

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 PCN 2

4 In the Matter of

5 TILLAMOOK PEOPLE'S UTILITY
6 DISTRICT,

7 Petition for Certificate of Public Convenience
and Necessity.

STAFF'S REPLY BRIEF

8 **I. INTRODUCTION**

9 On October 6, 2017, Tillamook People's Utility District ("TPUD") filed a Petition for
10 Certificate of Public Convenience and Necessity ("Petition") to allow construction of an
11 overhead transmission line which will require condemnation of land or interests therein. The
12 proposed 115 kV transmission line would run approximately eight and a half miles from
13 Bonneville Power Administration's Tillamook substation to a substation to be constructed in
14 Oceanside.¹

15 When a petition such as this is filed, the Commission must give notice and hold a public
16 hearing on the petition, then investigate to determine the necessity, safety, practicability and
17 justification in the public interest of the proposed transmission line.² The Commission must also
18 make findings that assure the proposed transmission line complies with the Statewide Planning
19 Goals and is compatible with the relevant acknowledged comprehensive plans and land use
20 regulations of each local government where the line is to be located.³ An order granting a
21 certificate is conclusive evidence in any condemnation proceeding that the transmission line is a
22 public use and necessary for public convenience.⁴

23 As required, the Commission held a public hearing on the petition in Tillamook, Oregon
24 on November 14, 2017 and later held an evidentiary hearing on November 1, 2018 in this

25 ¹ TPUD/200, Fagen/1-2.

26 ² ORS 758.015(2).

³ OAR 860-025-0030(2), (3).

⁴ ORS 758.015(2).

1 proceeding. Intervenors in this proceeding are Don Aufdermauer, Ben Hathaway, Todd A. Josi,
2 David Mast, Doris Mast, Oregon Coast Alliance, Oregon Dairy Farmers, Oregon Farm Bureau
3 Federation, Eric L. Peterson, Kristi Sherer, Bryce Smith, and Tilla-Bay Farms, Inc..

4 Staff for the Public Utility Commission of Oregon (“Staff”) investigated the petition and
5 filed testimony supporting issuance of a Certificate of Public Convenience and Necessity. Staff
6 recommends the Commission find a Certificate is supported by the necessity, safety,
7 practicability and justification in the public interest. Staff further recommends the Commission
8 find the proposed line is consistent with Statewide Planning Goals, and compatible with the
9 relevant acknowledged comprehensive plans and land use regulations of the affected local
10 governments.

11 II. DISCUSSION

12 1. Staff recommends the Commission find a Certificate for the proposed transmission line is
13 supported by the necessity, safety, practicability and justification in the public interest.

14 To issue a Certificate of Public Convenience and Necessity, the Commission must find a
15 Certificate is supported by the necessity, safety, practicability and justification in the public
16 interest of the proposed project. Each required element is a delegative term, which the
17 Commission may apply within the range of discretion allowed by the more general policies in
18 relevant statutes.⁵ In 2011, the Commission considered these elements and how they are applied
19 in the context of the laws and policies governing condemnation of private property. The
20 Commission indicated that it considers each required element to determine whether issuing a
21 Certificate is in the public interest, considering the benefits and costs to all Oregonians.⁶ The
22 Commission’s guidance and Staff’s recommendation as to each element as applied to this
23 proceeding is discussed below.

24 ⁵ See *In the Matter of Umatilla Electric Cooperative, Petition for Certificate of Public Convenience and Necessity*,
25 *Docket No. PCN 1, Order No. 17-111 at 2*; *In the Matter of PacifiCorp Petition for Certificate of Public*
Convenience and Necessity, *Docket No. UM 1495, Order No. 11-366 at 3-4*. See also *Chase Gardens, Inc. v.*
26 *OPUC*, 131 Or App 602, 605 (1994), *citing Springfield Education Assn. v. School Dist.*, 290 Or 217, 219 (1980);
Citizens’ Utility Board v. OPUC, 128 Or App 650, 655 rev den 320 Or 272 (1994).

⁶ Order No. 11-366 at 4.

