

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

PCN 2

In the Matter of the Petition of)
TILLAMOOK PEOPLE’S UTILITY) TILLAMOOK PEOPLE’S UTILITY
DISTRICT) DISTRICT’S OPENING POST-
) HEARING BRIEF
Petition for Certificate of Public)
Convenience and Necessity)
_____)

I. Introduction

Pursuant to the Prehearing Conference Memorandum issued by Public Utility Commission of Oregon (“Commission”) Administrative Law (“ALJ”) Judge Patrick Power dated February 5, 2019, Tillamook People’s Utility District (“TPUD” or “District”) submits this Opening Post-Hearing Brief. Based on the evidence and the extensive record in this proceeding, TPUD respectfully requests that the Commission grant its Petition for a Certificate of Public Convenience and Necessity (“CPCN”) and authorize TPUD to proceed with the construction of an 8.6 mile long overhead transmission line from a breaker in the Tillamook Substation owned by the Bonneville Power Administration to the proposed new Oceanside Substation (“Transmission Line”).

II. Background

TPUD serves all of Tillamook County and parts of Clatsop County and Yamhill County. TPUD is a municipal corporation, authorized by Section 12, Article XI of the Oregon Constitution, and organized under ORS Chapter 261. TPUD was the first people’s utility district (“PUD”) to form in Oregon.

As a public entity and consumer-owned utility, TPUD is not subject to the Commission's jurisdiction with regard to its rates, services, and accounting practices. The Commission does, however, have oversight for some PUD activities. Specifically, ORS 758.015(1) requires all utilities, including consumer-owned utilities, proposing to construct overhead transmission lines to petition the Commission for a CPCN if a transmission line will necessitate condemnation of land or an interest in land.

As explained in the District's Petition and testimony in this proceeding, the Transmission Line is needed to enhance system reliability for existing and new customers in large portions of TPUD's service territory, and the line is most critical for customers in and around the coastal communities of Netarts and Oceanside. The area to be served by the Transmission Line is currently served from a 14-mile radial 24.9 kV line sourced from TPUD's Wilson River Substation. The existing 24.9 kV line is aging, has limited capacity and poor reliability, and has subjected TPUD customers to long outages of increased frequency. The Transmission Line will increase overall system reliability and ensure that TPUD can adequately serve its existing and future customers.

III. Legal Standard

Under ORS 758.015, an electric utility must petition the Commission for a CPCN when condemnation of land is necessary for the construction of an overhead transmission line. ORS 758.015 provides:

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.

(2) The commission shall give notice and hold a public hearing on such petition. The commission, in addition to considering facts presented at such hearing, shall make the commissions own investigation to determine the necessity, safety, practicability and justification in the public interest for the proposed transmission line and shall enter an order accordingly. Except for petitions for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission line, the order shall be subject to review as in other cases. Orders on petitions for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission line are subject to judicial review in the same manner as an order in a contested case as set forth in ORS 758.017. In any proceeding for condemnation, a certified copy of such order shall be conclusive evidence that the transmission line for which the land is required is a public use and necessary for public convenience.

The Transmission Line does not require approval from the Energy Facility Siting Council. Review of TPUD's Petition must therefore satisfy only those requirements set forth in ORS 758.015 and the Commission's rules implementing that statute.

IV. Argument

TPUD's Petition and supporting testimony included a detailed description and the purpose of the proposed Transmission Line,¹ the need for the line,² the estimated cost,³ the route to be followed,⁴ the availability of alternate routes,⁵ a description of other transmission lines connecting the same areas,⁶ and other information to aid in the determination that the line is necessary and in the public interest. TPUD's Petition and supporting testimony includes evidence that the Transmission Line meets the requirements imposed by ORS 758.015 and OAR 860-025-0030. Commission Staff also

¹ TPUD/200, Fagen/3-5, 9-11.

² TPUD/100, Simmons/2-3.

³ TPUD/200, Fagen/11-12.

⁴ TPUD/200, Fagen/1-2; TPUD/203.

⁵ TPUD/200, Fagen/6; TPUD/205.

⁶ TPUD/202.

filed detailed testimony concluding that the Transmission Line meets the requirements set forth in ORS 758.015 and OAR 860-025-0030.

The evidence in the record demonstrates that the Transmission Line satisfies the necessity, safety, practicability, and justification requirements under ORS 758.015(2), as well as the requirements in OAR 860-025-0030(2) relating to compatibility with land use regulations. TPUD addresses each of these requirements in more detail below.

