



COLE ALBEE
Main (503) 595-3922
cole@mrg-law.com

April 17, 2024

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

**Re: Docket PCN 6- In the Matter of Portland General Electric Company's
Certification of Public Convenience and Necessity.**

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Request for Waiver of OAR 860-025-0030(3). Copies containing Highly Protected Information are being sent via encrypted zip file to the Filing Center and parties who have signed Modified Protective Order No. 24-087.

Please contact this office with any questions.

Sincerely,

Cole Albee
Paralegal

Attachment

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the Highly Protected pages of Portland General Electric Company's Request for Waiver of OAR 860-025-0030(3) on the parties to Docket PCN 6, on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below. Copies containing Highly Protected Information are being sent via encrypted zip file to the Filing Center and parties who have signed Modified Protective Order No. 24-087.

SERVICE LIST

PCN 6

Staff Isaac Kort-Meade (C)(HC) Public Utility Commission of Oregon P.O. Box 1088 Salem, OR 97308 Isaac.kort.meade@puc.oregon.gov	Staff Johanna Riemenschneider (C)(HC) Oregon Department of Justice Business Activities Section 1162 Court St. NE Salem, OR 97301-4796 Johanna.riemenschneider@doj.state.or.us
PGE Brendan McCarthy (C)(HC) Portland General Electric Company 121 SW Salmon St. 1WTC1301 Portland, OR 97204 Brendan.mccarthy@pgn.com Opucdockets@pgn.com	PGE Jocelyn C. Pease (C)(HC) McDowell Rackner Gibson PC 419 SW 11 th Ave. Ste. 400 Portland, OR 97205 jocelyn@mrg-law.com dockets@mrg-law.com

DATED: April 17, 2024



Cole Albee
Paralegal

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 6

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Petition for Certificate of Public
Convenience and Necessity.

**REQUEST FOR WAIVER OF
OAR 860-025-0030(3)**

REDACTED

I. INTRODUCTION

Pursuant to OAR 860-025-0030(4), Portland General Electric Company (PGE or the Company) requests a waiver of OAR 860-025-0030(3),¹ which requires that the petitioner provide documentation of all necessary land use approvals when it files its Petition for a Certificate of Public Convenience and Necessity (CPCN). Granting this Request for Waiver would allow the Commission to accept and commence prompt consideration of PGE’s concurrently filed Petition for a CPCN (Petition). Specifically, PGE’s Petition requests authority to construct an overhead, 115-kilovolt (kV) transmission line totaling 7.4 miles in length between the existing Rosemont and Wilsonville Substations (the Rosemont-Wilsonville Line) and located primarily within Clackamas County.² Because the Rosemont-Wilsonville Line is urgently needed to maintain adequate, safe, and reliable service, this Request for Waiver should be granted for good cause shown.

The Rosemont-Wilsonville Line is a key component of the Tonquin Project, which is critically needed to serve PGE’s growing load and to maintain reliability in Portland’s south metropolitan area, including the service areas of Tualatin, Sherwood, Wilsonville, West Linn, Lake Oswego, and unincorporated areas of Clackamas County and Washington County (hereinafter, South Metro area).³ Most immediately, the Tonquin Project, including the Rosemont-Wilsonville Line, must be completed as soon as possible to allow PGE to provide electric service to a new water treatment plant that will serve Beaverton, Hillsboro, and the Tualatin Valley Water District (TVWD), while maintaining reliable service in the surrounding areas.

¹ “A petition may not be filed under this rule unless the petitioner includes with the petition all necessary documentation to support a finding under OAR 860-025-0040(2) or (7), or files a request for a waiver as described in OAR 860-025-0030(4).” OAR 860-025-0030(3).

² A small portion—less than 0.3 miles—is located in Washington County.

³ Technically, the area described above refers to the southern portions of PGE’s western and eastern service regions.

PGE has worked diligently to secure the land use permits and approvals necessary to construct the Rosemont-Wilsonville Line, but it has not yet secured the necessary permits from Clackamas County.⁴ While PGE believes that it will obtain the required permits after County review is complete, the Company understands that the permitting process may take six months from filing of the land use permit application.⁵ Importantly, to minimize reliability risks on PGE's system, the Company wishes to minimize the period of time between the date on which the water treatment plant requires full electric load—approximately July of 2025—and the date for the Rosemont-Wilsonville Line. For this reason, the Company hopes to receive a CPCN and begin construction at the earliest possible date. If the Commission were to grant PGE's Request for Waiver by June 11, 2024, the Administrative Law Judge could adopt a schedule for the CPCN proceeding that allows for a nine-month review period (consistent with the schedules for recent CPCN proceedings), which would allow the Commission to issue a CPCN by March 14, 2025. A CPCN issued by this date would provide the Company with sufficient time to initiate any necessary condemnation proceedings and be granted access to commence construction by May of 2025, and to energize the Rosemont-Wilsonville Line by December 31, 2025.⁶

Due to these imminent pressures, good cause exists to grant a waiver of OAR 860-025-0030(3). The Company respectfully requests that the Commission take action on its Request for Waiver on or before June 11, 2024. In compliance with OAR 860-025-0030(4)(e), the Company has included a proposed case management schedule that will allow for an order to be issued by that date.

⁴ PGE/500, Armstrong/3-4.

⁵ PGE/500, Armstrong/4.

⁶ PGE/400, Gordanier-Messinger/23.

II. LEGAL STANDARD

To approve a petition for a CPCN, the Commission must find that the proposed project is in compliance with the Statewide Planning Goals and compatible with the acknowledged comprehensive plans and land use regulations of affected local governments.⁷ Under OAR 860-025-0030(3), a petition for CPCN may not be filed unless the petitioner includes with the petition all necessary documentation to support a land use finding under OAR 860-025-0040(2) or (7), or files a request for waiver under OAR 860-025-0030(4).⁸ OAR 860-025-0040(2) requires that the Commission's land use findings be based on evidence in the record, including 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.⁹ OAR 860-025-0040(7) only applies to transmission lines subject to the jurisdiction of

⁷ OAR 860-025-0040(1) ("The Commission, as part of its approval of a petition filed under OAR 860-025-0030, 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 consistent with the rules and procedures in the Commission's state agency coordination program pursuant to ORS 197.180.").

⁸ In docket PCN 5, the Commission concluded that: "Our rules do not require that Idaho Power wait to file its CPCN petition until it has acquired all permits and approvals to construct the B2H transmission line, nor do our rules require demonstrated compliance with all conditions contained in permits and approvals already obtained. Indeed, our rules explicitly contemplate that a utility will be in the process of acquiring permits and approvals for the transmission line at the time of its petition in that they require the utility to provide a description of all approvals and permits that are required for construction of the transmission line and the status of any permits or approvals that have not yet been obtained." *In re Idaho Power Co., Petition for Certificate of Publ. Convenience and Necessity*, Docket PCN 5, Order No. 23-225 at 11 (June 29, 2023) (citing OAR 860-025-0030(2)(p)). OAR 860-025-0030(2)(p) specifically provides that a petition for CPCN must include a "narrative that identifies all land use approvals and permits required for construction of the transmission line," the status of all permits, and an "explanation as to why petitioner did not obtain any pending or outstanding approvals or permits before submitting a petition[.]"

⁹ OAR 860-025-0040(2) provides:

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

the Energy Facility Siting Council (EFSC), and the Rosemont-Wilsonville Line is not subject to EFSC jurisdiction under ORS 469.300.¹⁰

Under OAR 860-025-0030(4), if the petitioner cannot obtain, or has not yet obtained all necessary documentation to support the Commission’s land use findings under OAR 860-025-0040(2) or (7), the petitioner must submit a request for a waiver of OAR 860-025-0030(3) in advance of or concurrent with the petition. The OAR 860-025-0030(3) waiver request must include:

- (a) The identification of whether the waiver request pertains to OAR 860-025-0040(2) or (7), and a list of all necessary documentation that the petitioner cannot obtain, or has not yet obtained at the time of filing;
- (b) An explanation that clearly and comprehensively explains the grounds for the waiver, including a narrative of why the required documentation cannot be obtained, or has not yet been obtained, along with any reliable evidence to support and verify the petitioner’s claim that such documentation cannot be obtained or demonstrates when the petitioner expects to obtain all land use approvals, permits or equivalent before the Commission makes its final decision on the petition, and that the petitioner is requesting that the Commission consider the petition concurrently with the identified approval and permit processes;
- (c) In the event that the petitioner seeks a waiver for OAR 860-025-0040(2); the petitioner shall indicate clearly whether it requests that the Commission make its findings under OAR 860-025-0040(2) or (6);¹¹

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 860-025-0040(2)(a) or (b) above properly presented to the Commission from an authorized representative from each affected city or county.