1 A. Necessity.

2 To establish the necessity of a proposed transmission line project, the Commission has
3 ruled that “the petitioner must demonstrate that Oregonians will forego something desirable and
4 useful without it.”⁷ Staff recommends the Commission find the proposed transmission line is
5 desirable and useful because it will provide increased capacity, allow for replacement of aging
6 infrastructure, improve reliability on TPUD’s system, and is the only option that adequately
7 addresses these needs.⁸

8 We first note that Staff does not concur with TPUD’s assertion that the Commission
9 should give deference to TPUD’s finding that there is a need for the transmission line.⁹ TPUD is
10 not the typical investor-owned utility, and the Commission has acknowledged that a utility such
11 as TPUD can be assumed to act in the best interests of its customers.¹⁰ However, it is the
12 Commission, and only the Commission, that is vested with statutory authority to issue a
13 certificate of public convenience and necessity.¹¹

14 TPUD proposes to construct a 115 kV transmission line, a substation near Oceanside, and
15 two distribution feeders.¹² The transmission line and the substation will transfer load from the
16 Wilson River substation to the new Oceanside substation, reducing load under normal operating
17 conditions.¹³ The increasingly limited capacity of the transformers in the Wilson River
18 substation was one of the primary reasons behind TPUD’s Petition. Without increasing capacity,
19 even without additional growth, TPUD indicated it may not be able to reliably meet load.¹⁴
20 TPUD’s initial N-1 contingency analysis showed limited capacity in the event the Wilson River
21 substation’s T2 transformer is removed from service.¹⁵ The transmission line project will

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23 ⁷ Order No. 11-366 at 4.

24 ⁸ See Staff/200, Hanhan/7, lines 7-9, Hanhan/11, lines 15-21, Hanhan/12, lines 1-5.

25 ⁹ Tillamook People’s Utility District’s Opening Post-Hearing Brief, at 6 (February 22, 2019).

26 ¹⁰ Order 17-111 at 6.

¹¹ ORS 758.015.

¹² Staff/200, Hanhan/8, lines 14-18.

¹³ Staff/200, Hanhan/10, lines 9-11.

¹⁴ Staff/400, Hanhan/9-10.

¹⁵ Staff/200, Hanhan/11, lines 11-14; Staff/206; TPUD/106, Simmons/23.

1 provide TPUD with the ability to transfer load to adjoining substations and serve expected load
2 growth in the central Tillamook Valley and Oceanside/Netarts areas.¹⁶

3 In addition, the transmission line project will serve the area currently connected to the
4 Wilson River substation by a 14-mile 24.9 kV radial distribution line, which includes a two-mile
5 segment over 50 years old, with failing and rusting steel wire.¹⁷ The radial distribution line is
6 increasingly limited in capacity, resulting in an increase in long outages. TPUD represents that it
7 cannot perform work on this line without prolonged outages as the line cannot be energized
8 during the work.¹⁸ The transmission line project allows for a looped system that would provide
9 redundancy and allow sections of line to be taken out of service for maintenance or repair
10 without disruption to all customers on the line.¹⁹

11 TPUD considered several options, including building a redundant 24.9 kV feeder to
12 Netarts and Oceanside and upgrading one of the Wilson River substation transformers,
13 collectively referred to as “Option 3.”²⁰ Given that the substation transformer upgrade has now
14 occurred, Staff still finds the transmission line is the best option to address capacity and
15 reliability for TPUD.²¹ TPUD’s recent analysis in December 2018 indicates it will still
16 encounter reliability issues under N-1 conditions and would need to install voltage regulators.²²
17 In addition, under its load growth analysis, TPUD finds that the added capacity at the Wilson
18 River substation will only accommodate 8 to 17 years of load growth, while the transmission line
19 project will accommodate load growth for approximately 38 to 48 years.²³ Staff finds the
20 timeframe of 17 years is unlikely, as it is based on an assumption of zero peak load growth, and a
21 shorter timeframe will necessitate planning for upgrades in the near future. Staff concurs that a
22 transmission line at 115 kV, being at a higher voltage with a wider corridor, is better suited to

23 ¹⁶ Staff/200, Hanhan at 10, lines 9-12.

24 ¹⁷ Staff/200, Hanhan at 9, lines 15-17.

25 ¹⁸ Staff/200, Hanhan at 9, 17-20; TPUD/106, Simmons/25.

26 ¹⁹ Staff/200, Hanhan at 10, lines 13-17.

²⁰ Staff/200, Hanhan at 11, lines 17-20.

²¹ Staff/200, Hanhan at 12; Staff/400, Hanhan/15; Staff/500, Hanhan at 2-4.