A. TPUD has met the “necessity” standard under ORS 758.015(2).

The Commission has previously determined that the “necessity” standard means that a petitioner must demonstrate “that Oregonians will forego something desirable and useful without it.”⁷ The Commission has previously determined that a transmission line that will serve an area operating at full capacity satisfies the “necessity” standard of the statute.⁸

The Transmission Line is necessary to adequately provide safe and reliable service to existing and new customer loads in large portions of TPUD’s service territory, and the line is most critical for customers in and around the coastal communities of Netarts and Oceanside. The customers who will directly benefit from the Transmission Line are diverse and include residential, small commercial, large commercial, industrial, water and sewer Districts, and irrigation uses.⁹ Without the Transmission Line, Oregonians living, working, and visiting the Netarts and Oceanside communities will forgo reliable electrical service.¹⁰

⁷ See *In re Pacific Power & Light*, OPUC Docket No. UM 1495, Order No. 11-366 at 4 (Sept. 22, 2011)(“Order 11-366”).

⁸ *Id.* at 6.

⁹ TPUD/100, Simmons/3.

¹⁰ TPUD/106, Simmons/24.

The Transmission Line will provide service to an area currently served by an old and failing 14-mile radial 24.9 kV line sourced from TPUD's Wilson River Substation. Because of the load growth TPUD has experienced, and continues to experience, in coastal areas and other parts of its territory served by the same facilities, reliability issues on the existing 24.9 kV line are expected to increase if an alternative is not constructed.¹¹ The Transmission Line is necessary to meet the District's obligation to provide safe and reliable service to its customers in the Netarts and Oceanside areas over an adequate planning horizon and will increase overall system reliability and ensure that TPUD can adequately serve its existing and future customers.¹²

As described in TPUD's Petition and supporting testimony, the purpose and need of the Transmission Line are to: (1) reduce high loading on existing facilities; (2) increase electrical system capacity in the central Tillamook Valley to support ongoing growth in the area (load growth); (3) improve service reliability; and (4) replace aging infrastructure in the City of Tillamook, Netarts, Oceanside, and the surrounding areas.¹³ While other options the District explored, such as rebuilding Feeder 51 and building a second 24.9kV distribution feeder, can address some of these issues, only the Transmission Line will address all of them over the appropriate planning horizon. Staff agrees:

In the course of planning to accommodate a growing system and aging infrastructure, Tillamook PUD identified the need for this Project. Alternatives to this Project were found to be inadequate to support Tillamook PUD's long-term needs and solution to an aging infrastructure and impending moratorium with new connections. Not only does this meet the necessity requirement, but Staff also believes the transmission line would improve the safety and reliability of Tillamook PUD's overall system. Tillamook PUD has taken appropriate steps and considered alternative routes. Without the Project, Tillamook PUD's customers will

¹¹ TPUD/100, Simmons/2-3.

¹² Exhibit TPUD/200, Fagen/2-3.

¹³ See, e.g., TPUD/106, Simmons/23.

likely be exposed to increasing reliability issues and outages. Therefore, Staff concludes that the Project is necessary.¹⁴

Finally, it is important to note that the Commission has determined that it will apply the CPCN statutes “in the context of the laws and policies governing the condemnation of private property.”¹⁵ TPUD is differently-situated than the public utilities the Commission traditionally regulates. As a people’s utility district, TPUD has constitutional and statutory authority to condemn property.¹⁶ Under the statutes governing condemnation, a “resolution or ordinance of a public condemner is presumptive evidence of the public necessity.”¹⁷ Although TPUD has not passed a specific resolution or ordinance of need for the purpose of condemnation – because it has so far attempted to avoid condemnation proceedings – TPUD’s publicly-elected Board independently reviewed and confirmed both the need for the Transmission Line and the preferred route for the Transmission Line.¹⁸ These reviews occurred over the course of multiple years as TPUD considered alternatives to the Transmission Line and alternative routes for the Transmission Line.¹⁹ The Commission should give some deference to the conclusions of another public body.²⁰

B. The need for the Transmission Line has not changed even with the addition of 11.5 MVA of capacity to the Wilson T1 transformer.

After TPUD filed this Petition, it added 11.5MVA of capacity through a replacement of the Wilson T1 transformer. This increase in capacity was part of, but not

¹⁴ Staff/200, Hanhan/12-13.

¹⁵ Order 11-366 at 3.

¹⁶ ORS 261.305(6).

¹⁷ ORS 35.235(2).

¹⁸ Exhibit TPUD/100, Simmons/2; Exhibit TPUD/103.