¹⁰ An “energy facility” subject to EFSC jurisdiction includes a “high voltage transmission line of more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one city or county in this state[.]” ORS 469.300(11)(a)(C); *see also* ORS 469.320 (describing when an EFSC site certificate is required for an energy facility). The Rosemont-Wilsonville Line is 115 kV and totaling 7.4 miles in length, with only 5.0 miles of newly constructed overhead transmission. Accordingly, the Rosemont-Wilsonville Line does not meet the definition of an “energy facility” subject to EFSC jurisdiction.

¹¹ *See supra* note 9 for a discussion of OAR 860-025-0040(2). OAR 860-025-0040(6), which applies when the Commission cannot make findings under OAR 860-025-0040(2), is not applicable here.

- (d) In the event that the petitioner requests that the Commission make its finding under OAR 860-025-0040(7), the petitioner will provide information from the relevant, pending [EFSC] proceeding to demonstrate that EFSC approval is being sought;
- (e) A case management proposal for conducting the CPCN process before the conclusion of any land use approval or permitting processes that will promote efficient use of Commission resources and avoid duplicative or wasted effort.

When reviewing a request for waiver, the Commission and its Staff consider whether the request is “reasonable” and adequately “supported by good cause.”¹² The Commission has included general waiver provisions in its rules for “good cause shown” “to more efficiently regulate utilities under conditions of rapidly changing environments and technologies and under extenuating circumstances.”¹³ A waiver under this standard is determined on a case-by-case basis, and is limited to those circumstances presented.¹⁴ Moreover, the Commission has clarified that an entity seeking a waiver under a “good cause” standard must establish a “sufficient reason for the waiver” and that the Commission will grant the request only if the waiver of the rule is “in the public interest.”¹⁵ Overall, however, for waiver of any of its rules, the Commission has discretion to determine what constitutes “good cause.”¹⁶

III. BACKGROUND

A. *Request for Service for Water Treatment Plant*

In September 2017, the Willamette Water Supply Program (WWSP) submitted a load request to PGE informing the Company of its intent to construct a new water treatment plant near

¹² OAR 860-025-0030(5)(a), (b).

¹³ See *In re Rulemaking to Update Waiver Provisions in the Commission’s Administrative Rules*, Docket AR 554, Order No. 11-346 at 4 (Sept. 8, 2011).

¹⁴ Docket AR 554, Order No. 11-346 at 4.

¹⁵ Docket AR 554, Order No. 11-346 at 4.

¹⁶ See, e.g., *In re Portland Gen. Elec. Co., Requests for Partial Waiver of OAR 860-039-0030(3) Requirements for Level 1 Applications*, Docket UM 1631, Order No. 22-502, Appendix A at 2 (Dec. 28, 2022).

SW 124th Avenue south of SW Tualatin-Sherwood Road in Sherwood.¹⁷ The load request explained that operation of the water treatment plant will require approximately 11 megavolt-amperes (MVA)¹⁸ of electricity, which represents a substantial increase to the total electricity delivered by PGE in the area.¹⁹ In 2019, Beaverton, Hillsboro, and TVWD formed the Willamette Water Supply System (WWSS) Commission to complete the construction of the WWSS and to manage and operate the WWSS after its completion.²⁰ The WWSP still operates on behalf of the WWSS Commission to complete the construction of the WWSS.²¹ The WWSS Commission subsequently revised the estimated load for the water treatment plant upward to 11.8 MVA.²²

Construction of the new water treatment plant began in January 2022 and the WWSS Commission currently anticipates the facility to be energized and begin testing equipment by October 2024.²³ The facility is expected to be fully constructed by December 2025, and by July of 2025, the plant will require full electrical load to be available as it ramps up to begin commercial operation by July 1, 2026.²⁴

B. Studies Showing Need for Upgrades to PGE’s Distribution and Transmission Systems

In January of 2020, PGE performed a study to determine the impact the new 11 MVA load would have on the distribution and transmission systems in the area (January 2020 Study).²⁵ That

¹⁷ Declaration of David Kraska, ¶ 4 (Attachment 2).

¹⁸ MVA represents the apparent power in an electrical system. It is the combination of real power (in megawatts or MW) and reactive power (in megavolt-amperes reactive or MVAR) and represents the total power in an AC circuit. PGE/100, Beil/3 n.2.

¹⁹ Declaration of David Kraska, ¶ 4 (Attachment 2).

²⁰ Declaration of David Kraska, ¶ 2 (Attachment 2).

²¹ Declaration of David Kraska, ¶ 2 (Attachment 2).

²² PGE/100, Beil/3 n.2.

²³ Declaration of David Kraska, ¶¶ 7-8 (Attachment 2).

²⁴ Declaration of David Kraska, ¶¶ 6-8 (Attachment 2).

²⁵ Highly Protected PGE/101.

study showed that, due to existing load conditions on the feeders and transformers adjacent to the proposed water treatment plant, accommodation of the new load would require substantial upgrades to PGE’s system.²⁶ In particular, the January 2020 Study identified the need for a new substation, upgrades to both the distribution feeders and transformers associated with the new substation, and upgrades to the transmission system.²⁷ The required transmission upgrades include the addition of approximately 5.0 miles of new overhead, 115-kV transmission line making up a portion of the Rosemont-Wilsonville Line.²⁸ Importantly, the study demonstrated that, without transmission upgrades, the new load from the water treatment plant would result in **Begin Highly Protected/ [REDACTED] End Highly Protected** system contingency scenarios that may cause overloads (i.e., greater than 100 percent of the facility rating) on **Begin Highly Protected/ [REDACTED] [REDACTED] End Highly Protected**.²⁹

Since PGE conducted the January 2020 Study, significant load growth has occurred in the area. In PGE’s updated power flow analysis conducted in 2024 (2024 Study), the Company determined that—without transmission upgrades—the new load from the water treatment plant would result in **Begin Highly Protected/ [REDACTED] /End Highly Protected** system contingency scenarios that may cause overloads (i.e., over 100 percent of the facility rating) on various transmission lines in the surrounding areas, as well as **Begin Highly Protected/ [REDACTED] [REDACTED] /End Highly Protected** (i.e., 95-100 percent of the facility rating) scenarios.³⁰ This

²⁶ Highly Protected PGE/101, Beil/17-30.

²⁷ See generally Highly Protected PGE/101.

²⁸ Highly Protected PGE/101, Beil/30.

²⁹ PGE/100, Beil/4; Highly Protected PGE/101, Beil/19-20.

³⁰ PGE/100, Beil/4-5; see also generally Highly Protected PGE/106.

includes overloads as high as **Begin Highly Protected**/[REDACTED]/**End Highly Protected** of the facility rating.³¹ Critically, in these scenarios, ameliorative actions such as switching substations to alternate sources or adjusting generation patterns will not be sufficient to protect against overload; instead, only direct shedding or curtailing of customer loads will bring the transmission facilities within rated limits.³² Moreover, the larger the overload, the more load that needs to be shed to alleviate the constraints. Without the Rosemont-Wilsonville Line, in a **Begin Highly Protected**/[REDACTED]/**End Highly Protected** overload scenario, PGE will need to shed 35 megawatts (MW), which equates to 21,000 residential customers losing power.³³ Accordingly, the Company concluded that new transmission upgrades, including the Rosemont-Wilsonville Line, are necessary to maintain system reliability once the water treatment plant is fully constructed and requires full energy capabilities.

C. Clackamas County Permitting Process

The Company has been diligently working with all regulatory authorities to obtain required land use permits and approvals for the Rosemont-Wilsonville Line; however, special circumstances have delayed the Company's efforts in Clackamas County.³⁴ In particular, PGE initiated preliminary discussions with Clackamas County Development Engineering Department staff in December 2021.³⁵ Per the County's standard and traditional practice (and as is typical with neighboring jurisdictions for the siting of utilities in the right-of-way), PGE understood that no land use permits would be required by Clackamas County. Accordingly, the Company submitted

³¹ PGE/100, Beil/35-36.

