

ENTERED MAR 21 2017

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 1

In the Matter of

UMATILLA ELECTRIC COOPERATIVE,

Petition for Certification of Public
Convenience and Necessity.

ORDER

DISPOSITION: PETITION GRANTED

I. INTRODUCTION

In this order, we grant the petition filed by Umatilla Electric Cooperative (Umatilla) for a certificate of public convenience and necessity as required for the construction of a five mile overhead transmission line from a breaker in the McNary Substation, owned by the Bonneville Power Administration (BPA), to Umatilla's existing Hermiston Butte Substation.

II. BACKGROUND

Umatilla provides electric service to its Oregon members in Morrow, Umatilla, Union, and Wallowa counties. Umatilla's service territory is located west of Boardman in Morrow County and covers much of Umatilla County, surrounding the cities of Hermiston and Pendleton and into the Blue Mountains.

As a consumer-owned utility, Umatilla is not subject to our jurisdiction with regard to its rates, service, and financial matters. However, under ORS 758.015, Umatilla is required to obtain from this Commission a certificate of public convenience and necessity (CPCN) in order to condemn property for purposes of building a transmission line.

The proposed 115 kV transmission line would run approximately five miles from BPA's McNary Substation to Umatilla's Hermiston Butte Substation. It would become the main feed to the Hermiston Butte Substation and provide backup to the existing feed from the McNary Substation into the Hermiston area. The transmission line is needed to adequately provide service to existing and new loads in the City of Hermiston and Umatilla's surrounding service territory.

On September 22, 2016, we held a public comment hearing and prehearing conference in this matter in Hermiston, Oregon. Umatilla and the Commission Staff made presentations at the hearing and answered questions. No petitions to intervene have been

filed and no members of the public participated in the prehearing conference. However, we have received some written comments from interested persons.

Umatilla and Staff filed testimony that was received at a hearing on December 12, 2016. The matter was submitted with the filing of briefs by Staff and Umatilla on January 11, 2016. There are no contested issues of fact and law. Staff supports Umatilla's application.

III. DISCUSSION

A. Legal Standard

Upon receipt of the petition, ORS 758.015(2) requires this Commission to undertake an "investigation to determine the necessity, safety, practicability and justification in the public interest for the proposed transmission line." In addition, OAR 860-025-0030(2) requires us to determine whether the proposed transmission line is compatible with land use regulations.

1. ORS 758.015(2)

In Order No. 11-366, we interpreted the statutory phrase "necessity, safety, practicability and justification in the public interest of the proposed transmission line."¹ Construing the phrase in the context of the laws and policies governing the condemnation of private property, we concluded that the statute required use to make separate determinations on the necessity, safety, practicability, and justification of the proposed transmission line, and must consider the "public interest" when addressing each of these requirements.² Furthermore, because we are acting in a legislative capacity making these public interest determinations, we concluded that we must focus on the benefits and costs to all Oregonians.³ Thus, although the interests of the petitioning entity must be considered, we do not require a specialized showing of benefits to these customers to issue a CPCN.

With regard to the specific meaning of "necessity, safety, practicability and justification" of a project, we relied on the plain, natural, and ordinary meanings of these terms.⁴ To establish the necessity of a project, we concluded that the petitioner must demonstrate that Oregonians will forego something desirable and useful without it. To establish the safety of a project, we held that a petitioner must show that the project will be constructed, operated, and maintained in a manner that protects the public from danger. To establish the practicability of the project, the petitioner must show the project is feasible and will be effectively and efficiently constructed. Finally, to show that a project is justified, the petitioner must show sufficient reason for the project to be built.

¹ *In the Matter of PacifiCorp, dba Pacific Power*, Docket No. UM 1495, Order No. 11-366 (Sept 22, 2011).

² *Id.* at 3.

³ *Id.* at 4.

⁴ *Id.*

2. OAR 860-025-0030(2)

In addition to the statutory criteria discussed above, OAR 860-025-0030 requires a petitioner to show 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. The rule allows the petitioner to prove compatibility by showing either (1) it already has received and use permits from local planning authorities; (2) the project does not require land use permits; (3) the project can be approved by the local authorities if the petitioner follows the proper procedures. The rule also allows us to make direct findings of compatibility with Statewide Planning Goals.

B. Necessity of Proposed Transmission Line

1. Position of the Parties

Umatilla and Staff agree that the new line is necessary to provide reliable and safe service to existing and new loads in the City of Hermiston and the surrounding service territory and for the continued public health, safety, and economic welfare of Umatilla's members. The cooperative states that it is experiencing rapid growth and is expanding, replacing, and adding infrastructure. Staff agrees that Umatilla has experienced rapid growth over the last five years, with continued growth forecast, and notes that outages on the system have increased in severity.