²² Staff/500, Hanhan at 3.

²³ Staff/500, Hanhan/4.

1 cover the distance proposed for distribution lines under Option 3.²⁴ In addition, Option 3 would
2 not resolve reliability issues as the old and the new distribution feeders would remain susceptible
3 to outages along the distribution routes that cross wooded areas.²⁵

4 Staff evaluated whether conservation efforts could mitigate the need for this line, but
5 notes that such efforts do not address the issues of replacing aging infrastructure or improving
6 reliability.²⁶ In addition, the suggestion that the Tillamook County Creamery Association may
7 reduce TPUD's load by switching to propane or diesel fuel for its boilers appears not to be a
8 viable option. TPUD remains the provider of last resort for the Creamery, and will need to plan
9 for peak demand.²⁷

10 In light of the foregoing, Staff recommends the Commission find the proposed line is
11 necessary.

12 B. Safety.

13 To establish the safety of a proposed transmission line project, the Commission has ruled
14 that a "petitioner must show that the project will be constructed, operated, and maintained in a
15 manner that protects the public from danger."²⁸ Staff recommends the Commission find the
16 proposed transmission line, as set forth in the Petition, is safe, as the project will be constructed,
17 operated and maintained consistent with relevant safety standards.²⁹

18 TPUD used registered professional engineers to design the line, and will follow the
19 standard construction specifications and guidelines of the U.S. Department of Agriculture's
20 Rural Utility Service ("RUS"), which has approved the project.³⁰ TPUD will also comply with
21 all applicable National Electric Safety Code (NESC) standards for construction, operation and
22 maintenance,³¹ and with any other applicable laws.³²

23 ²⁴ Staff/500, Hanhan/3-5; Staff/400, Hanhan/16, lines 17-18.

24 ²⁵ Staff/400, Hanhan/16; Staff/500, Hanhan/3.

24 ²⁶ Staff/200, Hanhan/12, lines 8-15.

25 ²⁷ Staff 400, Hanhan/12-13.

25 ²⁸ Order No. 11-366 at 4.

26 ²⁹ See Staff/200, Hanhan/6, lines 1-4.

26 ³⁰ Staff/200, Hanhan/4, lines 4-6, 10-11; TPUD/105, Fagen/1; TPUD/200, Fagen/11, lines 18-19.

³¹ See OAR 860-024-0010.

1 TPUD has experience operating and maintaining transmission lines. The district began
2 operating in 1936 and currently operates three 115 kV transmission lines.³³ Staff reviewed the
3 district's safety manual, history of workplace injuries, construction work plan, and narrative
4 project description filed with Tillamook County for land use permitting, and Staff found no
5 issues related to project safety.³⁴

6 Staff investigated the potential for environmental harm from the project. Staff finds the
7 project is almost exclusively along road right-of-ways, utility corridors or previously developed
8 areas, and will use avian-friendly construction standards.³⁵ In light of Intervenor testimony
9 regarding concerns about stray voltage, Staff reviewed TPUD's calculations of the
10 electromagnetic frequency on the proposed line and information on stray voltage, but does not
11 have concerns.³⁶ A number of these potential issues were considered in TPUD's Borrower's
12 Environmental Report for the 2013-2016 construction work plan, and in its conditional use
13 permit application to Tillamook County.³⁷ The County's final decision adopts a number of
14 Conditions of Approval to ensure compliance with applicable standards and requirements.³⁸

15 Staff recommends that the Commission find the project will be executed in a manner that
16 protects the public from danger and is therefore safe because the Company has a history of safe
17 operations, and the proposed construction plan and processes and the standards under which the
18 line would be constructed, maintained and operated are consistent with applicable laws and
19 standards.

20 C. Practicability.

21 To find a proposed transmission line project is practicable, "the petitioner must show the
22 project is feasible and will be effectively and efficiently constructed."³⁹ Staff recommends the

23 ³² Staff/200, Hanhan/4, lines 13-14; TPUD/200, Fagen/11, lines 21-23.

24 ³³ Staff/200, Hanhan/3, lines 19-23; Staff/400, Hanhan/4, lines 3-12.

24 ³⁴ Staff/200, Hanhan/4, lines 1-4; TPUD/105, Simmons.

25 ³⁵ Staff/200, Hanhan/5, lines 14-19.

