

May 30, 2023

***VIA ELECTRONIC FILING***

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

**Re: PCN 5—PacifiCorp's Reply Brief**

PacifiCorp, dba Pacific Power submits its Reply Brief in the above captioned proceeding.

Informal questions concerning this filing may be directed to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,



Matthew McVee  
Vice President, Regulatory Policy and Operations

Enclosure

**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.

**PACIFICORP’S  
REPLY BRIEF**

Pursuant to Oregon Administrative Rules (OAR) 860-001-0650 and Administrative Law Judge Mellgren’s Memorandum dated April 21, 2023, PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) submits this Reply Brief to the Public Utility Commission of Oregon (Commission) in the above-referenced matter. On May 15, 2023, PacifiCorp, Idaho Power Company (Idaho Power), Commission Staff (Staff), Stop B2H Coalition, Ms. Susan Geer, Ms. Wendy King, Mr. Greg Larkin/Ms. Irene Gilbert (Larkin/Gilbert), Mr. Sam Myers, and Mr. John Williams filed Opening Briefs in this matter.

**I. INTRODUCTION**

Idaho Power’s application for a certificate of public convenience and necessity (CPCN) for the Boardman to Hemingway transmission line (B2H transmission line or B2H) should be approved because Idaho Power has met the requirements in Oregon Revised Statute (ORS) 758.15 and CPCN review criteria established in OAR 860-025-0035. PacifiCorp, which will be a majority owner of B2H once constructed, has demonstrated that the B2H transmission line is projected to result in a risk-adjusted net benefit of \$1.7 billion for PacifiCorp and its customers and provides other benefits to the Company and its customers.

In Opening Briefs, only Larkin/Gilbert address PacifiCorp’s B2H’s ownership. Specifically, Larkin/Gilbert claim that PacifiCorp needs to file its own B2H CPCN, has “a questionable history” of effective wildfire mitigation, and may not be financially stable. The Larkin/Gilbert arguments should all be rejected as they either misinterpret the law or Commission orders or are unsupported by the record.

## II. DISCUSSION

### A. PacifiCorp Is Not Required to File a Separate CPCN Application and Has Submitted Substantial Information for Its Investment in B2H.

Larkin/Gilbert argue that because the application that initiated docket PCN 5 is limited to Idaho Power, the Commission cannot issue a CPCN for B2H until PacifiCorp files an application “providing required information to justify issuing the [CPCN].”<sup>1</sup> Not only do Larkin/Gilbert misinterpret ORS 758.15 but Larkin/Gilbert ignore the substantial record evidence that PacifiCorp has provided including the \$1.7 billion in risk-adjusted net benefits and the other system benefits resulting from PacifiCorp’s investment in the B2H transmission line.

In Oregon, the guiding principle of statutory interpretation is to “pursue the intention of the legislature if possible.”<sup>2</sup> The starting point for the inquiry is the statute’s “text and context”<sup>3</sup> because it is the “best evidence of the legislature’s intent.”<sup>4</sup> Next is a consideration of “pertinent legislative history.”<sup>5</sup> If “the legislature’s intent remains unclear,” then “general

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<sup>1</sup> Larkin Gilbert Opening Brief (Op. Br.) at 27-28, 47-48, 50, and 64. The Larkin/Gilbert Opening Brief does not contain page numbers. The page numbers provided are the pdf page number.

<sup>2</sup> ORS 174.020(1)(a); *see also Portland Gen. Elec. Co. v. Bureau of Labor & Indus. (PGE v. BLI)*, 317 Or 606, 610 (1993) (“In interpreting a statute, the court’s task is to discern the intent of the legislature.”).

<sup>3</sup> *State v. Gaines*, 346 Or 160, 171 (2009).

<sup>4</sup> *PGE v. BLI*, 317 Or at 610.

