

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN-2

In the Matter of

TILLAMOOK PEOPLE'S UTILITY
DISTRICT,

Petition for Certification of Public
Convenience and Necessity.

TILLAMOOK PEOPLE'S UTILITY
DISTRICT'S RESPONSE TO STAFF'S
MOTION TO MODIFY PROCEDURAL
SCHEDULE

Pursuant to OAR 860-001-0420 and Administrative Law Judge Power's (ALJ's) April 5, 2018 ruling, Tillamook People's Utility District ("TPUD") files this response to Staff of the Public Utility Commission of Oregon's ("Staff") motion to modify the procedural schedule in this docket ("Motion"). While acknowledging that delaying the date of the hearing is not required,¹ Staff proposes such a delay so that the hearing before the Public Utility Commission of Oregon ("Commission") will be held two weeks after Tillamook County's anticipated decision approving the land use permits for the transmission line project. As explained below, Staff's request is unnecessary, will cause unreasonable delay, and departs from past Commission practice. Staff's request should be denied, and the Commission should proceed with the hearing in this matter on May 11th as originally proposed by the Administrative Law Judge ("ALJ").

BACKGROUND

TPUD filed its Petition ("Petition") for a Certification of Public Convenience and Necessity ("CPCN") on October 6, 2017. As part of its filing, TPUD addressed the Commission's rules which require the Commission to comply with the Statewide Planning Goals and to assure a transmission line project is compatible with the acknowledged land use

¹ Motion at p.2, line 11.

regulations of local jurisdictions.² In support of the filing, TPUD provided the narrative portion of its land use applications filed with Tillamook County. In subsequent testimony, TPUD provided a report from the County Planning Staff stating that all approval criteria for those applications had been met.³

As Staff's Motion notes, the Tillamook County Planning Commission initially scheduled a hearing on the land use applications on February 8, 2018, but the hearing was continued to March 8, 2018, and again to April 26, 2018. As a result of these continuances, the anticipated deadline for the County to make a final decision is now July 13, 2018. This deadline, however, may be moved again if the County's Board of Commissioners decides to extend the process in a similar fashion. Further, land use applications like those involving TPUD's transmission line project may be appealed to the Land Use Board of Appeals. As a result, Staff's attempt to delay this proceeding until the County has made its initial decision is trying to hit a moving target, and even then, the ultimate time period in which final land use approval will be issued remains unknown. As explained below, it is therefore unnecessary for the Commission to wait for that proceeding to conclude before acting on the Petition, the benefits Staff hopes to capture by a delay are speculative at best, and the Commission has a sufficient record on which to make a decision prior to any final County action.

DISCUSSION

Staff's Motion first asserts that the County's land use decision will be "relevant" to this proceeding.⁴ While the decision of the local land use jurisdiction can be relevant to the Commission's decision, the Commission's rules already account for the fact that the timing of

² Petition at p.22.

³ Exhibit TPUD/301.

⁴ Motion at p.2, line 11.

land use permits does not have to sync up with the timing of the Commission's action on the Petition. The Commission's rules give express authority to the Commission to approve a certificate of public convenience and necessity without waiting for land use permits from a city or county. OAR 860-025-0030(2) sets out the overarching standard requiring the Commission to act compatibly with local land use regulations:

The Commission, as part of its approval of a Certificate of Public Convenience and Necessity, shall adopt findings which assure the proposed transmission project complies with the Statewide Planning Goals and is compatible with the acknowledged comprehensive plan(s) and land use regulations of each local government where the project is to be located. The Commission's findings shall be developed under the rules and procedures in the Commission's state agency coordination program pursuant to ORS 197.180.

The purpose of this rule is to ensure that the Commission's decisions are compatible with Statewide Planning Goals as required by ORS 197.180. OAR 860-025-0030(3), in turn, establishes the types of evidence on which the Commission can base its findings of compatibility:

(3) The Commission's land use findings assuring the proposed project's goal compliance and plan compatibility shall be based on the hearing record, which shall include at least one of the following:

(a) A copy of the local land use permit from each affected city or county planning agency, building department, or governing body stating that the proposed transmission project has received the jurisdiction's approval; or

(b) A copy of a letter from each affected local planning agency, building department, or governing body stating that the proposed transmission project is permitted under the jurisdiction's comprehensive plan, land use regulations, and development codes, but does not require specific approval by the jurisdiction; or

(c) Other written or oral land use information and documentation equivalent to OAR 860-025-0030(3)(a) or (b) above properly

presented to the Commission from an authorized representative from each affected city or county; or

(d) Commission goal compliance findings adopted pursuant to OAR 860-030-0065(3) in situations when the Commission is unable to assure goal compliance by acting compatibly with one or more of the affected comprehensive plans.

