

In the Matter of STOP B2H COALITION and IRENE GILBERT, Request to Rescind or Amend Order No. 23-225 pursuant to ORS 756.568	PacifiCorp Response Comments

I. INTRODUCTION

PacifiCorp d/b/a Pacific Power appreciates and understands the concerns expressed by property owners that will be impacted by the eventual construction of the 290 mile Boardman-to-Hemingway (B2H) transmission line (Stop B2H), as well as concerns from Sierra Club, Green Energy Institute, Mobilizing Climate Action Together, Renewable Northwest, and Northwest Energy Coalition (Joint Commenters) about whether B2H will provide the broader Oregon benefits discussed in prior B2H proceedings.

Yet as noted in PacifiCorp's initial comments, 300 megawatts (MW) of eastbound transfer capability enabled by B2H remains in the 2025 Integrated Resource Plan (IRP) preferred portfolio.[1] This 300 MW of eastbound capability will benefit Oregon customers through increased wheeling revenues, enhanced reliability, additional interconnection capacity, and likely lower cost energy through increased power flows and transaction points that can be utilized within CAISO's Western Energy Imbalance Market and Extended Day Ahead Market.

To the extent there have been any changes in the benefits that PacifiCorp's share of B2H will provide for Oregon customers, those changes are outside both Idaho Power and PacifiCorp's control. PacifiCorp was unable to procure transmission rights that would ensure delivery of westbound electricity from B2H to the majority of PacifiCorp's Oregon retail customers located in the western part of the state.[2] If PacifiCorp can secure adequate transmission rights in the future, it will re-evaluate its B2H strategies at that time.

Yet under any scenario, B2H will still terminate in Oregon, and will still serve PacifiCorp's Oregon customers—just potentially a fewer number than previously anticipated. And even if PacifiCorp's share of the line is dedicated to exclusively serving a single large load customer, that remains a public use under Oregon law, as large commercial customers are Oregon retail customers.

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[1] PacifiCorp In. Comments, at 1-2.
[2] *Id.* at 2-3.

For these reasons, the Oregon Public Utility Commission (Commission) should decline to rescind, suspend, or amend Idaho Power's B2H certificate of public convenience and necessity (CPCN), and decline to assess administrative penalties. If, instead, the Commission decides to take any action regarding the B2H CPCN, or assess administrative penalties as requested by the Joint Commenters, a contested case proceeding would be required.

II. STANDARD OF DECISION

The Commission may "at any time," after notice and opportunity to be heard, "rescind, suspend or amend any order made by" the Commission.[3] The Commission has authority to "amend or withdraw a CPCN decision in response to a wide variety of circumstances," and will consider doing so when "a major development warrants revisiting" a prior CPCN decision.[4] There must be "good cause" for doing so, and where there "has been no change in the critical factor" that was the basis for the Commission's determination, good cause does not exist.[5]

III. RESPONSE

A. There is no good cause or change in a critical factor that justified granting Idaho Power's CPCN.

Stop B2H, several concerned citizens, and the Joint Commenters take issue with PacifiCorp's intended use of the line.[6] Yet even if the entirety of PacifiCorp's share of B2H is used to serve a single or group of large load customers, this remains a public purpose under Oregon law that supports the continued issuance of the B2H CPCN.

First, large load customers <u>are still Oregon retail customers.</u> B2H will terminate at the Longhorn Substation, located on Bonneville Power Administration's system near Boardman, Oregon.[7] While not disclosing customer-specific information, PacifiCorp represents that the entirety of its discussions with large-load customers that would seek to utilize B2H are Oregon retail electricity customers—these customers would be sited near Boardman, Oregon, or the Longhorn Substation. Because Oregon has exclusive service territory requirements,[8] any customer located in PacifiCorp's service territory would be served by PacifiCorp. While HB 3546 requires utilities to create a new customer class for these customers,[9] their costs of service would nonetheless be included in PacifiCorp's Oregon retail rates.[10] To that point, the Commission has already considered, and rejected, the notion that PacifiCorp has the unilateral