¹⁹ TPUD/205.

²⁰ As noted below, the Tillamook County Board of Commissioners also concluded there is a public benefit to the Transmission Line.

all of, an option TPUD considered as an alternative to the Transmission Line.²¹ The partial implementation of that option, and the increased capacity resulting from the transformer upgrade, does not meaningfully alter the need for the Transmission Line. TPUD added 11.5MVA of capacity because the original Wilson T1 transformer had ancillary equipment fail during the 2017-18 winter, and TPUD determined that replacing the transformer was more cost-effective and beneficial for the overall electric system than refurbishing the 46-year-old transformer and replacing the ancillary equipment.²² The remainder of the capacity that TPUD needs to add to this part of its system (22MVA) will come from the Oceanside transformer, but the total capacity needed remains the same.

The Oceanside transformer was sized to provide back-up capacity to the Wilson and Trask substations and to supply the current and future needs of the Oceanside and Netarts communities. Because 11.5MVA of capacity was added at the Wilson Substation, the “back-up” capacity needed for the Oceanside transformer is reduced by that amount. However, there is still a significant need to provide both back-up capacity from Oceanside to the Wilson and Trask substations and to provide safe and reliable electric service for the Oceanside and Netarts communities.²³ The Transmission Line coupled with the Oceanside substation is the only solution that adequately meets the long-term needs for those areas and the rest of the central Tillamook Valley.

In response to the Commission’s inquiry, and arguments from some of the Intervenors, the District demonstrated that even after adding capacity by increasing the Wilson T1 transformer size, TPUD’s system in the central Tillamook Valley can

²¹ TPUD/400, Fagen/3.

²² TPUD/400, Fagen/3.

²³ TPUD/400, Fagen/13-14.

accommodate between only eight and seventeen years of additional load growth before it will no longer be able to serve customer loads under N-1 conditions, with the lower end of that range being more likely.²⁴ Given that construction of the line will take several years, it is imperative that the Transmission Line is built to prevent outages and reliability issues as soon as possible, otherwise Oregonians will forgo something desirable and useful without it. While the N-1 analysis performed after the upgrade of the Wilson T1 transformer is different from the N-1 analysis conducted before the upgrade of the Wilson T1 transformer, the new analysis still demonstrates the need for the Transmission Line.

The evidence in the record shows that electric loads and peak demands are increasing in Tillamook County, and more specifically in the Central Tillamook Valley, Oceanside, and Netarts. While the additional 11.5MVA of capacity from the replacement of Wilson T1 is beneficial to the TPUD electric system and its customers, the additional capacity from that upgrade will not last long, and more importantly, fails to address one of the main issues the Transmission Line is intended to resolve – the reliability issues facing the customers in the Netarts, Oceanside, and other coastal communities.

C. TPUD has met the “safety” standard under ORS 758.015(2).

The Commission previously determined that the “safety” standard in ORS 758.015(2) means that a petitioner requesting a CPCN must demonstrate that the “project will be constructed, operated, and maintained in a manner that protects the public from danger.”²⁵

²⁴ TPUD/400, Fagen/4.

²⁵ See Order 11-366 at 4.

Tillamook PUD has substantial experience in operating and maintaining transmission lines in a safe, efficient manner. All energized conductors will be supported by insulators that will isolate the conductors from the poles. The clearance for transmission conductors above ground will meet all design and safety requirements for transmission lines. The Transmission Line has been designed by registered professional engineers, and the design will meet appropriate industry standards including requirements of the United States Department of Agriculture—Rural Utilities Service (“RUS”), as well as all state and local requirements regarding safety, clearances, strength, and design. Further, TPUD will construct, operate, and maintain the Transmission Line to meet or exceed all applicable National Electrical Safety Code standards.

TPUD designs and maintains all electrical facilities to be in conformance with State of Oregon requirements contained in PUC Division 24 Safety Standards and with the United States Department of Agriculture—Rural Utilities Service’s (“RUS”) documents related to materials, assembly types, design and construction.²⁶

Staff agrees that the design and construction of the Transmission Line will satisfy the safety requirement. Staff testimony contains the following question and answer:

Q. Does Staff find the proposed line to be safe?

A. Yes, the proposed construction and line will adhere to relevant safety standards. As a result, Tillamook PUD has limited the external risks and the landowners directly affected by proximity are unlikely to be harmed.²⁷

TPUD commits to meeting or exceeding all applicable safety standards and rules, including those standards and rules contained in TPUD’s own safety manual.²⁸ These

²⁶ See Staff/200, Hanhan/4.