³² PGE/100, Beil/35-36.

³³ PGE/100, Biel/35.

³⁴ PGE/500, Armstrong/3.

³⁵ PGE/500, Armstrong/3.

only a Right-of-Way Permit application in May of 2023—a permit that is typically issued within one to two weeks upon receipt of application and without any land use review required.³⁶ However, in late Fall 2023, the County’s counsel reviewed the Clackamas County Zoning and Development Ordinance (ZDO) and determined that County staff’s past application of the ZDO was not correct per the current ZDO. County staff subsequently informed PGE that the ZDO did require a land use permit for the Rosemont-Wilsonville Line.³⁷

In November 2023, County staff indicated that the ZDO should allow construction of utility power lines both inside and outside the right-of-way of roads as an outright permitted use (i.e., without the need for a land use permit) and initiated a process to update the ZDO through amendment (*see* Attachments 3 and 4).³⁸ However, the timing and outcome of that effort to amend the ZDO is uncertain.³⁹ Therefore, to ensure timely completion of the project, the Company decided to move ahead with the land use permit application process while the County considers potential changes to its ZDO. Accordingly, PGE submitted its pre-application for the land use permit on February 15, 2024, and plans to submit its land use application by mid-May 2024.⁴⁰ PGE anticipates that the Clackamas County land use review process will be complete by mid-November 2024.⁴¹ If, in the interim, the County revises its code to eliminate the need for land use review for the project, PGE will have all the required land use approvals and permits for the

³⁶ PGE/500, Armstrong/3.

³⁷ PGE/500, Armstrong/3.

³⁸ PGE/500, Armstrong/3.

³⁹ PGE/500, Armstrong/3-4.

⁴⁰ PGE/500, Armstrong/4.

⁴¹ PGE/500, Armstrong/4.

Rosemont-Wilsonville Line and will inform the Commission, Staff, and interested parties to the proceeding of the change in status.⁴²

IV. COMPLIANCE WITH OAR 860-025-0030(4) REQUIREMENTS

A. OAR 860-025-0030(4)(a):

The identification of whether the waiver request pertains to OAR 860-025-0040(2) or (7), and a list of all necessary documentation that the petitioner cannot obtain, or has not yet obtained at the time of filing.

The remaining land use approvals necessary for the Rosemont-Wilsonville Line are in the jurisdiction of Clackamas County and for that reason this Request for Waiver pertains to OAR 860-025-0040(2). If Clackamas County does not revise its code, PGE will require one land use permit for the Rosemont-Wilsonville Line: a Type II Alteration of a Non-Conforming Use Permit⁴³ In addition, PGE will need to obtain a Right-of-Way Permit, which was submitted by the Company in May 2023 and placed on hold by Clackamas County pending approval of the land use permit.⁴⁴ Importantly, Right-of-Way Permits are typically issued as an administrative matter after the land use permits have been granted.⁴⁵

B. OAR 860-025-0030(4)(b):

An explanation that clearly and comprehensively explains the grounds for the waiver, including a narrative of why the required documentation cannot be obtained, or has not yet been obtained, along with any reliable evidence to support and verify the petitioner's claim that such documentation cannot be obtained or demonstrates when the petitioner expects to obtain all land use approvals, permits or equivalent before the Commission makes its final decision on the petition, and that the petitioner is requesting that the Commission consider the petition concurrently with the identified approval and permit processes.

⁴² PGE/500, Armstrong/4-5.

⁴³ PGE/500, Armstrong/2.

⁴⁴ PGE/500, Armstrong/2.

⁴⁵ PGE/500, Armstrong/3.

Consistent with OAR 860-025-0040(2)(a), PGE will demonstrate compliance with the Statewide Planning Goals and compatibility with the acknowledged comprehensive plans and land use regulations of affected local governments by obtaining the remaining land use approvals from Clackamas County. As discussed above, PGE has not yet obtained an Alteration of a Non-Conforming Use Permit from Clackamas County because of initial confusion regarding the need for a land use permit under Clackamas County's ZDO where the County has not required such a permit in past practice.⁴⁶ PGE submitted its pre-application for the land use permit on February 15, 2024, had the pre-application conference with County planning staff on April 2, 2024, and expects to file the land use application by mid-May 2024.⁴⁷ The Company's Right-of-Way Permit, which was submitted in May 2023, was placed on hold by the County pending approval of the land use permit.⁴⁸ PGE is seeking concurrent review of its Petition for CPCN for the Rosemont-Wilsonville Line while its land use permit is pending due to scheduling constraints and urgent need for the project.

1. The Rosemont-Wilsonville Line is Urgently Needed.

The Rosemont-Wilsonville Line is critical to the Company's ability to provide adequate, safe and reliable energy services to its customers in the rapidly growing South Metro area.⁴⁹ As discussed above, beginning in July of 2025, the water treatment plant will require approximately 11.8 MVA of electricity, placing additional demands on the system in an area which is already facing constraints.⁵⁰ PGE's updated 2024 Study to determine the impact of the new load confirms

⁴⁶ PGE/500, Armstrong/3.

⁴⁷ PGE/500, Armstrong/4.

⁴⁸ PGE/500, Armstrong/2.

⁴⁹ PGE/100, Beil/2.

⁵⁰ PGE/100, Beil/2-3.

that—without transmission upgrades—the new load will greatly increase the likelihood of numerous N-1-1 contingency events that would cause significant overloads and outages on various transmission lines in the surrounding areas.⁵¹ Accordingly, it is critical that the Company complete construction of the Rosemont-Wilsonville Line and energize the line as soon as possible, to minimize the outage risk.

2. The Rosemont-Wilsonville Line is Practicable and Feasible.

The Commission has suggested that a CPCN petition may be deemed prematurely filed, and thus not ripe for review, if “too many permits and approvals remain outstanding for [the Commission] to have confidence in the feasibility of a given project.”⁵² PGE has not yet obtained the outstanding land use permit and pending Right-of-Way Permit from Clackamas County; however, PGE believes that these permits will be issued after the County review is complete.⁵³ Moreover, as discussed in the testimony supporting PGE’s Petition, PGE has obtained all other required permits outside of Clackamas County and there is ample evidence of the general feasibility of the Rosemont-Wilsonville line, notwithstanding the outstanding permits from Clackamas County.⁵⁴

3. Due to Scheduling Constraints, Concurrent Review is Requested.

For the reasons discussed above, the Company expects the required land use permit to be issued by mid-November 2024.⁵⁵ If the Company were to delay filing its Petition until that time, the completion and energization of the Rosemont-Wilsonville Line would be significantly delayed.

⁵¹ PGE/100, Beil/4-5; *see also generally* Highly Protected PGE/106.

⁵² Docket PCN 5, Order No. 23-225 at 11.

⁵³ PGE/500, Armstrong/2.

⁵⁴ PGE/500, Armstrong/2; PGE/400, Gordanier-Messinger/5-24.

⁵⁵ PGE/500, Armstrong/4.

Due to these scheduling constraints and the urgent need for the transmission line, concurrent review is necessary.

C. OAR 860-025-0030(4)(c):

In the event that the petitioner seeks a waiver for OAR 860-025-0040(2); the petitioner shall indicate clearly whether it requests that the Commission make its findings under OAR 860-025-0040(2) or (6).

PGE will demonstrate compliance with the Statewide Planning Goals and compatibility with the acknowledged comprehensive plans and land use regulations of affected local governments by securing local land use approvals from Clackamas County. Accordingly, PGE requests that the Commission make its land use filings under OAR 860-025-0040(2).

D. OAR 860-025-0030(4)(d):

In the event that the petitioner requests that the Commission make its finding under OAR 860-025-0040(7), the petitioner will provide information from the relevant, pending Energy Facilities Siting Council (EFSC) proceeding to demonstrate that EFSC approval is being sought.

This section is not applicable because PGE does seek a waiver of OAR 860-025-0040(7).

E. OAR 860-025-0030(4)(e):

A case management proposal for conducting the CPCN process before the conclusion of any land use approval or permitting processes that will promote efficient use of Commission resources and avoid duplicative or wasted effort.

As detailed in Attachment 1 to this Request for Waiver, PGE provides a case management proposal for conducting the CPCN process simultaneously with the anticipated Clackamas County

land use review and ZDO amendment processes, which will promote efficient use of Commission resources and avoid duplicative or wasted effort.