The parties also agree that an upgrade to the existing line would not be as effective as development of the proposed line with respect to reliability and would be more expensive. The area is currently served by a 115kV line owned by Umatilla and sourced from BPA's McNary Substation. The existing line has limited capacity and limited reliability and has resulted in outages. Umatilla looked into upgrading the existing line but determined that upgrades would be an inferior choice.

The parties also note the benefits of the new line. Umatilla contends the new line will benefit Oregonians directly and indirectly by supporting economic development, jobs, and the tax base. Staff notes that a neighboring utility, Hermiston Energy Services, also will benefit through increased reliability.

2. Commission Resolution

We conclude that Umatilla has established the necessity of the proposed line. Umatilla has shown that it is experiencing rapid growth. The existing line has limited capacity and limited reliability, resulting in outages. Upgrading the existing line would be an inferior choice.

C. Safety of Proposed Transmission Line**1. Position of the Parties**

Umatilla and Staff contend that the project will be executed in a manner that protects the public from danger and is therefore safe. Umatilla states that safety is a priority for the cooperative in its operation and maintenance of its system, and it has substantial experience constructing, operating and maintaining transmission lines in a safe, efficient manner. Umatilla explains that the proposed line will be constructed, operated, and maintained to meet or exceed all National Electric Safety Code standards, as well as all applicable federal, state and local laws, regulations, and ordinances. Moreover, Umatilla adds that it designs and maintains all of its electrical facilities in conformance with State of Oregon⁵ and United States Department of Agriculture service standards.

Staff is satisfied that Umatilla will comply with applicable standards for construction, operation, and maintenance of the transmission line. Staff responds to concerns from land owners which it finds are not relevant or have been fully addressed by the project design. Staff investigated potential environmental harm and exposure to electromagnetic fields. Staff found minimal environmental impacts and exposures well below the applicable standard.

2. Commission Resolution

We find that Umatilla has demonstrated that the proposed transmission line will be constructed, operated, and maintained in a manner that protects the public from danger. The company commits to meet or exceed all applicable safety standards and rules. These standards and rules ensure that the line is constructed, operated, and maintained in a manner that protects the public.

D. Practicability**1. Position of Parties**

Umatilla and Staff contend that the proposed transmission line is practical. Umatilla notes that the proposed line will use an existing transmission corridor and take a relatively straight route between the McNary Substation and the Hermiston Butte Substation. Any alternate route would require new easements, the potential condemnation of more private property, and potential impacts to resource lands, such as agricultural parcels.

Staff describes Umatilla's planning process and compares the estimated cost of the proposed line to the costs of the alternatives which are more expensive. Staff notes that due to the significant growth forecast for the service territory, the rate impact of the project on the utility's customers is not significant. Umatilla has been granted

⁵ OAR 860, Division 024 (Safety Standards).

preliminary approval for financing the project through the Department of Agriculture, Rural Utilities Service (RUS), which requires a showing that the project is justified.

Given the number of landowners involved, Staff finds it reasonable to assume that Umatilla would have to resort to condemnation regardless of the route chosen. Thus, the project is not practicable without a CPCN because the cooperative otherwise would be unable to initiate the condemnation proceedings to acquire the necessary land or interests in land.

2. *Commission Resolution*

We find that Umatilla has established that the proposed transmission line is feasible and will be effectively and efficiently constructed. Umatilla has the experience and resources necessary to effectively and efficiently complete the project. The proposed line is the most cost-effective solution to the utility's need for new transmission into its Hermiston Butte Substation.

E. *Justification*

1. *Position of Parties*

Both Umatilla and Staff agree that the proposed transmission line is justified. In terms of benefits, Umatilla anticipates the proposed line will help meet its obligation to provide sale and reliable service to its customers. Umatilla states that reliability is essential, because the load center to be served has several critical loads, including hospital and medical facilities, large merchandise outlets, and industrial processes.

In terms of costs, Umatilla reports that the cost of the line is estimated to be \$5.74 million. The average impact on a residential member's bill is \$0.37 per month.

Umatilla adds that it plans to receive financing for the line from RUS. As part of receiving RUS financing Umatilla must demonstrate that the line is justified, and an environmental analysis must be performed.