²⁷ See Staff/200, Hanhan/6.

²⁸ See TPUD/211 for a copy of TPUD’s safety manual.

standards and rules will ensure that the Transmission Line is constructed, operated and maintained in a manner that protects the public from danger.

D. TPUD has met the “practicability” standard under ORS 758.015(2).

The Commission has previously determined that the “practicability” standard set forth in ORS 758.015(2) means that a petitioner for a CPCN must demonstrate that the “project is feasible and will be effectively and efficiently constructed.”²⁹

TPUD, in collaboration with the community and its leaders, has developed a route that is practicable. The starting and ending points of the Transmission Line are dictated by the location of existing infrastructure (owned by TPUD and the Bonneville Power Administration (“BPA”)) and the location of the areas to be served. The closest substation to the Netarts and Oceanside areas where capacity can be gained is BPA’s Tillamook Substation. By utilizing BPA’s Tillamook Substation, the District can rely on existing infrastructure and construct a shorter line than if other starting points were chosen, which provides many benefits, including cost savings and improvements in efficiency.³⁰ The preferred route also allows TPUD to rely heavily on existing rights of way, thereby reducing potential conflicts and impacts on surrounding uses.³¹

Staff also agrees that the Transmission Line is feasible and will be effectively and efficiently constructed. First, Staff concluded that the Transmission Line is financially feasible, because “construction of the line will have a modest impact to customer’s rates that is within a reasonable range.”³² Staff then concluded that the route is feasible, because “TPUD examined the ease of: obtaining corridor approval, necessary permits,

²⁹ See Order 11-366 at 4.

³⁰ Staff/100, Gibbens/31.

³¹ Exhibit TPUD/200, Fagen/2.

³² Staff/100, Gibbens/7.

access and construction. By prioritizing these metrics in the selection process of the route, the result is a path that is feasible to construct.”³³ Finally, Staff concluded that “...with TPUD’s history of implementing similar projects, the proposed construction plan will lead to effective and efficient construction of the line.”³⁴

The Commission has significant evidence in the record on which to base a determination that the Transmission Line is practicable and in the public interest. TPUD chose the best, least-cost location for the Transmission Line.

E. TPUD has met the “justification” standard under ORS 758.015(2).

The Commission has previously determined that the “justification” standard in ORS 758.015(2) means that a petitioner must show “sufficient reason for the project to be built.”³⁵ To make this determination, the Commission relies on “benefits and costs that can be quantified in economic terms.”³⁶

The record shows that the proposed Transmission Line will provide many benefits to TPUD and its customers and will allow TPUD to continue to meet its obligation to provide safe and reliable service to its customers and future customers. As discussed above, the Transmission Line is needed to directly serve approximately 1,700 electric meters in the communities of Oceanside and Netarts, including the area near Whiskey Creek Road. The Transmission Line will not only be a new and reliable source of electricity, it will provide a connection to other power sources and substantially reduce both the number of customers involved in an outage situation and the length of an outage.

While there is no question that the Transmission Line will be bring significant

³³ Staff/100, Gibbens/8.

³⁴ Staff/100, Gibbens/9.

³⁵ Order 11-366 at 4.

³⁶ *See Id.*

benefits to the communities in the Central Tillamook Valley and the Oceanside and Netarts areas, TPUD understands the Commission will review both the benefits and the costs. In Staff's review of the benefits and costs, Staff concluded:

The benefits of the line include increased reliability, avoidance of safety hazards; it ensures that power is available to future customers, increases flexibility in the system, and reduces outages. These benefits exist for over 12,000 customers in the central Tillamook valley. Staff finds the benefits outweigh the costs, given that the majority of the impacts can be mitigated.³⁷

As demonstrated in the record, TPUD is committed to working with individual property owners to minimize impacts during the construction of the Transmission Line. Indeed, as part of its land use approval process, TPUD was required to demonstrate that the Transmission Line was compatible with adjacent uses and that it would not have significant impacts to farm or forest practices.³⁸

TPUD is a not-for-profit utility and strives to keep its rates low and competitive. Using the most efficient and least-cost route, the cost of the line is estimated to be approximately \$14.6 million.³⁹ TPUD has determined that each \$10 million obligation it takes on has an average impact on a residential customer's bill of \$1.95 per month for the first 10 years, and \$1.59 per month over 25 years.⁴⁰ Based on the estimated cost of the Transmission Line, this amounts to a rate impact of \$2.85 per month in the first ten years and \$2.32 per month over 25 years.

