

April 19, 2022

VIA ELECTRONIC FILING

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

RE: Docket AR 626—PacifiCorp Initial Comments

I. INTRODUCTION

On March 31, 2022, the Oregon Secretary of State issued the Public Utility Commission of Oregon's (Commission) Notice of Proposed Rulemaking (NOPR), regarding Changes to Rules Regarding Certificates for Public Convenience and Necessity (CPCN).

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) appreciates the significant informal stakeholder processes that led to the current NOPR. While the Company endorses the majority of the proposed NOPR language, PacifiCorp provides several additional comments for the Commission's consideration. Although the NOPR substantially resolved many of PacifiCorp's previously identified concerns,¹ there are several policy questions, procedural concerns, and clerical issues that the Commission should consider prior to adopting final CPCN regulations.

To that end, the Company respectfully requests the Commission: implement an 11-month deadline for a Commission decision on CPCN applications; amend Oregon Administrative Code (OAR) 860-025-0030(2)(m) to include the documents listed in OAR 860-025-0040(2)(a)-(c); amend OAR 860-025-0035(1)(e) to incorporate relevant local, state, and federal policies; remove the reference to multiple lower-voltage lines in OAR 860-025-0030(o); clarify when stakeholders will be allowed further input on the Commission's standard CPCN data requests; and align the obligation to quantify the economic impacts to "other Oregon utilities" and to Oregon in general in -0035(d), with the qualification "to the extent reasonably known by petitioner" found in OAR 860-025-0030(k).

II. COMMENTS

A. The Commission should include an 11-month deadline for a Commission decision.

The Commission should include an 11-month deadline for a Commission decision on all CPCN applications. This would align with the spirit of recently enacted state and federal policies that seek to incentivize the development of substantial transmission infrastructure in the next decade.

¹ PacifiCorp's Informal Comments on Proposed Rule Revisions (Aug. 13, 2021).

In 2021, the Oregon Legislative Assembly enacted House Bill (HB) 2021.² Most relevant to this NOPR, electric utilities must submit clean energy plans that detail how each will achieve Oregon’s clean energy targets.³ As the Commission is well aware, action plans can include planned investments not only in new generation, energy efficiency, and demand response projects, but also the “development of new transmission and other supporting infrastructure.”⁴ The Assembly directed the Commission to take action “as soon as practicable” on utility clean energy plans.⁵

At the federal level, Congress recently passed the Infrastructure Investment and Jobs Act (IIJA) which includes several important provisions that may impact transmission in Oregon.⁶ Section 40101 establishes a grant program to develop transmission infrastructure to prevent outages and enhance the resilience of the electric grid resulting from extreme weather, wildfire, and natural disasters. Section 40103 establishes a grant program to develop transmission projects that enhance electric grid reliability, and support grid resilience research, development, and demonstration projects. Section 40106 establishes a revolving loan fund that permits the Department of Energy to finance new or updated transmission projects. Section 40107 establishes a matching grant program for smart grid investments that improve grid flexibility, resilience, and reliability. Most relevant to this NOPR, § 40105 permits the Federal Energy Regulatory Commission (FERC) to override state decisions that deny CPCN applications, if the CPCN could result in the development of transmission infrastructure in electric transmission corridors of national interest.

Adjacent to the IIJA, the FERC recently embarked on its most ambitious reform to transmission planning and cost allocation requirements in several decades.⁷ As the FERC noted, the electricity sector “is transforming as the generation fleet shifts from resources located close to population centers toward resources, including renewables, that may often be located far from load centers.”⁸ The “growth of new resources seeking to interconnect to the transmission system and the differing characteristics of those resources are creating new demands on the transmission system.”⁹ FERC intends the Advanced Notice of Proposed Rulemaking (ANOPR) to inform “the need for more holistic transmission planning and cost allocation and generator interconnection processes, to plan the grid for the future, and to do so in a way that results in rates that are just and reasonable.”¹⁰

On balance, HB 2021, IIJA, and the FERC ANOPR support a Commission deadline for a decision on CPCN applications. The Company recommends the Commission adopt the same 11-

² *An Act Relating to Clean Energy*, 2021 Or. Laws Ch. 508 (Sept. 25, 2021).

