

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

PCN 1

In the Matter of

UMATILLA ELECTRIC COOPERATIVE,

Petition for Certification of Public  
Convenience and Necessity.

RULING

DISPOSITION: MOTION DENIED

On November 23, 2016, Umatilla Electric Cooperative (Umatilla) and the Staff of the Public Utility Commission of Oregon jointly filed a motion to modify the procedural schedule in this docket. Presently a hearing in this matter is set for December 12, 2016. They request that the hearing be canceled and that the briefing date, January 11, 2017, be moved up to December 23, 2016.

In their motion they note that both parties have filed testimony and that each has waived cross-examination. They state that each will file a motion for the admission into evidence of their respective pre-filed testimony and that neither will object. No one has filed a petition to intervene.

Jurisdiction for the Commission in this matter is based on ORS 758.015(1), which provides that any electric utility that intends to use condemnation in conjunction with its construction of an overhead transmission line must first petition this Commission for a certificate of public convenience and necessity. Subsection (2) requires that the Commission “give notice and hold a public hearing on such petition.”

As noted in the motion, the Commission held a public comment meeting in this docket in Hermiston, Oregon, on September 22, 2016. The moving parties argue that the Commission could deem that meeting the “hearing” required by the statute and cancel the hearing now set for December 12. They claim that granting their motion would “allow for more efficient resolution” of this matter.

Their motion is denied. The public meeting held in Hermiston does not meet the requirement of a “hearing.” ORS 758.015(2) requires the Commission to consider “facts presented at such hearing.” Although the event was noticed as a “Public Comment Hearing,” its stated purpose was to allow the public to submit comments—not evidence—on Umatilla’s request. No witnesses were sworn, no testimony was offered, and no one was subject to cross-examination.

In addition, the notice itself also made clear that the Public Comment Hearing was a preliminary event and that a hearing would be held at a later date. The notice made clear that, following the receipt of public comments, a “prehearing” conference would be held to, among other things, adopt a procedural schedule for the docket. That schedule, adopted by the administrative law judge at the prehearing conference of September 22, included the December 12 hearing date.

In such circumstances the Commission cannot rely on the facts presented at the public meeting and would be inviting reversible error in a subsequent condemnation action were we to deem the public meeting a hearing where no hearing was held.

Dated this 30<sup>th</sup> day of November, 2016, at Salem, Oregon.



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Patrick Power  
Administrative Law Judge