25 ³⁶ Staff/400, Hanhan/4-5.

26 ³⁷ Staff/200, Hanhan/5, lines 11-14.

26 ³⁸ TPUD/413, Fagen/3, 38-41.

³⁹ Order No. 11-366 at 4.

1 Commission find that the project is feasible and will be constructed both effectively and
2 efficiently.

3 Staff agrees that TPUD selected a reasonable route for the transmission line and will
4 construct it in a manner that will limit the project cost and impacts to landowners.⁴⁰ The
5 proposed route is in proximity to the existing BPA Tillamook substation and customers to be
6 served via the new Oceanside substation, it provides for co-location with existing rights of way
7 and avoids biological and cultural resources.⁴¹ TPUD evaluated a number of alternative route
8 segments and selected one segment, W2, that was more expensive than other options but travels
9 along an existing road for a greater percentage of the distance, with fewer stream crossings.⁴²
10 There is no potential route that would not cross agricultural lands, and Staff finds the proposed
11 route appropriate.⁴³

12 Financially, Staff found the proposed line feasible because TPUD's reasonable cost
13 estimates indicate a modest impact on customer rates, even with cost overruns of 50 percent over
14 the initial projected cost of \$13.5 million.⁴⁴ The current estimate of \$14.6 million⁴⁵ remains
15 reasonable. TPUD included a Farm and Forest Impact Assessment in its land use application to
16 Tillamook County that notes the financial impact to farming practices should be minimal.⁴⁶
17 Tillamook County's order approving the conditional use permit adopts Conditions of Approval
18 to mitigate the land use impacts.⁴⁷

19 Staff further finds TPUD has gained experience constructing two 115 kV transmission
20 lines in the 1990s on routes that cross farms, forestlands, near residences and waterways and
21 traverses along roadways.⁴⁸

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23 ⁴⁰ Staff/300, Gibbens/4, lines 8-9, Gibbens/5, lines 3-4.

⁴¹ Staff/100, 7-8; Staff/300, Gibbens/6, lines 10-15.

⁴² Staff/100, Gibbens/10-11.

24 ⁴³ Staff/100, 7-8; Staff/300, Gibbens/6, lines 10-15.

25 ⁴⁴ Staff/100, Gibbens/7, lines 11-18; Staff/300, Gibbens/5, lines 17-20, Gibbens/7, lines 5-6.

⁴⁵ TPUD/417, Fagen 5.

26 ⁴⁶ Staff/300, Gibbens/7, lines 4-6.

⁴⁷ TPUD/413, Fagen.

⁴⁸ Staff/100, Gibbens/8-9.

1 Given the considerations above, Staff recommends the Commission find the project is
2 practicable.

3 D. Justification.

4 To find a proposed transmission line project is justified, “the petitioner must show
5 sufficient reason for the project to be built,” on consideration of the public benefits and costs of
6 the project.⁴⁹ Staff recommends the Commission find that the project is justified because the line
7 is necessary and practicable, as explained in the above sections, TPUD has demonstrated that the
8 selected route is an appropriate balance among viable options, and TPUD has limited the impact
9 on individual landowners, mitigating a number of concerns at reasonable expense.⁵⁰

10 Staff did not engage in a traditional cost/benefit study because most of the relevant
11 benefits of the line and the negative externalities are somewhat unquantifiable.⁵¹ Moreover, any
12 need for the analysis is less compelling than in petitions concerning investor owned utilities,
13 because TPUD is a not-for-profit entity, assumed to be acting for the benefit of all of its
14 customers.⁵²

15 Given Staff’s recommendation that the Commission find the line is necessary, failure to
16 construct the line may result in continued prolonged outages, safety concerns, increases in rates,
17 and TPUD’s inability to provide power to new customers.⁵³ The transmission line will improve
18 reliability, reduce outages, and provide TPUD with flexibility in serving load and in performing
19 maintenance in the affected area.⁵⁴ Constructing the line will benefit over 12,000 customers in
20 the central Tillamook Valley.⁵⁵ Constructing the line will impact customer rates, property
21 owners along the route, produce construction impacts and other possible impacts, but Staff finds
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24 ⁴⁹ Order No. 11-366 at 4.

⁵⁰ Staff/100, Gibbens/14-15.

⁵¹ Staff/100, Gibbens/12.