³ *Id.* § 4.

⁴ *Id.* § 4(5).

⁵ *Id.* § 4(6).

⁶ *Infrastructure Investment and Jobs Act*, Pub. L. 117-58 (Nov. 15, 2021).

⁷ *In re FERC Transmission ANOPR*, 86 Fed. Reg. 40,266 (Jul. 27, 2021)

⁸ *Id.* ¶ 3.

⁹ *Id.*

¹⁰ *In re FERC Transmission ANOPR*, RM21-17-000, E-1 News Release (Jul. 15, 2021).

month deadline for a Commission decision on rate cases, for CPCN applications.¹¹ Given the similar complexity with CPCN applications (though not all) to rate cases, an 11-month deadline seems reasonable and warranted. While not universal, deadlines for a final Commission decision in CPCN proceedings are common before the FERC and in the West.¹² The recommended deadline could reasonably be included in OARs 860-025-0030, or 860-025-0035.

Given the costly, complex, and time-consuming nature of transmission projects, a deadline would ensure that CPCN decisions are timely, though provide adequate time for the Commission and parties to adequately investigate the issues presented.¹³

B. The Commission should align OAR 860-025-0030(2)(m) and 860-025-0040(2)(a)-(c).

The Commission should amend OAR 860-025-0030(2)(m) to include the documents listed in OAR 860-025-0040(2)(a)-(c). For example:

(m) A review of and reference to regulatory approvals and reviews that concern, analyze or otherwise discuss the proposed transmission line, such as an integrated resource plan acknowledgement, other short- or long-term planning documents, construction work plans filed with a regulatory body, and any relevant site certificate issued by the Energy Facility Siting Council or similar certificates or documents from city, county, planning agencies, building departments, or governing bodies.

This amendment would align OAR 860-025-0030 (requirements for a CPCN petition), with OAR 860-025-0040 (standard of decision for Statewide Planning Goals and land use regulations). This ensures that when the Commission issues a decision under OAR 860-025-0040, that a utility has provided the relevant city, county, planning agency, building department, or other governing body certificate or documents to inform the Commission's decision.

C. The Commission should amend OAR 860-025-0035(1)(e) to incorporate relevant local, state, and federal policies.

As discussed above, there are several recent state and federal policies that will require or strongly incentivize transmission and generation projects in the next decade. Many of the projects that result from these policies will either require a CPCN directly (for new transmission projects), or

¹¹ ORS §§ 757.210(1)(a), 757.215(1).

¹² 18 CFR 4.34(b)(5)(iii) (one year deadline for state water quality certifications required for FERC hydropower project licensing proceedings); 18 CFR 5.23(b)(2) (same); 18 CFR 157.22(b) (same for FERC Natural Gas Act CPCN proceedings); 18 CFR 157.22(b) (90-day deadline for environmental decisions required for FERC Natural Gas Act permitting and abandonment proceedings); Cal. Pub. Util. Code § 1005.1(a) (18-month deadline for CPCN decisions); Cal. Pub. Util. Code § 1001.5(b) (90-day deadline to exempt certain utility applications from CPCN decisions); Ut. Rev. Code § 54-4-25(5) (30-day deadline for uncontested applications for utility service territory CPCN's, and 45-day deadline after a hearing for contested applications); Mont. Code Ann. § 69-12-323(1)(a) (180-day deadline for motor carrier CPCN's).