<sup>5</sup> *Gaines*, 346 Or at 171-72 (noting that “we no longer will require an ambiguity in the text of a statute as a necessary predicate to the second step – consideration of pertinent legislative history that a party may proffer”).

maxims of statutory construction to aid in resolving the remaining uncertainty” become applicable.<sup>6</sup> A statute is ambiguous if there is more than one “plausible interpretation” of the disputed text.<sup>7</sup> Where ambiguity exists, the correct interpretation is that which best effectuates the legislature’s purpose.<sup>8</sup>

ORS 758.015(1) provides that

When any person, as defined in ORS 758.400, providing electric utility service, as defined in ORS 758.400, or any transmission company, proposes to construct an overhead transmission line which will necessitate a condemnation of land or an interest therein, it shall petition the Public Utility Commission for a certificate of public convenience and necessity setting forth a detailed description and the purpose of the proposed transmission line, the estimated cost, the route to be followed, the availability of alternate routes, a description of other transmission lines connecting the same areas, and such other information in such form as the commission may reasonably require in determining the public convenience and necessity.

The meaning of the statute, which directs any person who “proposes to construct an overhead transmission line which will necessitate a condemnation of land or an interest therein” to request a CPCN, is plain. There is no ambiguity as the statute’s exact language requires a CPCN if condemnation authority is sought for construction of a transmission line.

Larkin/Gilbert would have the Commission disregard the statutory language that only requires a CPCN when construction will necessitate the condemnation of land. It would require PacifiCorp that is not constructing a transmission line and seeking condemnation

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<sup>6</sup> *Id.* at 172.

<sup>7</sup> *Tharp v. Psychiatric Sec. Review Bd.*, 338 Or 413, 425–426 (2005) (court declared text ambiguous when counsel presented two plausible interpretations).

<sup>8</sup> *Long v. Farmers Ins. Co.*, 360 Or 791, 803 (2017) (holding that a statute’s terms “should be interpreted in light of their function within the statute’s overall purpose”); *Linn-Benton-Lincoln Ed. v. Linn-Benton-Lincoln ESD*, 163 Or App 558, 570 (1999) (“[A] court should attempt to construe the language of a statute in a manner consistent with its purpose.”); *see also, e.g., Godfrey v. Fred Meyer Stores (In re Godfrey)*, 202 Or App 673, 689 (2005) (rejecting a technical definition of “report or statement” that “would seem to frustrate what it appears is plainly the purpose of the statute”).

authority to file a CPCN. That was not the Legislature’s intent. The text and content of ORS 758.15 is clear, a CPCN is only required when construction necessitates condemnation authority. Idaho Power is the overall project manager for the B2H transmission line, responsible for all B2H *permitting, design, procurement, and construction*.<sup>9</sup> As such, Idaho Power is responsible for constructing a transmission line that requires condemnation authority and as such was required to file a CPCN application.

Furthermore, as described in its Opening Brief,<sup>10</sup> PacifiCorp has provided substantial evidence supporting its investment in B2H. For PacifiCorp, the B2H transmission line is projected to result in risk-adjusted net benefits of \$1.713 billion.<sup>11</sup> It also provides a number of other benefits including regional benefits as it will facilitate the transfer of energy of diverse resources between PacifiCorp’s balancing authority areas.<sup>12</sup> Further contrary to the Larkin/Gilbert argument,<sup>13</sup> the Company provided its costs as well.<sup>14</sup>

**B. PacifiCorp Is Proactively Mitigating Wildfire Threats to its System and Claims to the Contrary are Unsupported.**

Larkin/Gilbert allege that PacifiCorp “is likely responsible” for wildfire damage and has a “questionable history on effective mitigation and management of wildfires along their existing transmission lines.”<sup>15</sup> Larkin/Gilbert’s claims that the Company is likely responsible for wildfire damage or has engaged in ineffective wildfire mitigation is unsupported in record.

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<sup>9</sup> Idaho Power/500, Ellsworth/10-11.

<sup>10</sup> PacifiCorp Opening Brief at 5-6; *see also*, PAC/100, Link/2-5; PAC/200, Link/2-36; PAC/201, and PAC/202 Confidential.

<sup>11</sup> PAC/200, Link/4, 10-36.

<sup>12</sup> PacifiCorp/100, Link/4; *see also*, Kreider/308, PacifiCorp 2021 IRP at Vol. 1. Ch. 4.