PGE anticipates that the land use approval process will be completed by mid-November 2024.⁵⁶ PGE's proposed schedule follows behind the land use approval schedule and anticipates a final order from the Commission after the target date for local land use approvals to be issued.

PGE acknowledges that it is possible that the schedule described in Attachment 1 may need to be revised if the Clackamas County permit review process is significantly delayed. For this reason, the Company makes the following commitments to promote the Commission's efficient and orderly review of its Petition, and to avoid duplicative or wasted effort:

- Throughout the CPCN docket, PGE will file a status update every 60 days (or other time period as determined by the Commission) regarding the schedule for the Clackamas County land use review and approval and will note any schedule modifications.
- In the event that the timing for the Clackamas County land use review is delayed by a period of 60 days or more, PGE will confer with the parties to the CPCN docket to discuss whether the land use review delay warrants a modification to the CPCN review schedule.

V. CONCLUSION

PGE respectfully requests a waiver of OAR 860-025-0030(3) for the Company's Petition for a CPCN for the Rosemont-Wilsonville Line. Due to scheduling constraints and because PGE's Request for Waiver of OAR 860-025-0030(3) satisfies the requirements of OAR 860-025-0030(4) as discussed above, the Commission should grant the Company's request.

⁵⁶ PGE/500, Armstrong/4.

Respectfully submitted this 17th day of April, 2024.



Jocelyn Pease
Lynne Dzubow
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
dockets@mrg-law.com

Brendan McCarthy
Portland General Electric Company
121 SW Salmon Street
Portland, OR 97204
opucdockets@pgn.com

Attorneys for Portland General Electric Company

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

Docket PCN 6

Petition for a Certificate of Public
Convenience and Necessity

PORTLAND GENERAL ELECTRIC COMPANY

Request for Waiver of OAR 860-025-0030(3)

Attachment 1

Proposed Case Management Schedule

April 17, 2024

ATTACHMENT 1 – PROPOSED CASE MANAGEMENT SCHEDULE

CPCN Process	Land Use Process	Clackamas County ZDO Amendment Process	Rationale for Timing Between the Proceedings and Proposal to Promote Efficiency
		<u>March 4, 2024</u> : County Public Notice of Proposed Amendment to ZDO.	
	<u>April 2, 2024</u> : Pre-application meeting with Clackamas County.	<u>April 8, 2024</u> : Planning Commission Hearing to receive testimony from the public and other interested parties on the proposed amendments to ZDO.	
<u>Wednesday, April 17, 2024</u> : Petition for CPCN filed; Notice of Petition sent to landowners and certification of mailing included with Petition for CPCN filing.			PGE files Petition before Clackamas County permits are issued in order to address transmission issues and minimize outage risk to customers.
	<u>Mid-May 2024</u> : PGE submits land use permit application.		PGE files land use permit application in CPCN docket to apprise parties of progress in land use process.
<u>Tuesday, June 4, 2024</u> : Staff recommendation to Commission regarding request for waiver.			
<u>Tuesday, June 11, 2024</u> : Commission Special Public Meeting on Request for Waiver.		<u>June 12, 2024</u> : Board of County Commissioners Hearing to receive testimony from the public and other	

CPCN Process	Land Use Process	Clackamas County ZDO Amendment Process	Rationale for Timing Between the Proceedings and Proposal to Promote Efficiency
		interested parties on the proposed ZDO amendments and potentially make determination.	
<u>Friday, June 14, 2024:</u> Prehearing Conference.	<u>Mid-June 2024:</u> Clackamas County deems land use permit application complete.		
<u>Friday, June 28, 2024:</u> Public Comment Hearing (in person and virtual).		<u>Late June 2024:</u> Board of County Commissioners adoption of Order for Amendment.	Early public comment session to identify issues and potential intervenors. PGE will inform Staff if the Alteration of a Non-Conforming Use Permit from Clackamas County is still needed after the ZDO amendment process is complete.
<u>Friday, July 12, 2024:</u> Public Comment Hearing (virtual only).			Early public comment session to identify issues and potential intervenors.
<u>Friday, August 2, 2024:</u> Requested deadline to file Petitions to Intervene			
<u>Monday, September 2, 2024:</u>			

CPCN Process	Land Use Process	Clackamas County ZDO Amendment Process	Rationale for Timing Between the Proceedings and Proposal to Promote Efficiency
Staff and Intervenor Opening Testimony			
<u>Wednesday, October 16, 2024:</u> PGE’s Reply Testimony			
<u>Wednesday, October 16, 2024:</u> Data Request Responses Due within 5 business days (best efforts)			
<u>Friday, November 15, 2024:</u> Staff and Intervenors’ Cross-Answering and Rebuttal Testimony	<u>Mid-November 2024:</u> Land use approval from Clackamas County is expected to be obtained, and PGE will file an update regarding land use approval.		Land use approval is expected to be obtained prior to evidentiary hearing / prior to close of record. If the land use approval is obtained prior to Staff and Intervenors’ Cross-Answering and Rebuttal Testimony, PGE will make best efforts to submit Supplemental Reply Testimony regarding the updated status as soon as possible.
<u>Friday, December 6, 2024:</u> PGE’s Surrebuttal Testimony			
<u>Friday, December 13, 2024</u>			

CPCN Process	Land Use Process	Clackamas County ZDO Amendment Process	Rationale for Timing Between the Proceedings and Proposal to Promote Efficiency
Witness List, Cross-Exam Statements, and Cross Exhibits			
<u>Friday, December 20, 2024</u> Cross-examination hearing			
<u>Friday, January 17, 2025</u> : Opening Briefs due.			
<u>Friday, January 31, 2025</u> : Reply Briefs due.			
<u>Friday, March 14, 2025</u> : Final order anticipated.			

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

Docket PCN 6

Petition for a Certificate of Public
Convenience and Necessity

PORTLAND GENERAL ELECTRIC COMPANY

Request for Waiver of OAR 860-025-0030(3)

Attachment 2

Declaration of David Kraska

April 17, 2024

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 6

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY'S

PETITION FOR CERTIFICATE OF
PUBLIC CONVENIENCE AND
NECESSITY.

DECLARATION OF DAVID KRASKA

1 I, David Kraska, P.E., declare under penalty of perjury under the laws of the State of
2 Oregon:

3 1. My name is David Kraska and I am currently employed by the Tualatin Valley
4 Water District (TVWD) as Program Director of the Willamette Water Supply Program (WWSP)
5 and General Manager of the Willamette Water Supply System Commission (WWSS Commission).

6 2. The WWSP is a collection of staff and consultants originally tasked by TVWD and
7 the City of Hillsboro (Hillsboro) to plan, design, and construct the Willamette Water Supply
8 System (WWSS). In 2019, TVWD, Hillsboro, and the City of Beaverton (Beaverton) formed the
9 Commission to complete the construction of the WWSS and to manage and operate the WWSS
10 after its completion. The WWSP still operates on behalf of the WWSS Commission to complete
11 the construction of the WWSS.

12 3. I have been employed by TVWD as the Program Director of the WWSP since 2015.
13 I began serving as the WWSS Commission's General Manager when the WWSS Commission was
14 formed in 2019.

1 4. In September 2017, the WWSP submitted a load request to Portland General
2 Electric Company (PGE or the Company) informing the Company of its intent to construct a new
3 water treatment plant off of SW Tualatin-Sherwood Road on property that is now in the City of
4 Sherwood. The load request explained that operation of the water treatment plant will require
5 approximately 11 megavolt-amperes (MVA) of electricity (Electric Load).

6 5. Construction and operation of the new water treatment plant is essential to the new
7 WWSS, which when complete, will be one of Oregon's most seismically-resilient water systems—
8 built to better withstand natural disasters, protect public health, and speed regional economic
9 recovery through restoring critical services more quickly. The water treatment plant, which is
10 located on basalt rock and is being constructed to have superior seismic resiliency, will enhance
11 emergency preparedness by being able to produce drinking water for emergency responders and
12 the community within 24 hours of a major seismic event. Although the water treatment plant will
13 have back-up power generation capabilities, it will be dependent upon PGE power service to
14 restore the full water-production capacity at the plant. The water treatment plant will also include
15 a state-of-the-art water treatment system where multiple processes—including enhanced
16 coagulation, ballasted flocculation, sedimentation, ozonation, granulated activated carbon and
17 sand filtration, and ultraviolet light and chlorine disinfection—will produce high-quality, safe, and
18 reliable drinking water for the residents in the Beaverton, Hillsboro, and TVWD service areas. The
19 plant, which will initially produce up to 60 million gallons of water per day (mgd), is planned for
20 an ultimate capacity of 120 mgd to account for future population growth in the area. Accordingly,
21 the plant will provide essential public health infrastructure and emergency preparedness for the
22 growing area.