¹³ For example, PacifiCorp's Energy Gateway Transmission Expansion project is well into its second decade, with significant projects remaining to be developed in the next five to 10 years.

indirectly (for generation projects that also require additional transmission capacity). This amendment would align the various local, state, and federal policies that support these generation and transmission investments.¹⁴ The Commission could accomplish this goal by amending the standard of decision for CPCN applications in OAR 860-025-0035(1)(e):

(e) The Commission may also consider other factors it deems relevant to the statutory criteria, including relevant local, state, and federal policies.¹⁵

D. The Commission should remove the reference to multiple lower-voltage lines in OAR 860-025-0030(o).

The NOPR requires utilities to evaluate available alternatives to a proposed transmission line, “including but not limited to conservation measures, non-wires alternatives, and construction of one or more lower-voltage single or multi-circuit lines.”¹⁶ PacifiCorp notes that in most if not all circumstances, it is less feasible to construct multiple lower-voltage, single circuit lines, compared to a single-circuit or higher-voltage line. This is because multiple lines duplicate regulatory proceedings (each would need a CPCN), increase costs (because high-voltage single-circuit lines typically benefit from economies of scale and scope that lower customer costs), increase landowner impacts (by duplicating the lines that transect a given property), and delay projects (because of additional property negotiations resulting from multiple lines).

While the Company notes that the “available alternatives” in this section are only examples that the Commission could consider in any given proceeding, multiple lower-voltage lines are not a reasonable available alternative. PacifiCorp is concerned that including this language could signal to opponents of contested CPCN applications the types of “available alternatives” they could raise, that while not effective alternatives (and not relevant to a Commission decision), would nonetheless delay and burden already complex and important proceedings.

E. The Commission should clarify when stakeholders can comment on the Commission’s standard CPCN data requests (SDRs).

The Commission provided example SDRs in the Commission Staff workshop materials from July 15, 2021. However those SDRs were not included in the proposed NOPR, they were only identified by reference.¹⁷ PacifiCorp does not necessarily have material concerns with the initially proposed SDRs,¹⁸ however it is unclear whether the Commission will provide stakeholders the ability to comment in a future rulemaking or informal agency proceeding, or whether stakeholder concerns should be addressed on a case-by-case basis in future CPCN

¹⁴ Or. Rev. Stat. § 183.332 (“it is also the policy of this stat that agencies attempt to adopt rules that correspond with equivalent federal laws and rules”).

¹⁵ PacifiCorp notes that -0035(1)(e) appears the most relevant proposed regulation to amend in the NOPR, that there may be other sections that could appropriately address this issue as well.

¹⁶ NOPR, at 6.

¹⁷ *Id.* at 4, 7.

¹⁸ Though the Commission generally restates its previous comments regarding the SDRs. PacifiCorp’s Informal Comments, § II(G).

contested cases. Either way, PacifiCorp would appreciate the Commission's clarification on this point.

F. The Commission should align the obligation to quantify the economic impacts to “other Oregon utilities” and to Oregon in general in OAR 860-025-0035(d), with the qualification “to the extent reasonably known by petitioner” found in OAR 860-025-0030(k).

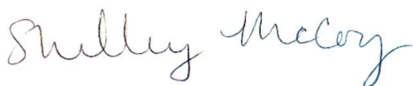
OAR 860-025-0035(d) currently requires utilities to justify project based in part on “the benefits and costs as they relate to affected ratepayers of other Oregon utilities, connections to regional and inter-regional electricity grids and a petitioner's non-Oregon service territories, and all Oregonians.”¹⁹ This is contrasted with the more limited language in OAR 860-025-0030(k), that requires utilities to demonstrate the “Costs and benefits to petitioner's Oregon ratepayers and ratepayers of other Oregon utilities and to Oregonians in general,” though only as “reasonably known to petitioner.”²⁰

PacifiCorp appreciates the Commission's holistic approach to transmission planning and CPCN applications. However, to ensure that individual CPCN applications are not denied due to a technicality (i.e., a utility's failure to correctly estimate the rate impact to “all Oregonians”), PacifiCorp recommends the modest condition, similar to that already included in OAR 860-025-0035(k).

III. CONCLUSION

PacifiCorp supports the majority of the Commission's NOPR, and respectfully requests the Commission consider PacifiCorp's modest comments discussed above.

Sincerely,



Shelley McCoy
Director, Regulation

¹⁹ NOPR, at 8.

²⁰ NOPR, at 6.