<sup>13</sup> Larkin/Gilbert Opening Brief at 50.

<sup>14</sup> Stop B2H/300, PacifiCorp response to Staff data request 2 Confidential and 2 1<sup>st</sup> Supplemental Confidential; Larkin Exhibit 1207, PacifiCorp response to Greg Larkin data request 3 Confidential.

<sup>15</sup> Larkin/Gilbert Opening Brief at 47-48.

To support its allegations that PacifiCorp was likely the cause of past wildfire damage and that it has not effectively mitigated the impacts of wildfires, Larkin/Gilbert rely on various news articles regarding recent wildfires, a settlement, and a FERC investigation on reliability.<sup>16</sup> However, none of the documents establish causation for any wildfire, including whether it was related to a transmission line. Thus, this “evidence” does not create any reasonable inference regarding the safety of transmission lines or PacifiCorp’s wildfire mitigation efforts. Further such “evidence” does not support any inference that transmission lines increase the probability of wildfires. The record evidence does demonstrate that there is a low probability of ignition associated with a 500-kilovolt transmission line like B2H.<sup>17</sup>

The risk of wildfire is inherent to operating an electric utility and is elevated for utilities in the western United States where climates are arid year-long in some areas or seasonal in others. However, the frequency, severity, and costs of wildfires have increased in the west. This increased intensity and severity of wildfires led to Governor Kate Brown issuing an Executive Order 19-01 on January 30, 2019, establishing the Governor’s Council on Wildfire Response.<sup>18</sup> PacifiCorp has been proactively taking steps to mitigate wildfire risk in its Oregon service territory, which has been set forth in a number of filings at the Commission.<sup>19</sup> In fact, pursuant to Commission rules,<sup>20</sup> PacifiCorp has filed a Wildfire Mitigation Plan (WMP) with the Commission beginning with its 2022 WMP, which was

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<sup>16</sup> Id.

<sup>17</sup> See *ie.*, Idaho Power/1300, Lautenberger/3, 10-24.

<sup>18</sup> Executive Order No. 19-01, Office of the Governor (Jan. 30, 2019).

<sup>19</sup> See *i.e.*, *In the Matter of PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 374, Order No. 20-374 (Dec. 18, 2020), granting a Wildfire Mitigation and Vegetation Management Mechanism (WMVM); *In the Matter of PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 399, Order No. 22-491 (Dec. 16, 2022), approving continued use of the WMVM for vegetation management; and *In the Matter of PacifiCorp, dba Pacific Power, Application for Approval of an Automatic Adjustment Clause for Recovery of Costs Associated with the Company’s Wildfire Protection Plan*, Docket No. UE 407, Order No. 23-173 (May 10, 2023), approving a stipulation for an automatic adjustment clause to be used for the recovery of wildfire mitigation costs..

<sup>20</sup> OAR 860-300-0001, et seq.

approved by the Commission in Order 22-131.<sup>21</sup> In its most recent plan, the 2023 WMP, the Independent Evaluator's Report concludes that PacifiCorp met or substantially met all of its requirements and states:

As the independent evaluator, the level of improvement from the 2022 WMP assessment to the 2023 WMP assessment is clear and provides confidence that future WMP's will continue to show professionalism and improvements. Pacific Power has provided good momentum moving forward in redefining their actions associated with Oregon rules regarding WMP structures. Bureau Veritas's overall conclusion is that Pacific Power has made changes to their WMP that demonstrates their efforts to reduce fire risks as required by [Commission's] rules as narrated above in the recommendations. Pacific Power has proven to have taken a good step forward in their WMP processes and philosophies while understanding there is always room for improvement.<sup>22</sup>

Due the growing threat of wildfire in the western United States, PacifiCorp has been proactive in developing plans for wildfire mitigation efforts in its service territories. There is no record evidence demonstrating otherwise.