1 6. The water treatment plant is expected to begin commercial operations—i.e., be
2 fully operational—by July 1, 2026.

3 7. The WWSS Commission began construction on the water treatment plant in
4 January 2022 and anticipates construction to be complete in December 2025.

5 8. The WWSS Commission currently requires that the water treatment plant be
6 energized by October 31, 2024, so that the WWSS Commission can begin equipment testing. The
7 WWSS Commission currently anticipates that the full Electric Load will be needed by July 2025
8 so that the WWSS Commission can continue the start up and commissioning process for the
9 treatment plant leading up to the completion of construction later that year.

10 Pursuant to ORS 162.055(4), I hereby declare that the above statement is true to the best
11 of my knowledge and belief, and that I understand it is made for use as evidence before the Public
12 Utility Commission of Oregon and is subject to penalty for perjury.

SIGNED this 4 day of April, 2024, at Portland, Oregon.

Signed: _____



David Kraska, P.E.
Tualatin Valley Water District
Program Director, WWSP
General Manager, WWSS Commission

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

Docket PCN 6

Petition for a Certificate of Public
Convenience and Necessity

PORTLAND GENERAL ELECTRIC COMPANY

Request for Waiver of OAR 860-025-0030(3)

Attachment 3

Clackamas County CPO & Interested Parties Notice

April 17, 2024



Notice of Land Use Public Hearings
for Community Planning Organizations, Hamlets, and Other Interested Parties

Subject: Ordinance ZDO-288, Zoning & Development Ordinance (ZDO) Amendments Related to Utility Facilities

Notice Date: March 4, 2024

Contact: Joy Fields, Principal Planner
150 Beaver Creek Road, Oregon City, OR 97045
Phone: 503-742-4510
Email: jfields@clackamas.us

It has recently been determined that the county's ZDO likely requires a conditional use permit for most utility facilities, even underground utility lines and even in road rights-of-way where utility lines commonly are developed. Historically, utility facilities inside road rights-of-way have proceeded through a utility permit process without review and analysis by Planning and Zoning. Given the new awareness of the scope of the needed land use review and the significant number of annual utility permits in road rights-of-way, a practical difficulty exists in administering the ZDO in its current form. From a policy perspective, many of these permits likely do not warrant review through a land use application. In addition, it may be appropriate for some utility facilities outside road rights-of-way to be permitted outright.

Although the scope of the amendments may be narrowed during public hearing review, key elements of the initial proposal, discussed in more detail below, would:

- Adopt a comprehensive definition of utility facility
- Allow utility facilities inside road rights-of-way as an outright permitted use
- Allow utility lines both inside and outside road rights-of-way, both underground and overhead, as an outright permitted use
- Clarify the types of utility lines that, in most cases, must be underground

The Planning Commission and Board of County Commissioners (BCC) have scheduled hearings to receive testimony from the public and other interested parties on the proposed amendments. Because the amendments may affect your community or area of interest, we are giving you and your organization advance notice of the opportunity to review and comment on them before or at the public hearings.

Additional background information and the full text of the proposed amendments is available online at www.clackamas.us/planning/zdo288, by contacting Joy Fields directly at the number or email listed above, or by contacting Planning & Zoning at 503-742-4500 or zoninginfo@clackamas.us.

Public Hearings and Testimony

Interested parties are welcome to provide testimony in advance of or at the hearings listed below. Planning Commission public hearings are held virtually using the Zoom platform. Board of County Commissioners public hearings are held both virtually using the Zoom platform and in person. One week before the hearing dates, a Zoom link to the public hearing and details on how to observe and testify will be posted at the hearing web address.

Public Hearing Dates and Times:

Planning Commission: Monday, April 8, 2024, 6:30 p.m.

www.clackamas.us/planning/planning-commission

Board of County Commissioners: Wednesday, June 12, 2024, 10:00 a.m.

Public Services Building, 4th Floor Board Hearing Room, 2051 Kaen Rd, Oregon City, OR 97045

www.clackamas.us/meetings/bcc/landuse

Written testimony may be submitted before the hearings to Joy Fields at jfields@clackamas.us or 150 Beaver Creek Road, Oregon City, OR 97045.

- Written testimony received by 4 p.m., Thursday, March 28, 2024, will be included in the information packet provided to the Planning Commission one week before its scheduled hearing; written testimony received after that time and before 8 a.m., Monday, April 8, 2024, will be emailed to the Planning Commission before the hearing.
- Written testimony received by 4 p.m., Monday, June 3, 2024, will be included in the information packet provided to the Board of County Commissioners (BCC) one week before its scheduled hearing; written testimony received after that time and before 4 p.m., Tuesday, June 11, 2024, will be emailed to the BCC before the hearing.

Interested parties who want to present **verbal testimony** at either hearing will be asked to sign up and/or indicate their interest in testifying at the beginning of the hearing.

Proposed Amendments

Ordinance ZDO-288 proposes the following key amendments to ZDO provisions related to utility facilities. Refer to the drafts of the proposed amendments to review the full scope of the proposal.

1. **Adopt a definition of utility facility.** Currently, the ZDO defines public utility and limits it to utilities regulated by the Public Utility Commission under Oregon Revised Statutes chapter 757, as well as any utility that provides electrical energy directly to consumers. The ZDO also separately defines hydroelectric facilities. There are also code references to telephone exchanges and water, stormwater, and sanitary sewer facilities. In addition, the ZDO has a separate “government uses” category that provides a pathway for *some* utilities. Finally, the ZDO provides for “similar use” determinations in many zones through an additional layer of land use review. However, utility facilities are not referred to consistently across zones, and the overarching definition of public utility that applies in all zones is not sufficiently comprehensive to address the full range of what is typically considered to be a utility.
2. **Adopt definitions of utility line and utility service line.** These definitions are intended to allow these types of utility facilities to be regulated differently.
3. **Repeal definitions of hydroelectric facility, public utility and public water system.** These facilities will be encompassed by the new definition of utility facility.

4. **Revise the definition of right-of-way.** The intent is to more accurately define the term. As it pertains to utility facilities, the term is proposed for use in distinguishing utility facilities to be regulated differently.
5. **Move definition of small power production facility.** This use is singled out only in the Rural Industrial District, so the definition is proposed to be relocated to Section 604, which regulates the RI zone.
6. **Specify that utility service lines are an accessory use in all zones.**
7. **Allow utility facilities inside road rights-of-way as an outright permitted use in all residential, commercial, industrial and open space zones.**
8. **Allow utility lines both inside and outside road rights-of-way, both underground and overhead, as an outright permitted use in all residential, commercial, industrial and open space zones.**
9. **Allow certain utility facilities as a conditional use in certain commercial zones.** In some commercial zones, some utility facilities require a similar use determination or are prohibited. The proposal is to allow most utility facilities as a conditional use, except as enumerated in items 6 through 8, above. Refer to the drafts of the proposed amendments for greater detail.
10. **Clarify the types of utility lines that, in most cases, must be underground.** Section 1006 of the ZDO, which applies to development, including institutional uses such as utility facilities, includes the following standard:

All development that has a need for electricity, natural gas, and communications services shall install them pursuant to the requirements of the utility district or company serving the development. Except where otherwise prohibited by the utility district or company, all such facilities shall be installed underground.

Arguably, the requirement applies only to utility facilities that have a need for other utilities' services (e.g., a sewer pump station that requires electrical service), not utility facilities that provide service to others (e.g., an electric transmission line). Alternatively, a utility provider that proposes to establish an aboveground utility facility may be able to "prohibit" itself from an underground installation. However, it could also be argued that the requirement applies to all utility facilities and that "prohibited" requires something more substantial than a simple choice on the utility's part.

Applying the underground installation standard to major utility lines, rather than just on-site service lines, potentially could result in substantially increased costs for utilities and ultimately ratepayers. The proposal is to limit the requirement for underground utilities to service lines rather than larger lines, such as distribution and transmission lines.