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[3] ORS 756.568.
[4] *In re PGE CPCN,* Docket PCN 6, Order No. 25-125, at 40-41 (Mar. 28, 2025).
[5] *E.g.,* Idaho Power In. Br. at 5, n. 13-14 (discussing various Commission decisions implementing ORS 756.568).
[6] *E.g.,* Joint Comments, at 5 ("A decision by PacifiCorp to remove B2H from its system resources and instead sell the line's capacity for use by a single buyer would undermine each of these justifications for approving the CPCN and therefore violate the spirit and legal framework under which the line was approved."); Stop B2H Comments, at 3 ("PacifiCorp's decision to dedicate B2H primarily to a 'specific customer' (a data center) for 'the sole purpose to serve their facilities' raises significant concerns about public transparency, particularly regarding the scale of this customer's usage and its impact on the public grid.").
[7] *E.g.,* "New substation in Boardman, Ore., supports growing energy needs," BPA News, PR 05 25 (Apr. 15, 2025). (available here: 20250415-pr-05-25-bpa-completes-longhorn-substation.pdf).
[8] ORS 758.400 to 758.475.
[9] *E.g.,* 2025 OR Laws Ch. 323; HB 3546, § 2.
[10] *E.g.,* ORS 757.020 (establishing duty to furnish adequate and safe service at reasonable rates).

right—without more specific facts and circumstances—to deny service to large load customers under the exemptions provided in ORS 757.020 and OAR 860-021-0335(7).[11]

Thus, even assuming PacifiCorp was the sole CPCN petitioner and owner of B2H, PacifiCorp's services to these large load customers would fall under the provision of electrical utility service to Oregon retail customers as defined in ORS 758.400.[12] This set of circumstances would still satisfy ORS 758.015. Comments that seek to mischaracterize these customers as something other than Oregon retail customers should be disregarded.[13]

Second, it is immaterial whether PacifiCorp would serve one or multiple retail customers with its share of B2H. As noted in Idaho Power's initial comments, Oregon has never constrained its "public use" requirement to serve more than one customer; all that matters is whether the property at issue would serve a public purpose (Oregon does not allow for the taking of private property for private use).[14] Yet providing electric utility services has always been considered a public use; that conclusion is embedded within Oregon's existing,[15] and soon-to-be-effective,[16] CPCN authorities. So long as condemnation results in the provision of electric utility services under Oregon law, that is a per se public use, and a valid exercise of the state's powers of eminent domain.[17]

While this conclusion is correct under Oregon law, it is also good policy. To do otherwise would prevent utilities from serving any customer that was not currently served by the utility, where at least one landowner objected to the extension of services across their property to the unserved customer. As noted by Idaho Power in its initial brief, many states take the similar

[11] *In re PacifiCorp's 2024 Rate Case,* UE 433, Order No. 24-447, at 113-114 (Dec. 19, 2024) ("While PacifiCorp is correct that there are limitations to its obligation to serve under ORS 757.020, the situation presented here would give PacifiCorp too much unilateral discretion, pose too large a risk of discrimination, and have too significant a consequence for the customer to be an appropriate general limitation on the obligation to serve.").
[12] ORS 758.015
[13] Joint Comments, at 5 ("A decision by PacifiCorp to remove B2H from its system resources and instead sell the line's capacity for use by a single buyer would undermine each of these justifications for approving the CPCN and therefore violate the spirit and legal framework under which the line was approved.").
[14] *E.g., Port of Umatilla v. Richmond,* 321 P.2d 338, 344 (1958) ("Turning to the law of the case, we agree with counsel for defendants that the plaintiff Port cannot take private property for private use by condemnation."); Idaho Power Comment, at 13-14.
[15] ORS 758.015(2) (a Commission's CPCN decision is "conclusive evidence that the transmission line for which the land is required *is a public use* and necessary for public convenience.") (emphasis added).
[16] 2025 OR Laws Ch. 305; HB 3681, § 5(4) ("In any proceeding for condemnation of land or an interest therein, a certified copy of a site certificate for an energy facility that is a high voltage transmission line under ORS 469.300 (12)(a)(C) shall be conclusive evidence that the high voltage transmission line for which the land is required *is a public use* and necessary for public convenience.") (emphasis added).
[17] *Id.*

approach.[18] Oregon law correctly allows utilities to exercise the power of eminent domain in these circumstances, which supports the continued issuance of the B2H CPCN.

Third, even if PacifiCorp dedicated its rights to B2H to serve large-load customers, that will still benefit other Oregon retail customers. It would <u>materially reduce</u> Oregon retail rate impacts for non-large load customers. Under HB 3546 and PacifiCorp's proposed multi-state cost allocation protocol, the costs of service for these customers, including the transmission costs associated with the use of B2H and generation resources necessary to serve these large loads, would be allocated to those customers.[19] This means that, even if PacifiCorp's shared of B2H served only large-load customers, PacifiCorp's investments in the line would only be paid by those customers, and not by Oregon's non-large-load customers.