**C. Allegations of PacifiCorp's Financial Stability Are Unsupported and Based on a Mischaracterization of Commission Filings.**

For the first time in briefs, Larkin/Gilbert question PacifiCorp's financial stability based on the false premise it is liable for recent wildfires.<sup>23</sup> Apparently supporting this argument, Larkin/Gilbert rely on a routine filing that PacifiCorp makes at the Commission when it issues debt and enters into credit agreements. Not only do Larkin/Gilbert misstate

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<sup>21</sup> *In the Matter of PacifiCorp, dba Pacific Power, 2022 Wildfire Mitigation Plan*, Docket No. 2207, Order No. 22-131 (Apr. 28, 2022).

<sup>22</sup> Docket No. UM 2207, Independent Evaluator Report on Wildfire Mitigation Plan Compliance Bureau Veritas North America, Inc. PacifiCorp dba Pacific Power (May 23, 2023).

<sup>23</sup> Larkin/Gilbert Opening Brief at 47-48, 50.

the standard for debt issuances, but there is also no record evidence that supports the Larkin/Gilbert allegation questioning PacifiCorp’s solvency or liability for wildfire damage.

The provision of electric service is capital intensive, especially for a utility like PacifiCorp, which is transitioning the resources it uses to provide safe, reliable, and affordable electric service to customers to a cleaner energy mix. To finance such investments, the Company uses both equity and debt. When debt is issued by a utility, ORS 757.405 vests oversight of the issuances with the Commission. ORS 757.415(1) provides the purposes for which a utility can issue stocks, bonds, notes, and other evidence of indebtedness. ORS 757.415(2) provides that before a utility can issue securities, the Commission must issue an order that finds in part that an issuance

... is required for the purposes specified ... and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility, and will not impair its ability to perform that service.

Larkin/Gilbert argue that the debt at issue in Order 20-393<sup>24</sup> was issued “absent the requirement that [PacifiCorp] show it will result in outcomes that are “fair, reasonable and not contrary to the public interest.” However, this is not the standard required under statute for transactions with non-affiliated interests.<sup>25</sup> Appendix A to Order 20-393 sets forth Staff’s detailed analysis of PacifiCorp’s application as required under ORS 757.405 and 757.415. Larkin/Gilbert’s argument not only does a disservice to the Commission and its Staff as it suggests it is not reviewing utility applications requesting to issue indebtedness in accordance

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<sup>24</sup> *In the Matter of PacifiCorp, dba Pacific Power, Application for Authority to Issue and Sell or Exchange Not More Than \$3,000,000,000 of Debt and Enter Into Credit Support Agreements*, Docket No. UF 4318, Order No. 20-393 (Nov. 03, 2020).

<sup>25</sup> See ORS 757.495.



with statute but also appears to challenge a Commission Order from 2020 for which the reconsideration period has ended.<sup>26</sup>

Finally, Larkin/Gilbert offer no other evidence regarding PacifiCorp's solvency.<sup>27</sup> As such, the Commission should reject this argument as Larkin/Gilbert offer no credible evidence regarding PacifiCorp's financial stability.

### III. CONCLUSION

Based on the foregoing, the Company's Opening Brief, and the record evidence, PacifiCorp respectfully requests that the Commission approve Idaho Power's CPCN application for B2H transmission line.

Respectfully submitted this 30<sup>th</sup> day of May, 2023, on behalf of PacifiCorp.



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<sup>26</sup> See OAR 860-001-0720.

<sup>27</sup> The Company notes that the December 7, 2022 compliance filing in Docket No. UF 4318, which was required in Order No. 20-393, the Company's Prospectus shows its expected Moody's Investors Service Inc. rating as A1 and S&P Global Rating as A+. See Docket No. UF 4318, December 7, 2022, Compliance Filing, page 70.

## CERTIFICATE OF SERVICE

I certify that I delivered a true and correct copy of **PacifiCorp's Reply Brief** on the parties listed below via electronic mail in compliance with OAR 860-001-0180.

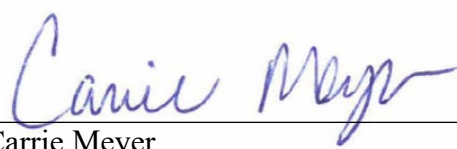
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Dated this 30<sup>th</sup> day of May 2023.

  
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 Carrie Meyer  
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