11. **Exempt utility cabinets that comply with Section 830, utility facilities in road rights-of-way and utility lines from the development standards in Section 1000 and from the requirement to file a Design Review application.**

Additional Information and Staff Report

For general Planning & Zoning information:

www.clackamas.us/planning

For additional information about ZDO-288 and its public hearings (and for a copy of the staff report available Monday, April 1, 2024):

www.clackamas.us/planning/zdo288

or

Joy Fields-742-4510, jfields@clackamas.us

or

Planning & Zoning Customer Service, 503-742-4500, zoninginfo@clackamas.us

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

503-742-4545: ¿Traducción e interpretación? |Требуется ли вам устный или письменный перевод? |翻译或口译 ? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통역?

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

Docket PCN 6

PORTLAND GENERAL ELECTRIC COMPANY

Request for Waiver of OAR 860-025-0030(3)

Attachment 4

Zoning & Development Ordinance 288 Staff Report

April 17, 2024



PLANNING & ZONING DIVISION

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

STAFF REPORT TO THE PLANNING COMMISSION

To: Clackamas County Planning Commission
From: Jennifer Hughes, Planning Director (jenniferh@clackamas.us)
Date: April 1, 2024
RE: Planning File ZDO-288: *Zoning and Development Ordinance Amendments Related to Utility Facilities*

BACKGROUND

It has recently been determined that the county's Zoning and Development Ordinance (ZDO) likely requires a conditional use permit for most utility facilities, even underground utility lines and even in road rights-of-way where utility lines commonly are developed. (Individual service lines that are accessory to specific uses are an exception.) In addition, there is a lack of clarity regarding which utility lines must be underground.

Historically, utility facilities inside road rights-of-way have proceeded through a utility permit process without review and analysis by Planning and Zoning. Given the new awareness of the scope of the needed land use review and the significant number of annual utility permits in road rights-of-way, a practical difficulty exists in administering the ZDO in its current form. From a policy perspective, some or all of these permits may not warrant review through a land use application. In addition, it may be appropriate for some utility facilities outside road rights-of-way to be permitted outright.

The Board of County Commissioners (Board) held a policy session last November to consider the land use regulations applicable to utility facilities. After a staff presentation and related discussion, the Board voted to initiate amendments to the ZDO that, if adopted, would do the following:

1. Adopt a more comprehensive definition of "utility facility"
2. Limit the requirement for underground utilities to utility facilities that have a need for other utilities' services, rather than utility facilities that provide service to others
3. Allow the following outright: all utility facilities inside road rights-of-way and utility lines outside road rights-of-way. No changes would be made in EFU, TBR or AG/F zones where the ZDO already implements state law.

Ordinance ZDO-288 contains the amendments to the ZDO that are needed to implement the Board's initial direction. The Board recognized during the November policy session discussion that the scope of the proposal may be narrowed during public hearing review. However,

beginning with the most expansive potential proposal allowed for the most accurate public notice of what the county may consider for adoption.

On February 26, 2024, the Planning Commission (PC) held a study session on ZDO-288, which provided an opportunity for the PC to discuss the potential ZDO amendments and ask related questions of staff.

There will be at least two public hearings on this proposal: one before the PC on Monday, April 8, 2024, and another before the Board on Wednesday, June 12, 2024. The PC provides a recommendation to the Board, which will ultimately decide whether the ordinance is adopted.

PROPOSAL

ZDO-288 proposes text amendments to 16 separate sections of the ZDO¹. The amendments are included in **Attachment A**.

Generally, these amendments would:

- Adopt a comprehensive definition of utility facility
- Clarify the types of utility lines that, in most cases, must be underground
- Allow utility *facilities* inside road rights-of-way as an outright permitted use
- Allow utility *lines* both inside and outside road rights-of-way, both underground and overhead, as an outright permitted use

1. Definitions

The ZDO definition of “public utility”, adopted substantially in its current form in 1982, presents practical difficulties in administration.

PUBLIC UTILITY: A utility regulated by the Public Utility Commission under ORS 757 or any other utility that provides electrical energy directly to consumers within the State of Oregon, including, but not limited to, municipalities, cooperatives and people's utility districts.

Based on staff’s review of ORS 757, this definition appears to exclude, for example, telecommunications, sanitary sewer, surface water management and municipal water facilities. The ZDO has a separate “government uses” category that provides a pathway for *some* of these utilities. The ZDO also provides for “similar use” determinations in many zones through an additional layer of land use review.

The proposal is to adopt a definition of “utility facility” that covers the full range of what is typically considered to be a utility. This will provide clarity for users of the ZDO, including Planning staff charged with administering the code. Also proposed are definitions of utility line and utility service line, as well as other minor amendments for clarity and consistency.

¹ Each ZDO section proposed for amendment is listed in the “List of Attachments” section, found on page 10 of this report.

2. Underground utilities

Section 1006 of the ZDO, which applies to many types of development, including institutional uses such as utility facilities, includes the following standard:

All development that has a need for electricity, natural gas, and communications services shall install them pursuant to the requirements of the utility district or company serving the development. Except where otherwise prohibited by the utility district or company, all such facilities shall be installed underground.

Arguably, the requirement applies only to utility facilities that have a need for other utilities' services (e.g., a sewer pump station that requires electrical service), not utility facilities that provide service to others (e.g., an electric transmission line). Alternatively, a utility provider that proposes to establish an aboveground utility facility may be able to "prohibit" itself from an underground installation. However, it could also be argued that the requirement applies to all utility facilities and that "prohibited" requires something more substantial than a simple choice on the utility's part. Applying this standard to major utility lines, rather than just on-site service lines, potentially could result in substantially increased costs for utilities and ultimately ratepayers.

The proposal is to specify that utility *service* lines must be underground unless prohibited by the utility district or company.

3. Primary or conditional use

In most zones, public utility facilities are a conditional use except where they are accessory to the main use on a lot (e.g., service lines for a dwelling or commercial building). In several zones, utilities are listed only as an accessory use. The term "facilities" is a broad one and seems to encompass not just structures such as electrical substations and water reservoirs but also transmission, distribution and service lines and associated poles. In the Exclusive Farm Use, Timber and Ag/Forest zones, state law applies and establishes several different utility use categories, some of which are outright allowed and some of which require land use review.

Of note, road rights-of-way are zoned in the same manner as other land, with the zoning adjacent to the right-of-way most often extending to the centerline; hence, even utilities in rights-of-way are regulated by the ZDO. Utilities are commonly placed underground and overhead in rights-of-way; state law seemingly recognizes this by establishing the following as outright allowed in EFU, TBR and AG/F zones:

Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

In other zones, the ZDO makes no such distinction. As a result, utility facilities in rights-of-way (unless they qualify as an accessory use) seemingly require conditional use permits in all other zones where utilities are permitted, and there are several zones where such facilities may be prohibited altogether.

The proposal is to allow outright all utility facilities in road rights-of-way and all utility lines outside rights-of-way, both above- and belowground. As proposed to be defined by ZDO 202, utility lines could include support poles or towers and equipment (with some limits) for monitoring and operation of the line. What would remain as a conditional use in most zones are non-linear utility facilities outside rights-of-way, such as sewer pump stations, electrical substations and water reservoirs. Also included is a proposal to allow these non-linear facilities as a conditional use in the VR-4/5 and VR-5/7 zones. Currently utility facilities are not permitted in these zones, which is inconsistent with other low density residential zones.

The amendments would not apply in EFU, TBR or AG/F zones where the ZDO already implements state law. In addition, even if utility facilities are identified as a primary use, review requirements associated with environmental or hazard areas (e.g., streams, wetlands, floodplains) would continue to apply.

PUBLIC NOTICE & COMMENTS

Notice of the proposed amendments in ZDO-288 was sent to:

- All cities within the County;
- All County Community Planning Organizations (CPOs) and Hamlets; and
- Oregon Department of Land Conservation & Development (DLCD), Metro, Oregon Department of Transportation (ODOT), and other interested agencies.

Notice was also published in the newspaper and online. Written testimony received to date is included in ***Attachment B***.

ANALYSIS & FINDINGS

The proposed ZDO text amendments are legislative in nature and are subject to the relevant Statewide Planning Goals, the Metro Urban Growth Management Functional Plan (UGMFP), County Comprehensive Plan policies, and procedural standards identified in the county's Zoning & Development Ordinance (ZDO). Compliance with the relevant portions of each is discussed in subsections 1 through 4, below.

