

**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.

RULING

DISPOSITION: MOTION GRANTED

**I. INTRODUCTION**

At the prehearing conference on April 4, 2018, I proposed to set the hearing in this matter for May 11, 2018. In response, Staff, for the first time, suggested that the hearing be postponed until a later date in recognition of pending local planning decisions. I directed that Staff present its proposal in the form of a written motion with supporting argument so that all parties could reply.

**II. STAFF'S MOTION**

On April 10, 2018, Staff filed its motion to amend the procedural schedule in this docket until after the decision by Tillamook County regarding the pending permit application related to approval of the proposed transmission line that is the subject of this application. Presently, this matter is set to go before the Tillamook County Planning Commission on April 26, 2018. All parties agree that, whatever the outcome at the Planning Commission level, the decision will be appealed to the County Board of Supervisors, which is expected to act in mid-July to mid-August. Staff suggests that the hearing be set for a date two weeks after the County Board decision.

According to Staff, there are three reasons that support its request. First, the County's decision would be relevant to this proceeding. Under the applicable rule<sup>1</sup>, a copy of the local land use permit is one method for the Commission to make the necessary land use finding to the effect that the project is compatible with Statewide Planning Goals.

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<sup>1</sup> OAR 860-025-0030(3)(a).

Second, Staff's proposal will promote administrative efficiency. Depending on the result of the county process, Tillamook PUD may need to consider an alternate route. If the route is altered after this proceeding has been resolved, the hearing will have been unnecessary and the resulting Commission order would need to be withdrawn.

Third, Staff's proposal would not result in an unreasonable delay. The hearing would be postponed for only three months. The Commission would be able to take administrative notice of the County's action and proceed expeditiously.

### **III. SUPPORT FOR STAFF'S MOTION**

Replies in support of Staff's motion were filed by David and Doris Mast, Tilla Bay Farms, Inc., the Oregon Farm Bureau and Oregon Dairy Farmers Association (filing jointly), the Oregon Coast Alliance (ORCA), and Eric and Loretta Peterson.

Tilla Bay Farms notes that the CPCN process includes the requirement of local land use approval under OAR 860-025-0030(3)(a), while the Tillamook County Planning Commission proceedings and subsequent appeals do not require CPUC approval. Thus, ordering them in the manner proposed by Staff is appropriate.

The Oregon Farm Bureau and Oregon Dairy Farmers Association believe that Staff's motion promotes efficient use of resources while respecting the County's role in deciding whether the project has met the required conditions. Requiring the parties to proceed with a hearing before the County has addressed the land use approval wastes time, resources and energy when all parties acknowledge that local land use approval is necessary before the project may proceed (and is a condition of the PUC process).

ORCA argues that it is important that the County Board of Supervisors make the final decision on the land use application because of the greater deference to be given to their decision relating to land use issues. Thus, it is reasonable for the land use component of the application to be decided by the County Board.

### **IV. OPPOSITION**

Tillamook PUD opposes Staff's motion. It notes the uncertainties regarding the likely date for the County Board's actions as well as the possible appeal to the Land Use Board of Appeals, and argues that Staff unnecessarily is trying to hit a moving target.

According to Tillamook PUD, the Commission's rules allow the Commission to approve a certificate of public convenience and necessity without waiting for local land use approval. The District cites other cases where the Commission has granted a certificate of CPCN in the absence of full land use approval from the local jurisdiction.

Tillamook PUD challenges Staff's claim that the delay would promote administrative efficiency, noting that all testimony has been filed and only a limited hearing is planned. Tillamook posits several different scenarios for the outcome of the local planning process to argue that 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 to whether the delay would be "significant," Tillamook PUD states that it might result in a Commission decision toward the end of the calendar year, more than a year after the petition was filed. Tillamook notes that the timing of the County Board action may be delayed, and then the decision appealed to the Land Use Board of Appeals. Thus, by delaying the hearing, the Commission would be picking an arbitrary date for the outcome of the proceedings, without any level of certainty greater than what is in the current record.

Finally, Tillamook PUD notes that, if the Commission approves the application but Tillamook County does not grant land use approval for the transmission line, no harm will have occurred to any party. Tillamook will simply be unable to move forward with the project until it addresses the County's concerns. This is an inherent risk that already exists in the Commission's rules where the rules allow the petition to be granted even before the local land use agency takes final action.

## V. RESOLUTION

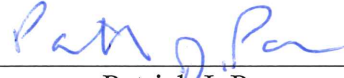
I grant Staff's motion. The Commission process will be better informed if it incorporates the results of the local planning process, even if an appeal from the Board of Supervisors decision is pending at the Land Use Board of Appeals at the time of the hearing.

This is a highly contested proceeding at the Commission with substantial testimony in support of and against the petition. To the extent that the issues overlap between the county planning process and the CPCN process, there is nothing to be gained from conflicting outcomes. Given the primacy of the local land use planning agency's action under OAR 860-025-0030(3)(a), it would be inefficient for the Commission to proceed without the benefit of the local planning decision.

While granting the motion appears to delay the proceeding, it also might expedite it, in terms of the submission and resulting commission decision. After the hearing, the parties plan to submit the case on three rounds of briefs. The Commission decision will follow. If the proceeding were to go ahead before the local planning agency action, it is possible that the filing of briefs would have to be held in abeyance awaiting the local planning agency action. Of course, depending on the local planning agency action, it also might be possible that this matter would have to be reopened or even dismissed.

The delay in the hearing will promote administrative efficiency with no harm to Tillamook PUD. At the time of the hearing the Commission will have the benefit of the local planning agency action, resulting in a more fully developed record for the Commission's decision.

Dated this 25<sup>th</sup> day of April, 2018, at Salem, Oregon.



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Patrick J. Power  
Administrative Law Judge