Staff now prefers to rely only on subsection (a) of the rule, but OAR 860-025-0030(3) allows the Commission to demonstrate compliance with local comprehensive plans in multiple different ways. The structure of OAR 860-025-0030(3) is consistent with how most state agencies determine land use compatibility and allows the applicant 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. The Commission has used a fourth option, which is to make direct findings of compatibility with the Statewide Planning Goals.⁵ Each of these four methods would be "relevant" to the Commission's decision, but Staff does not explain why only the first method should be used in this matter.

Staff's own testimony acknowledges that the County's process may not be completed in a timely manner and that the Commission has other options for making the required compatibility findings.⁶ Indeed, in the last two proceedings involving a request for a CPCN cited above for Pacific Power and Umatilla Electric Cooperative, the Commission granted the petition in the absence of full land use approval from the local jurisdiction.

⁵ *Pacific Power Petition for Public Convenience and Necessity*, UM 1495, Order No. 11-366 (Sept. 22, 2011); *In re Umatilla Electric Cooperative, Petition for Certification of Public Convenience and Necessity*, PCN 1, Order No. 17-11 (Mar. 21, 2017) at p. 7.

⁶ Exhibit Staff/300, Gibbens/17.

Staff's Motion next asserts that delaying the hearing will promote efficiency in the administrative process.⁷ To the contrary, there are very few efficiencies to be obtained from delaying the hearing. Testimony in this proceeding has concluded and only one party has continued to reserve a small amount of time for potential cross examination. Staff's independent analysis and recommendation is complete. If, as Staff suggests, TPUD is unable to obtain the land use permits it has applied for, and if an entirely new route must be pursued, then the entire CPCN process will start over, not just the hearing. However, it is unknown if denial of the land use permits would be so detrimental as to require a new CPCN proceeding. The land use permits involve multiple different approval standards, some of which may simply require a new application for a development permit instead of an application for an entirely new route. It is just as likely as not that a new land use permit could rely on the same route as the route presented in this matter depending on the basis for the County's denial. This is exactly why the Commission's rules account for the fact that a transmission line may be "compatible" with local land use regulations, even if the actual permits under those regulations have not yet been issued.

As a third basis for its Motion, Staff asserts that waiting until the County makes a decision, approximately three months from now, is not a significant delay.⁸ First, whether the delay is significant or not is subjective. A three-month delay in the Commission's hearing would mean that a final order is unlikely to issue until the end of this calendar year, more than a year after TPUD submitted the Petition – a significant delay to TPUD in its efforts to complete all of the permitting required for this project. Second, the County may not even make a final decision until after the anticipated July date. The County's Planning Commission spread out the hearings in part to accommodate more public participation. If the County's Board of Commissioners

⁷ Motion at p.2, line 18.

⁸ Motion at p.3, line 5.

extends the same courtesies, there could be another two months added to the local proceedings. Even so, as expressed to the ALJ during the prehearing conference in this matter, any party that does not prevail is likely to appeal the County's decision to the state's Land Use Board of Appeals. This is typically a six-month process that could result in the matter being remanded back to the County, even for something as small as adding additional findings. In other words, the County's initial decision Staff wishes to wait for is by no means guaranteed to provide certainty about what the ultimate decision will be. The Commission, by delaying its hearing until July, would essentially be picking an arbitrary date in hopes of knowing more about the likely outcome of the proceedings, but without any level of certainty greater than what appears in the current record before the Commission.

Finally, TPUD notes that, if the Commission approves the Petition and Tillamook County does not grant land use approval for the transmission line, no harm will occur to any party. TPUD will be unable to move forward with the proposed line unless and until it addresses the County's concerns that result in denial of the land use permits – if that is indeed the outcome. This is an inherent risk that already exists in the Commission's rules where those rules allow the Petition to be granted even before the local land use jurisdiction takes final action. In fact, this is the case for all other non-PUC permits as well. For example, if TPUD were unable to obtain the multiple state and federal permits that are required for the project, such as cut and fill permits, it would have to either address those agencies' concerns or choose a new route. The Commission's rules recognize that its role is limited and that it may have to make a decision even for a project that is not fully permitted yet.

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CONCLUSION

For the reasons stated, TPUD respectfully requests that Staff's motion to modify the procedural schedule in this docket be denied and that the Commission proceed with a hearing in this matter on May 11th as originally proposed by the ALJ.

Dated: April 17, 2018

Respectfully submitted,



Tommy A. Brooks, OSB 076071
Chad M. Stokes, OSB 004007
Cable Huston LLP
1001 SW Fifth Ave. Suite 2000
Portland, Oregon 97204-1136
Telephone (503) 224-3092
Facsimile (503) 224-3176
E-Mail: tbrooks@cablehuston.com
E-Mail: cstokes@cablehuston.com

Of Attorneys for Petitioner
Tillamook People's Utility District