Finally, *fourth,* it needs to be stressed that Idaho Power's intended use and need for the line remains. As noted in its initial comments, Idaho Power needs B2H to "serve approximately 20,000 of its customers in Oregon and the line will enable BPA to deliver power to public power customers in southeast Idaho."[20]

The Commission is not presented with a circumstance where a single utility was granted a CPCN based on representations that it would serve Oregon retail customers, and that purpose has now changed and that utility now plans to serve a single or small number of large-load customers. Rather, PacifiCorp's share of B2H may eventually serve large load customers (who are nonetheless Oregon retail customers), *in addition to* Idaho Power and BPA customers that are still anticipated to be served by B2H. Because Idaho Power still requires the line to serve its customers, and Idaho Power (not PacifiCorp), was granted a CPCN, and the Commission confirmed that PacifiCorp "has no obligation to submit its own CPCN petition,"[21] PacifiCorp's intended use of the line does not materially impact the public use of the B2H CPCN.

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[18] *Id.* at 15, n. 52 (*Pub. Serv. Co. of Colorado v. Shaklee*, 784 P2d 314, 317-19 (Colo. 1989) (condemnation of private property by electric utility for construction of transmission line was for public use, despite fact that private company paid for most of cost of construction of transmission line); *Dyer v. Texas Elec. Serv. Co*., 680 S.W.2d 883, 884-55 (Tex. App. 1984) (holding that Certificate of Convenience and Necessity issued by utility commission was proper and condemnation for electric power line easement was for public use, even though only immediate use of the line was to serve a single customer); *Handley v. Cook*, 162 W. Va. 629, 632-33 (1979) ("Relators contend that [electric] service to one customer does not serve a public need; however, it is the nature of the use rather than the number of persons served which is the paramount consideration."); *In re Rayburn Country Elec. Cooperative Inc. CPCN Application*, Docket No. 56234, Opinion, 2024 TEX. PUC LEXIS 742 at *3 (Tex. P.U.C., Mar. 6, 2024) ("In the context of common carrier facilities like transmission lines, the Texas Supreme Court has determined that a facility serves a public use if it serves 'even one customer unaffiliated' with the owner. Thus, once [Rayburn Country Electric Cooperative, Inc.] sells a minority share of the Plant to an unaffiliated owner, line serving the Plant will become a public use transmission facility."); *Farnell Shingleton v. Progress Energy Carolinas*, Docket E-2, SUB 867, Opinion, 2005 N.C. PUC LEXIS 1074 at *8-15 (N.C. P.U.C., Aug. 22, 2005) (finding that like telephone service, the provision of electric service to the Complainant is a matter of public use or benefit); *In re N.B. Partners, Ltd*., Case No. 88541-E-P98, Order, P.U.R. 4th. 67, 72 (W.Va. P.S.C., Nov. 29, 1988) (concluding that "a 'holding out' of service 'to the public' does not necessarily imply that service is offered to a large sector of the public; an electric transmission line built to serve a single customer can be classified as dedicated to a public use if the service provided to the single customer could have an impact on the public").

[19] 2025 Or. Laws Ch. 323, HB 3546, § 2; *In re PacifiCorp's 2026 Protocol,* UM 2401, Dir. Test. Link, at 4 (Aug. 1, 2025).

[20] Idaho Power Comment, at 15.

[21] *In re B2H CPCN,* Docket PCN 5, Order No. 23-225, at 12.

Under Oregon law, these circumstances, individually and collectively, justify the continued issuance of Idaho Power's CPCN.

B. If the Commission seeks to "rescind, suspend or amend" Order 23-225, PacifiCorp requests a subsequent contested case proceeding to ensure adequate due process.

The Stop B2H Petition and initial party comments request the Commission pursue a variety of actions related to B2H, including rescinding and revoking the CPCN,[22] or issuing penalties against PacifiCorp for a purported violation of Idaho Power's CPCN.[23]

These are serious allegations that would require a contested case proceeding to address. A contested case is required to address any action to revoke, suspend, amend, or otherwise refuse to issue Idaho Power a CPCN for the B2H line. This is supported by ORS 756.568 and Oregon's Administrative Procedures Act (APA).

Start with ORS 756.568. To PacifiCorp's knowledge the Commission has not addressed what specific processes would be required to "rescind, suspend or amend" a previously granted CPCN. That provision generally requires the Commission to provide adequate notice of the issues presented and an opportunity to be heard under ORS 756.500 to 756.610.

Yet those statutes provide at least three different procedural vehicles for the Commission to consider: complaints (ORS 756.500 and .512); investigations (ORS 756.515); and hearings (ORS 756.518 through .610). Through process of elimination, the current proceeding appears to be an investigation under ORS 756.515(1); the Commission's initial ALJ Memorandum and Schedule Announcement did not direct Idaho Power or PacifiCorp to appear as required for a complaint proceeding, nor has the Commission scheduled a prehearing conference required for a contested case proceeding.