1. Statewide Planning Goals:

This section of the report includes findings on the consistency of ZDO-288 with Statewide Planning Goals.

- a. **Goal 1 – Citizen Involvement:** Goal 1 calls for “the opportunity for citizens to be involved in all phases of the planning process” and requires the County to have a citizen involvement program with certain features.

ZDO-288 does not propose to change the *Citizen Involvement* chapter (Chapter 2) of the County's Comprehensive Plan. ZDO Section 1307 implements policies of Comprehensive Plan Chapter 2, and contains adopted and acknowledged procedures for citizen involvement and public notification of land use applications. Notice of ZDO-288 has been provided consistent with the requirements of Chapter 2 and Section 1307, including to all Community Planning Organizations, DLCD, other agencies, and a list of utility providers and other interested parties. Notice of the Planning Commission (PC) and Board of County Commissioners' (Board) hearings were published in the newspaper and on the county's webpage. Before a final decision on ZDO-288 can be made, there

will have been at least two public hearings: one before the PC and another before the Board.

This proposal is consistent with Goal 1.

- b. **Goal 2 – Land Use Planning:** Goal 2 requires the County to have and to follow a comprehensive land use plan and implementing regulations. Comprehensive plan provisions and regulations must be consistent with Statewide Planning Goals, but Goal 2 also provides a process by which exceptions can be made to certain Goals.

ZDO-288 does not require an exception to any Statewide Planning Goal, and no amendments are proposed to the county's Comprehensive Plan. With the proposed amendments, the County's adopted and acknowledged Comprehensive Plan will continue to be consistent with Statewide Planning Goals, and the implementing regulations in state law. As detailed in Section 3, below, the amendments proposed in ZDO-288 are consistent with all applicable goals and policies of the county's Comprehensive Plan.

This proposal is consistent with Goal 2.

- c. **Goal 3 – Agricultural Lands:** The ZDO-288 text amendments would not change the Plan agricultural land policies or implementing regulations for compliance with Goal 3.

This proposal is consistent with Goal 3.

- d. **Goal 4 – Forest Lands:** The ZDO-288 text amendments would not change the Plan forest lands policies or implementing regulations for compliance with Goal 4.

This proposal is consistent with Goal 4.

- e. **Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources:** Goal 5 requires the County to have programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. It requires an inventory of natural features, groundwater resources, energy sources, and cultural areas, and encourages the maintenance of inventories of historic resources.

ZDO-288 would not make any change to the County's Comprehensive Plan goals, policies, or inventories of Goal 5 resources, or implementing regulations. Utility facilities may be allowed within areas protected under Goal 5, subject to the same Goal 5 implementing regulations and processes that currently apply.

This proposal is consistent with Goal 5.

- f. **Goal 6 – Air, Water and Land Resources Quality:** Goal 6 instructs the County to consider the protection of air, water, and land resources from pollution and pollutants when developing its Comprehensive Plan. ZDO-288 would not change any Comprehensive Plan goal or policy, or implementing regulation, affecting a Goal 6 resource, nor would it modify the mapping of any protected resource.

This proposal is consistent with Goal 6.

- g. **Goal 7 – Areas Subject to Natural Disasters and Hazards:** Goal 7 requires the County's Comprehensive Plan to address Oregon's natural hazards. ZDO-288 would not change the County's acknowledged Comprehensive Plan policies or implementing

regulations regarding natural disasters and hazards, nor would it modify the mapping of any hazard.

This proposal is consistent with Goal 7.

- h. **Goal 8 – Recreational Needs:** The ZDO-288 text amendments do not propose to change Plan policies or implementing regulations related to recreational needs.

This proposal is consistent with Goal 8.

Goal 9 – Economy of the State: Goal 9 requires the County to provide an adequate supply of land for commercial and industrial development. ZDO-288 would not change the Comprehensive Plan or zoning designation of any property. It also would not add any new restriction to land uses in areas of the County reserved for commercial and industrial development.

Adequate utility infrastructure is essential for commercial and industrial development; providing a clear permitting pathway for such infrastructure is supportive of Goal 9.

This proposal is consistent with Goal 9.

- i. **Goal 10 – Housing:** Goal 10 requires Oregon’s county plans to “*encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.*”

Adequate utility infrastructure is essential for residential development; providing a clear permitting pathway for such infrastructure is supportive of Goal 10.

This proposal is consistent with Goal 10.

- j. **Goal 11 – Public Facilities and Services:** The purpose of Goal 11 is to ensure that local governments plan and develop a timely, orderly, and efficient arrangement of public facilities and services to act as a framework for urban and rural development. ZDO-288 would provide a clear permitting pathway for water, sanitary sewer, and other utility services infrastructure. Consistent with the Goal 11 implementing Oregon Administrative Rules, the ZDO will continue to restrict the development of sanitary sewer facilities outside urban areas and unincorporated communities.

This proposal is consistent with Goal 11.

- k. **Goal 12 – Transportation:** Goal 12 is implemented by Oregon Administrative Rules (OAR) Chapter 660, Division 12. Local governments are required to adopt a transportation system plan (TSP) and land use regulations to implement the TSP. This proposal does not include amendments to the County’s TSP or transportation-related land use regulations.

OAR 660-012-0060 also requires any comprehensive plan and land use regulation amendment to be evaluated according to the terms outlined in that OAR to demonstrate whether they will have a significant impact on the transportation system. Utility facilities in road rights-of-way and utility lines are unmanned. Therefore, transportation demand is limited to intermittent repair/maintenance needs. In the zones affected by ZDO-288, a conditional use permit or Type II review for institutional development will continue to be required for manned utility facilities, as it is currently. The conditional use and Type II

review processes require compliance with the county's transportation concurrency regulations, which ensure that development is consistent with the county's Goal 12 implementing standards for vehicular traffic congestion. As such, no additional analysis of the transportation system is needed.

This proposal is consistent with Goal 12.

- i. **Goal 13 – Energy Conservation:** Goal 13 encourages land use plans to consider lot size, building height, density, and other measures in order to help conserve energy. ZDO-288 would not change any policy or implementing regulation regarding energy conservation.

This proposal is consistent with Goal 13.

- m. **Goal 14 – Urbanization:** The purpose of Goal 14 is to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. The Goal primarily concerns the location of UGBs, the establishment of "urbanizable areas" and unincorporated communities, exception lands, and rural industrial uses.

ZDO-288 would not modify any UGB or the status or boundaries of any unincorporated community. The ordinance would not modify any urban or rural reserve boundary, allow any new land use in such reserve areas in a manner inconsistent with state law, or change the land use plan designation or zoning of any property.

This proposal is consistent with Goal 14.

- n. **Goal 15 – Willamette River Greenway:** ZDO-288 would not change any existing requirement related to development in the Willamette River Greenway (WRG). Utility facilities would be allowed within the WRG, subject to the same WRG regulations and processes as currently apply.

This proposal is consistent with Goal 15.

- o. **Goals 16-19:** These four Statewide Planning Goals address estuarine resources, coastal shorelands, beaches and dunes, and ocean resources, respectively, and are **not applicable to Clackamas County.**

2. Metro Urban Growth Management Functional Plan (UGMFP)

The purpose of the Functional Plan is to implement certain regional goals and objectives adopted by the Metro Council as the Regional Urban Growth Goals and Objectives (RUGGO), including the Metro 2040 Growth Concept and the Regional Framework Plan.

ZDO-288 does not propose to change the County's residential, commercial, or industrial land supply or regulations related to protection of the county's habitat and water quality areas, to allow new retail or assembly uses in designated industrial areas, or to modify the UGB.

Title 8 of the UGMFP establishes a process for ensuring compliance with requirements of the UGMFP. An amendment to the county's comprehensive plan or land use regulations is deemed to comply with the UGMFP only if the county provided notice to Metro as required by section 3.07.820(a). Notice of this proposal was provided to Metro on March 4, 2024 - 35 days prior to the first evidentiary hearing. Metro has not submitted any comment.

The proposal is consistent with the Metro Urban Growth Management Functional Plan.