Staff did not engage in a traditional cost/benefit study because most of the benefits of the line, including improved reliability, reduced outages, flexibility in serving load, and increased load serving capabilities are not readily quantifiable. To assess justification, Staff examined the alternate routes and the upgrade option and found the project to be justified by comparison. Staff also considered the impact to customers and businesses and found that the improved reliability benefits all affected persons.

2. *Commission Resolution*

Based on Staff's independent analysis, we find that Umatilla has shown sufficient reason for the proposed transmission line to be built. We agree that many of the economic benefits of the line are not readily quantifiable, but they are tangible and cannot be

achieved more efficiently or cheaply. We make this determination to facilitate Umatilla's use of condemnation. Because we have no rate-making jurisdiction over Umatilla, our finding cannot be used to justify Umatilla's recovery of its related costs. However, as noted by Staff, as a municipal utility, Umatilla can be presumed to act in the best interests of its customers.

F. Compatibility with Land Use Regulations

1. Position of Parties

At the outset, Umatilla states its willingness to work with all landowners to avoid the need for condemnation (and the need for this proceeding). However, if condemnation is required, the cooperative faces a timing issue – it cannot apply for final land use approval from the county until it has a property interest in the land on which the line will be constructed – and it needs condemnation to acquire that property interest.

Umatilla states that it has worked with local land use authorities to confirm that the line is a permissible use along the route both within and without the Umatilla County/City Urban Growth Areas and in the City of Hermiston. In the case of the county, the transmission line would be a conditional use, such that the county may place conditions on its approval to address any compatibility issues.

Regarding the Statewide Planning Goals, Umatilla separately discusses the application of each of the relevant goals to its application.

Goal No. 1 is "Citizen Involvement." Umatilla notes that there is the opportunity for citizen involvement in this proceeding as well as in the local permitting process.

Goal No. 2 is "Land Use Planning and Exceptions." Consistency of the transmission line with the county comprehensive plan is a requirement for the conditional use permit that Umatilla will obtain from the county.

Goal No. 3 is "Agricultural Lands." Umatilla states that the proposed route avoids all relevant lands.

Goal No. 5 is "Open Spaces, Scenic and Historic Areas, and Natural Resources." Umatilla states that the proposed line does not pass through any such designated areas.

Goal No. 6 is "Air, Water, and Land Resources." Umatilla states it will obtain permits for applicable federal and state environmental standards, including air and water quality standards. The construction of the line will be in accordance with all applicable statutes, regulations, and standards.

Goal No. 8 is "Recreational Needs." Umatilla states that the transmission line will have no material impact on recreational opportunities in and around the area to be developed.

Goal No. 9 is "Economy of the State." Umatilla cites the improved transmission reliability resulting from the project that will support future load growth and economic development.

Goal No. 13 is "Energy Conservation." Umatilla cites the efficiency of building the straight—and therefore short—line in an existing corridor as promoting energy conservation. The shorter the line, the lower the line losses.

Staff likewise investigated the plan for the project in terms of local and statewide planning criteria. With regard to local planning requirements, Staff relied on letters from the City of Hermiston's Planning Department and from the Umatilla County Department of Land Use Planning. In its letter, the City of Hermiston noted that the route passes through two areas of the city zoned for power transmission lines so that no land use approval is required. In its letter, Umatilla County indicates that the line can be approved under a conditional use permit in compliance with land use regulations, once the utility has acquired the subject property.

Staff also works its way through each of the Statewide Planning Goals addressed by Umatilla in its showing and independently agrees that the project is compatible with the particular goal.

2. *Commission Resolution*

We find that Umatilla has established, and Staff has confirmed, that the proposed project is compatible with statewide and local land use regulations and goals.

IV. PUBLIC CONCERNS

Although no person intervened in this proceeding, we did receive comments or expressions of concerns regarding the project from members of the public. To the extent those concerns relate to the adequacy of the payments to be made by Umatilla to landowners in the condemnation process, those concerns are outside of our jurisdiction.

In its investigation, Staff reviewed concerns regarding the location of the line in relation to existing housing and found that the placement of the line sufficiently addresses the concerns.

V. CONCLUSION

We approve Umatilla's petition. We find that Umatilla has met the legal requirements under ORS 758.015 and OAR 860-025-0030(2) for granting a certificate of public convenience and necessity for the proposed line.

VI. ORDER

IT IS ORDERED that Umatilla Electric Cooperative is granted a Certificate of Public Convenience and Necessity to construct a five mile overhead transmission line from the Bonneville Power Administration's McNary Substation to Umatilla Electric Cooperative's Hermiston Butte Substation.

Made, entered, and effective MAR 21 2017.




Lisa D. Hardie
Chair



John Savage
Commissioner





Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.