While ORS 756.515(4) allows the Commision to reach a decision "without notice or hearing" for certain investigations, a hearing is required for others (ORS 757.515(2), (3), (5), (6)). PacifiCorp represents that, given the issues at stake in this proceeding, Oregon's APA requires a contested case prior to the Commission reaching a decision that could result in any rescission, revocation, or amendment of the B2H CPCN.

The APA requires a contested case hearing where an individual's "right or privilege" may be revoked or suspended, or where a license may be suspended, revoked, or refused.[24] A contested case hearing include a variety of procedural protections,[25] and before the Commission, contested cases "are subject to the most procedural requirements of any decision-making process used by the Commission."[26]

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[22] Stop B2H Comments, at 1 (recommending the Commission rescind and revoke the CPCN).
[23] Joint Commenters, at 6 ("the Commission should enforce" and any "other use of B2H is a violation of the CPCN," and the Commission "has authority to issue financial penalties when any of its orders are violated.").
[24] ORS 183.310(2)(B)-(C).
[25] *E.g.,* ORS 756.500 to 756.610.
[26] OPUC Internal Operating Guidelines, Appendix A, at 15 (available here: Internal-Operating-Guidelines.pdf).

Applied here, Oregon has held that CPCNs are a vested property right.[27] A contested case is required to grant a CPCN.[28] While the CPCN is in effect,[29] it grants a private party (here Idaho Power), the ability to exercise Oregon's eminent domain powers.[30] If parties cannot come to reasonable terms on the value of potentially condemned property, Idaho Power can initiate a condemnation proceeding for a judicial determination on the fair market value for the property in question,[31] and ultimately acquire and possess real property pursuant to those proceedings.[32]

For these reasons, PacifiCorp represents that a CPCN is a "right or privilege," as well as likely a license under the APA. Accordingly, despite the procedural uncertainty in ORS 756.515, a contested case that adheres to the hearing procedures in ORS 756.515 through ORS 756.610 would be required before the B2H CPCN could be rescinded, suspended, or amended.

A similar conclusion supports a contested case prior to the Commission reaching a decision on administrative penalties.

As an initial matter, this proceeding is an investigation under ORS 756.568. That statute does not provide the Commission with the power to issue penalties. A subsequent proceeding under the Commission's penalty powers would need to be initiated before the Commission could take up the issue.

Those penalty statutes require a contested case. The Commission's general penalty powers are found in ORS 756.990. That statute is silent regarding what process the Commission should use to enforce penalties. Instead, the APA requires a contested case proceeding for all civil penalty proceedings where not otherwise required by law.[33] This aligns with other Commission penalty statutes which include formal trial-like proceedings for the potential assessment of penalties. ORS 756.160(4) requires the Commission to bring an action in state court for any "forfeiture or penalty" under the Commission's jurisdiction; ORS 756.350 requires the same for unpaid fees provided; and other Commission penalty statutes require a contested case proceeding.[34]

To ensure PacifiCorp and Idaho Power both have the adequate notice of the issues presented and an opportunity to be heard, a contested case would be required prior to the Commission addressing the remedies raised by the commenters in this proceeding—including

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[27] *E.g., Fisk v. Leith,* 137 Or. 459, 463 (1931) (holding that a CPCN granting an electric utility an exclusive service territory was a "statutory right thus to engage in business was a property asset—a vested right—and, a cause of action having accrued by reason of interference therewith, such could not be destroyed by subsequent legislation.").
[28] ORS 758.015(2).
[29] OAR 860-025-0035(3) (CPCN generally expires 15 years from issuance).
[30] OR Const. Art. I, § 17.
[31] ORS 35.220.
[32] ORS 35.352.
[33] ORS 183.745(4).
[34] ORS 757.993(4) (requiring a complaint proceeding for penalties resulting from utility excavation notification provisions under ORS 756.500 to 756.610); ORS 757.994(2) (requiring civil penalties for water utility violations to be administered as a contested case if elected by the respondent under ORS 183.745(4)); ORS 757.995(3) (civil penalties for wildfire protection provisions to be administered as a contested case if elected by the respondent under ORS 183.745(4).

any action to "rescind, suspend or amend" Idaho Power's B2H CPCN, or assess administrative penalties against PacifiCorp for alleged violation of Commission orders.

IV. CONCLUSION

PacifiCorp respectfully requests the Commission close this investigation without further action. If the Commission would like to pursue other remedies, including taking action regarding Idaho Power's B2H CPCN or the assessment of administrative penalties, PacifiCorp requests a contested case hearing prior to the Commission reaching a decision on these issues.

Respectfully submitted October 15, 2025,

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