3. Clackamas County's Comprehensive Plan

ZDO-288 proposes amendments that would allow a broader range of utility facilities without requiring a separate "authorization of similar use" process, clarify requirements for underground utility lines, allow some utility facilities as primary uses rather than conditional uses, and newly allow utility facilities in the VR-4/5 and VR-5/7 zones.

There are no Comprehensive Plan policies that prohibit utility facilities in any zones or that require utility facilities to be reviewed as conditional uses.

Staff finds that policies in only the following two chapters of the County's Comprehensive Plan are applicable to this proposal.

a. Chapter 2 – Citizen Involvement:

Chapter 2 aims to promote public participation in the County's land use planning. Its policies largely focus on the County's Community Planning Organization (CPO) program and methods for informing and involving the public. Chapter 2 includes these specific policies:

2.A.1 – Require provisions for opportunities for citizen participation in preparing and revising local land use plans and ordinances. Insure opportunities for broad representations, not only of property owners and Countywide special interests, but also of those persons within the neighborhood or areas in question.

2.A.6 – Seek citizens' input not only through recognized community organizations, but also through service organizations, interest groups, granges, and other ways.

2.A.13 – Insure that the County responds to citizen recommendations through appropriate mechanisms and procedures.

Consideration of ZDO-288 has proceeded according to the noticing and public hearing requirements of ZDO Section 1307, which implements Chapter 2 of the Plan.

The public, Community Planning Organizations, and affected agencies have an opportunity to provide input to this proposal to revise the ZDO through written and verbal testimony before the Planning Commission and Board of County Commissioners.

This proposal is consistent with Chapter 2.

b. Chapter 3 – Natural Resources and Energy:

Section 3.K identifies Wildlife Habitat and Distinctive Resource Area policies and includes:

3.K.9 Improve scenic quality of areas impacted by urban blight, working toward the following objectives:

- 3.K.9.1 Regulation and/or removal of advertising billboards*
- 3.K.9.2 Screening junkyards and other unsightly areas*
- 3.K.9.3 Placing of utility lines underground*

3.K.9.4 Requiring landscape buffers (berms, trees, etc.) between incompatible uses and in visually sensitive areas.

ZDO-288 includes an amendment to ZDO 1006 to clarify that only utility service lines are required to be underground unless prohibited by the utility provider. It is unclear whether ZDO 1006 currently requires larger utility lines to be underground. Regardless, this policy commits the county to work toward the list of objectives, not that the objectives be achieved within a specific timeframe or solely as a result of land use review.

This proposal is consistent with Chapter 3.

c. Chapter 4 – Land Use:

Chapter 4 includes 10 policies that require underground utilities in various urban Plan designations/zoning districts. Specifically, these policies apply in the MR-1, PMD, MR-2, HDR, SHD, R-2.5 through R-30, C-2, OC, OA, C-3, RTL, BP, LI and GI Districts and read as follows:

- 4.Q.9 Develop all Medium, Medium High, High, and Special High Density Residential areas with public sewer, public water, curbs, drainage controls, pedestrian/bikeway facilities, underground utilities, and street lighting.*
- 4.R.10 Develop all land divisions in urban areas with public sewer, public water, drainage controls, pedestrian/bikeway facilities, and underground utilities. Street lighting and street trees may be required. Implementing ordinances shall set standards in which street lighting and street trees will be encouraged or required.*
- 4.Y.1 Require curbs, drainage controls, underground utilities, and street lighting.*
- 4.Z.1 Require sidewalks, drainage controls, underground utilities, and street lighting.*
- 4.AA.6.6 Sidewalks, drainage controls, underground utilities, and street lighting shall be required.*
- 4.BB.5 Require curbs, drainage controls, underground utilities, and street lighting.*
- 4.CC.7 Require curbs, drainage controls, underground utilities, and street lighting.*
- 4.DD.5 Require curbs, sidewalks, drainage controls, underground utilities and street lighting.*
- 4.EE.9 Require underground utilities and street lighting.*
- 4.FF.10 Require curbs, underground utilities and street lighting.*

These policies are embedded in lists of other policies related to standards for new development. Requiring underground utilities for utility service lines for new development is consistent with these policies.

This proposal is consistent with Chapter 4.

d. Chapter 5 – Transportation System Plan:

Section 5.I identifies Rural Scenic Roads policies and includes:

- 5.1.2 *Promote the protection of recreation values, scenic features and an open, uncluttered character along designated scenic roads.*

Developments adjacent to scenic roads shall be designed with sensitivity to natural conditions and:

[...]

- 5.1.2.8 *Underground placement of utilities shall be encouraged.*

This policy is embedded in a list of other policies related to standards for new development. Requiring underground utilities for utility service lines for new development is consistent with this policy.

This proposal is consistent with Chapter 5.

e. **Chapter 11 – *The Planning Process*:**

Chapter 11 of the Comprehensive Plan includes policies requiring inter-governmental and inter-agency coordination, public involvement, and noticing. As explained previously in this report, all required entities have been notified in accordance with law and have been invited to participate in duly-advertised public hearings.

Chapter 11 of the Comprehensive Plan also contains the specific requirement that the Comprehensive Plan and ZDO be consistent with Statewide Planning Goals and with Metro's Urban Growth Management Functional Plan; Chapter 11 is what requires the ZDO itself to be consistent with the Comprehensive Plan. This report's *Analysis & Findings* outline how ZDO-288 is consistent with all of these requirements.

This proposal is consistent with Chapter 11.

5. Zoning and Development Ordinance (ZDO):

The proposed text amendments are legislative. Section 1307 of the ZDO establishes procedural requirements for legislative amendments, which have been or are being followed in the proposal and review of ZDO-288. Notice of this proposal was provided at least 35 days before the first scheduled public hearing to DLCD, all active CPOs and Hamlets, and other interested parties and agencies, to allow them an opportunity to review and comment on the proposed amendments. Advertised public hearings are being held before the Planning Commission and the BCC to consider the proposed amendments. The ZDO contains no further specific review criteria that must be applied when considering an amendment to the text of the ZDO.

RECOMMENDATION

Staff recommends approval of ZDO-288, as proposed in *Attachment A*. Staff finds the proposed ZDO text amendments are consistent with all applicable criteria.

LIST OF ATTACHMENTS

A. Proposed ZDO Amendments

1. **ZDO Section 202, *Definitions***
2. **ZDO Section 315, *Urban Low Density Residential (R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, and R-30), Village Standard Lot Residential (VR-5/7), Village Small Lot Residential (VR-4/5), Village Townhouse (VTH), Planned Medium Density Residential (PMD), Medium Density Residential (MR-1), Medium High Density Residential (MR-2),***

- High Density Residential (HDR), Village Apartment (VA), Special High Density Residential (SHD), and Regional Center High Density Residential (RCHDR) Districts*
3. **ZDO Section 316**, *Rural Area Residential 1-Acre (RA-1), Rural Area Residential 2-Acre (RA-2), Recreational Residential (RR), Rural Residential Farm Forest 5-Acre (RRFF-5), Farm Forest 10-Acre (FF-10), and Future Urban 10-Acre (FU-10) Districts*
 4. **ZDO Section 317**, *Mountain Recreational Resort (MRR) and Hoodland Residential (HR) Districts*
 5. **ZDO Section 510**, *Neighborhood Commercial (NC), Community Commercial (C-2), Regional Center Commercial (RCC), Retail Commercial (RTL), Corridor Commercial (CC), General Commercial (C-3), Planned Mixed Use (PMU), Station Community Mixed Use (SCMU), Office Apartment (OA), Office Commercial (OC), and Regional Center Office (RCO) Districts*
 6. **ZDO Section 511**, *Village Community Service District (VCS)*
 7. **ZDO Section 512**, *Village Office District (VO)*
 8. **ZDO Section 513**, *Rural Tourist Commercial (RTC) and Rural Commercial (RC) Districts*
 9. **ZDO Section 602**, *Business Park, Light Industrial, and General Industrial Districts (BP, LI and GI);*
 10. **ZDO Section 604**, *Rural Industrial District (RI),*
 11. **ZDO Section 702**, *Open Space Management District (OSM)*
 12. **ZDO Section 711**, *Government Camp Open Space Management District (GCOSM)*
 13. **ZDO Section 830**, *Utility Carrier Cabinets*
 14. **ZDO Section 1001**, *General Provisions*
 15. **ZDO Section 1006**, *Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control*
 16. **ZDO Section 1102**, *Design Review*

B. Exhibit List and Exhibits