TPUD expects to receive financing for the Transmission Line from RUS. As part of receiving RUS approval of financing for a facility such as the proposed Transmission

³⁷ Staff/100, Gibbens/14.

³⁸ TPUD/413, Fagen/36.

³⁹ TPUD/417, Fagen/5.

⁴⁰ TPUD/100, Simmons/3.

Line, TPUD must demonstrate that the Transmission Line is justified, and an environmental analysis must be performed where appropriate agencies are contacted and given an opportunity to comment.⁴¹ The RUS approval and the Construction Work Plan can be found at exhibit TPUD/105.

Staff agrees that the line is justified. Staff's testimony contains the following conclusion:

Q. Does Staff find the proposal justifiable?

A. Yes. Given that the line is necessary, and there is no better alternative, along with the fact that TPUD has attempted to limit the impact to all customers, Staff finds the proposed transmission line justified and is in the public interest.⁴²

F. TPUD has demonstrated that the Transmission Line is compatible with land use regulations.

As part of the Commission's review and approval of a CPCN, the Commission requires "a showing that the proposed transmission project complies with Oregon's Statewide Planning Goals and is compatible with the acknowledged comprehensive plans and land use regulations of each local government where the project is to be located."⁴³ The purpose of this rule provision is to ensure that the Commission's decisions are compatible with Statewide Planning Goals as required by ORS 197.180. The Commission's state agency coordination program ("SAC") implementing ORS 197.180 was adopted in May 1991. At that time, the Commission reviewed all of its programs to determine which ones, if any, affected land use. Of all the Commission's programs, only the Certificate of Need and Public Convenience was deemed to affect land use. Based on

⁴¹ TPUD/100, Simons/4-5.

⁴² Staff/100, Gibbens/16.

⁴³ See Order 11-366 at 9.

that conclusion, the Commission adopted new rules (OAR 860-025-0030 *et seq.*) to ensure “that the granting of a Certificate of Public Convenience and Necessity will comply with Oregon land use laws.”⁴⁴

As noted in the SAC, all comprehensive plans in the state have been acknowledged to be in compliance with Statewide Planning Goals. Thus, when the Commission acts compatibly with an acknowledged comprehensive plan, it acts compatibly with the Statewide Planning Goals. The Commission’s new rules therefore included what is now set forth in OAR 860-025-0030(3), which allows the Commission to demonstrate compliance with local comprehensive plans in lieu of the Commission adopting compatibility filings directly, but which nevertheless allows the Commission to directly adopt compatibility findings if appropriate.

OAR 860-025-0030(2) is not itself an approval standard. Rather, it is an instruction to the Commission to adopt findings of land use compatibility—findings that can be based on information provided pursuant to OAR 860-025-0030(3). The structure of OAR 860-025-0030(3) is consistent with how most state agencies determine land use compatibility and allows the petitioner to show either: (1) it has already received land use permits from the relevant local planning jurisdictions; (2) the proposed project does not require land use permits; or (3) the proposed project has not, but can be approved by the local jurisdiction if it follows that jurisdiction’s procedures and standards. OAR 860-025-0030(3) has a fourth option, which allows the Commission to make direct findings of compatibility with the Statewide Planning Goals, which it has done in at least one prior proceeding.⁴⁵

⁴⁴ Oregon Pub. Util. Comm., *State Agency Coordination Program*, page iii (May 1991).

⁴⁵ Order No. 11-366 at 9.

The proposed Transmission Line runs through two different planning jurisdictions: (1) Tillamook County (“County”), and (2) the City of Tillamook (“City”). As explained in more detail below, the construction of a transmission line is allowed along the identified route in both of these jurisdictions. TPUD applied for and received all required land use and other development permits from the County. No permits are required from the City based on the proposed route.

The following is a more detailed summary of how the Transmission Line is approved in each jurisdiction.

a. Tillamook County

The various components of the Transmission Line will lie within six base zones and three overlay zones in the County. TPUD initiated land use approval in the County on August 30, 2017 when it filed an application requesting a consolidated review of the Transmission Line in all County zones.⁴⁶

Throughout 2018, the County held multiple hearings on the application, beginning with a hearing before the Planning Commission on February 8, 2018, and concluding with a hearing before the County’s Board of Commissioners on July 30, 2018.⁴⁷ At that final hearing, the County approved all permits for the Transmission Line and, on August 29, 2018, adopted the findings supporting its decision.⁴⁸

The County’s findings approving the Transmission Line contain over 200 specific findings of fact and law addressing how the Transmission Line satisfies the County’s land use regulations. Among those findings, the County made several important

⁴⁶ TPUD/413, Fagen/5.