25 ⁵² Staff/100, Gibbens/13; Order 17-111 at 6.

⁵³ Staff/100, Gibbens/13, lines 17-20.

26 ⁵⁴ Staff/100, Gibbens/12, lines 18-22.

⁵⁵ Staff/100, Gibbens/14, lines 6-7.

1 the benefits justify the project, particularly given the existing and applicable regulatory
2 constraints to address safety and land use issues.⁵⁶

3 Staff recommends that the Commission find there is sufficient reason for the project and
4 it is therefore justified in the public interest.

5 Based on the foregoing, Staff recommends that the Commission find a Certificate is
6 supported by the necessity, safety, practicability and justification in the public interest.

7 2. Issuing a Certificate is consistent with Statewide Planning Goals and compatible with the
8 relevant acknowledged comprehensive plans and land use regulations of the affected local
9 governments.

9 In order to approve a Certificate of Public Convenience and Necessity, the Commission
10 must find the proposed project complies with the Statewide Planning Goals and is compatible
11 with the relevant local government's acknowledged comprehensive plans and land use
12 regulations.⁵⁷ When a project is subject to the jurisdiction of the Energy Facility Siting Council
13 (EFSC), the Commission relies on EFSC's findings in this regard.⁵⁸ However, based on the
14 smaller size and length of TPUD's project, Staff concurs with TPUD that it is not subject to
15 EFSC review.⁵⁹ Therefore, the Commission may rely on documentation from the affected cities
16 or counties or otherwise make findings regarding the project's compliance with land use
17 requirements.⁶⁰ Documentation from the affected cities and counties requires at least one of:

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

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

25 ⁵⁶ Staff/100, Gibbens/13-14; Staff/300, Gibbens/11.

26 ⁵⁷ OAR 860-025-0030(2).

⁵⁸ OAR 860-025-0030(4).

⁵⁹ ORS 469.300(11)(a).

⁶⁰ OAR 860-025-0030(3)(d).

1 (c) Other written or oral land use information and documentation equivalent to
2 OAR 860-025-0030(3)(a) or (b) above properly presented to the Commission
3 from an authorized representative from each affected city or county.⁶¹

4 Here, the proposed line affects two local planning jurisdictions: the City of Tillamook
5 and Tillamook County, and both possess acknowledged comprehensive plans. With respect to
6 the portion of the project within the City of Tillamook, communications between TPUD and the
7 City provide documentation that the use is permitted and no specific land use approval is
8 required.⁶² Staff finds this documentation adequate to demonstrate that the project is a permitted
9 use that does not require specific approval by the jurisdiction.

10 TPUD's proposed project required a conditional use permit and development permit from
11 Tillamook County.⁶³ Though TPUD had applied for these approvals from Tillamook County at
12 the time it filed this Petition, the permit was not approved at the county level until a decision was
13 issued by the Tillamook County Board of Commissioners on August 29, 2018.⁶⁴ Staff finds the
14 permit documentation in the record from Tillamook County to be adequate to demonstrate that
15 the project has received the jurisdiction's approval.

16 III. CONCLUSION

17 Staff's recommendation is that the Commission find TPUD's Petition for a Certificate of
18 Public Convenience and Necessity is supported by the necessity, safety, practicability and
19 justification in the public interest of the project. Staff further recommends the Commission find
20 the project is consistent with Statewide Planning Goals and compatible with local land use
21 requirements.

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26 ⁶¹ OAR 860-025-0030(3).

⁶² Staff/100, Gibbens/18, lines 11-19; Staff/109, Gibbens/3; TPUD/100, Simmons/6, lines 10-13.

⁶³ Staff/100, Gibbens/18, lines 3-10.

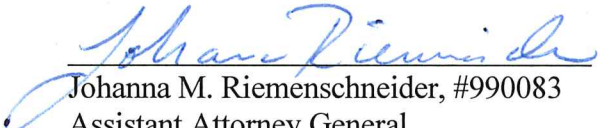
⁶⁴ Staff/100, Gibbens/18, lines 3-10; TPUD/413, Fagen/1-3.

1 For the foregoing reasons, Staff respectfully requests that the Commission issue an order
2 granting the Petition.

3 DATED this 12th day of March 2019.

4 Respectfully submitted,

5 ELLEN F. ROSENBLUM
6 Attorney General

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