⁴⁷ TPUD/413, Fagen/6.

⁴⁸ TPUD/413, Fagen/1-3.

conclusions. First, the County considered whether there is a need for the Transmission Line. In doing so, the County concluded the following:

54. The Board finds there is a need (substantial public benefit) for the Transmission Line. The Applicant presented compelling evidence that the Transmission Line will provide a substantial public benefit by, among other things, increasing the reliability of electric service to the Oceanside and Netarts communities and allowing for additional load growth in those areas. The Applicant also presented compelling evidence that the improvements related to the Transmission Line will result in better service to other areas of the County, including electric customers in the City of Tillamook, which is a large load center. There is additional testimony in the record from the Tillamook Creamery Association, which opposes the specific project, that the line is needed. Similarly, the testimony presented on behalf of the Appellant concedes that the line is needed, and only that the route for the line is in dispute.⁴⁹

While the “need” for the Transmission Line the County identified is based on a standard that is slightly different from the standard the Commission will analyze for “need,” they are related because both ultimately rely on the benefit the public will receive from the line.

Second, the County’s findings demonstrate the role the County’s regulations play in implementing the Statewide Planning Goals. In response to specific allegations that the Transmission Line is inconsistent with Statewide Planning Goal 11, the County concluded “[t]he Board notes that Statewide Planning Goals do not apply directly to a quasi-judicial decision governed by the County’s acknowledged plan and land use regulations.”⁵⁰ This is consistent with provisions of state law, as recognized by the Land Use Board of Appeals. ORS 197.250 requires that a comprehensive plan implement the

⁴⁹ TPUD/413, Fagen/12.

⁵⁰ TPUD/413, Fagen/25.

Statewide Planning Goals and, on that basis, the comprehensive plan and its land use regulations can become “acknowledged” under ORS 197.251. After that, the Statewide Planning Goals normally do not apply directly as approval criteria for permit applications, and only the local regulations apply.⁵¹

Now that the County has approved all land use permits for the Transmission Line, the Commission can determine that the CPCN is compatible with applicable land use regulations. As noted above, OAR 860-025-0030(3) expressly allows the Commission to rely on a copy of the local land use jurisdiction’s permits as a basis for concluding that the Commission’s action will be compatible with local land use regulations and the Statewide Planning Goals.

b. City of Tillamook

Only a small portion of the Transmission Line, approximately 0.2 mile, is proposed to pass through the City of Tillamook. That area is located where the Transmission Line crosses Highway 101. Two of the three poles within the City limits will be within public rights of way. The City has confirmed that the franchise agreement between TPUD and the City provides authority for the placement of the poles in those areas and that no other land use permits are needed.⁵² TPUD has had positive communications with the property owner where the third pole is to be located and is in the process of finalizing an understanding of the easement terms TPUD will obtain.

Where land use approval is not required, OAR 860-025-030(3) allows the Commission to determine that a CPCN will be compatible with local land use regulations and Statewide Planning Goals.

⁵¹ See *Gottman v. Clackamas County*, 64 Or LUBA 358 (2011).

⁵² Exhibit TPUD/100, Simmons/6.

G. The Transmission Line does not require EFSC approval as required by OAR 860-025-0030(4).

This rule provides: “If a proposed transmission line is subject to the jurisdiction of the Energy Facility Siting Council (“EFSC”), the Commission shall adopt findings which assure the project and route have been certified by EFSC, and the requirements of OAR 860-025-0030(2) and (3) shall not apply.”

The Transmission Line is not subject to EFSC jurisdiction. Pursuant to ORS 469.300, a transmission line is subject to EFSC jurisdiction if the line is 230 kilovolts or more, more than 10 miles in length, and to be constructed in more than one city or county in the state. The Transmission Line is only 115 kV, eight miles in length, and resides solely in Tillamook County. The line therefore falls outside EFSC’s jurisdiction and this rule provision does not apply.

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V. Conclusion

Based on the evidence in the record in this proceeding, the Commission can find that TPUD has met the legal requirements under ORS 758.015 and OAR 860-025-0030(2) for granting a CPCN. TPUD respectfully requests that the Commission grant its Petition for a CPCN and authorize the construction of an 8.6-mile-long overhead transmission line from a breaker in the Tillamook Substation owned by the BPA to the proposed new Oceanside Substation.

Dated this 22nd day of February 2019.

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