

1                               **BEFORE THE PUBLIC UTILITY COMMISSION**  
2   **OR OREGON**

3   AR 626

4  
5   In the Matter of

6   Rulemaking Regarding Certificates of Public  
7   Convenience and Necessity.

STAFF COMMENTS

8  
9  
10           The Public Utility Commission of Oregon Staff (Staff) submits these comments after  
11 further consideration of the proposed rules that are the subject of the Notice of Proposed  
12 Rulemaking filed April 1, 2022. Staff continues to support adoption of the proposed rule  
13 changes. Staff offers further support of proposed amendments to OAR 860-025-0030 and  
14 proposes additional edits to refine the text of the proposed changes, consistent with Staff's  
15 understanding of the intent of the changes.

16                               *Support for Proposed Rule Changes*

17           The proposed rule changes are similar in many ways to the rule changes Staff developed  
18 with input from various stakeholders in the informal phase of this rulemaking docket. The Staff  
19 Report for the December 2, 2021, public meeting of the Commission outlines Staff's support for  
20 the draft proposed rules. For the same reasons, Staff supports the adoption of similar changes in  
21 the proposed rules. The rules provide an overdue update to the rules, incorporating application  
22 requirements that are consistent with modern resource planning and ensuring the Commission  
23 has the information it needs to issue a certificate of public convenience and necessity (CPCN).  
24 The rules also provide clarity and transparency for the CPCN process, ensure efficiency of  
25 process and limit the likelihood of premature petition filings for a CPCN. The December 2, 2021  
26 Staff report is attached for inclusion in the rulemaking record as Attachment 1.

1 The proposed rules include the following language proposed for OAR 860-025-  
2 0030(2)(j):

3 (j) Estimated bill impacts. At a minimum, petitioner must include an estimate of  
4 the projected average monthly bill increase for its customers in each Oregon  
5 customer class that may experience a rate increase, given the estimated revenue  
6 requirement. A bill impact analysis provided under this rule is used solely for  
purposes of evaluating the petition.

7 Staff continues to believe, as stated in the attached Staff report, that requiring this information to  
8 be included in a CPCN petition will better inform review of a petition, by clarifying the expected  
9 impact on each customer class. For further support, Staff notes that in some cases, only one  
10 customer or a small class of customers may be likely to see a bill impact from a transmission  
11 line, and the fact that other customers face minimal or no impact may be considered in  
12 evaluating whether the project is justified and in the public interest. Conversely, a large average  
13 monthly bill increase may be a factor for the Commission to weigh in considering the practicality  
14 or justification of a proposed transmission line.

15 The proposed rules also include the following language proposed as OAR 860-025-  
16 0030(2)(q):

17 (q) A narrative that identifies all land use approvals and permits required for  
18 construction of the transmission line. This narrative must include information on  
19 whether petitioner has submitted an application for each approval or permit, the  
20 status of all such applications, an explanation as to why petitioner did not obtain  
any pending or outstanding approvals or permits before submitting a petition  
under this rule as applicable.

21 Staff supports this filing requirement for petitions as it allows for the assessment of  
22 outstanding approvals that may present a practical hurdle to the completion of the transmission  
23 line. Such information is therefore relevant to the Commission's evaluation of the practicability  
24 of a project and whether issuance of a CPCN for purposes of condemnation is justified.

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*Staff's Proposed Edits to Proposed Rules*

Staff recommends the following edits to the proposed rules and reserves the right to propose additional changes upon further consideration.

**I. Proposed Edits to Process Waiver in OAR 860-025-0030(3).**

The Proposed rules include amendments to OAR 860-025-0030(3) that add language for requesting a waiver – essentially a process exception -- of the requirement to file documentation of land use approvals to support findings required by proposed OAR 860-025-0040. Staff recognizes that OAR Chapter 860, Division 25 already contains a rule authorizing waiver of any of the Division 25 rules for good cause shown upon request or the Commission's own motion. OAR 860-025-0000(2). However, given that this waiver would be for the purposes of allowing a CPCN petition to be filed without all required information, Staff supports language that ensures the timely and efficient review of such requests. Staff proposes the following edits in lieu of OAR 860-025-0030(3), as proposed. Staff believes the edits below are consistent with this purpose and clarify the process, without waiving the need for findings that the Commission must make under proposed OAR 860-025-0040:

- (3) 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 (4).
- (4) At the time of filing, if the petitioner cannot include all necessary documentation to support a finding under OAR 860-025-0040(2) or (4), the petitioner must submit a request for a waiver of section (3) of this rule concurrent with the petition. The petitioner will provide notice that the petition includes a request for waiver at the time of filing. 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 (4), and a list of all necessary documentation that cannot be submitted 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, along with any reliable evidence to support and verify the petitioner's claim that such documentation cannot be obtained;
  - (c) In the event that the petitioner seeks a waiver of the requirement to include documentation to support a finding under OAR 860-025-0040(2) or (4); the petitioner shall request that the Commission make its findings under OAR 860-025-0040(2), (3) or (4) as appropriate.
  - (d) In the event that the petitioner requests that the Commission make its findings under OAR 860-025-0040(4), the petitioner will provide information from the

- relevant, pending Energy Facilities Siting Council (EFSC) proceeding to demonstrate that EFSC site approval is being sought.
- (5) Staff will review the waiver request upon receipt of the petition. If Staff finds the waiver request is likely supported by good cause, it will recommend the Commission approve the waiver request at a public meeting within 90 days of the receipt of the petition.
- (6) If Staff finds the waiver request is likely not supported by good cause, it will recommend the Commission deny the request at a public meeting within 90 days of the receipt of the petition. Staff will further ask the Commission to make a finding that the petition is incomplete and that it will not be considered by the Commission, pursuant to 860-025-0030(4).

## **II. Proposed Edits to OAR 860-025-0030(2)(r).**

The proposed rules add a requirement that a petitioner for a CPCN certificate submit responses to standard data requests when filing a petition. Staff supports this requirement to improve the efficiency of CPCN proceedings. A CPCN proceeding is a contested case, in which parties may engage in discovery. As noted in the informal stage of the rulemaking, Staff regularly finds it must issue a number of common data requests to petitioners as part of its investigation in CPCN dockets. By establishing a set of standard data requests to which responses must be submitted at the time of filing, those responses will be available to parties at the outset and allow for more focused discovery requests within the schedule for the docket. This change will allow CPCN dockets to move forward more efficiently.

Public comment has already been submitted in this rulemaking record that indicates the standard data request responses may be considered part of the petition. Staff believes the filing requirements in the proposed rules adequately address basic filing requirements and set forth the appropriate amount of information to include in a petition. The use of standard data requests is intended for purposes of discovery, to reveal evidence to parties in the docket that may be relevant to a petition, similar to the standard data request process already used in general rate cases. *See* OAR 860-022-0019(2)(a); General Rate Case data requests are available here: [www.oregon.gov/puc/forms/forms and reports/ratefiling-standarddatarequest.pdf](http://www.oregon.gov/puc/forms/forms%20and%20reports/ratefiling-standarddatarequest.pdf). The Standard data request form for CPCN petitions would reflect a set of requests for CPCN petitioners that may lead to relevant information for the review of the petition and would be similarly available

1 on the Commission's website.

2 Data request responses are not filed in the docket nor are they provided to the  
3 Administrative Law Judge. They are submitted to parties as provided under OAR 860-001-0540.  
4 All the same, Staff recognizes that the current wording of the proposed rules has caused  
5 confusion and should be clarified as the requirement falls under section (2) which identifies the  
6 information that must be contained in a petition.

7 Therefore, Staff suggests the following edits:

8 (2) Petitions under ORS 758.015 must contain the following information:

9 . . .

10 (r) When filing a petition, a petitioner must also certify that it has concurrently  
11 submitted its responses to the most recent version of the Standard Data Requests  
12 for Petitions for Certificates of Public Convenience and Necessity, approved by  
the Commission and available at: [www.oregon.gov/puc/forms](http://www.oregon.gov/puc/forms).

13 Once the filing requirements for petitions are established as a result of this rulemaking  
14 proceeding, it will be clear what information must be included in a petition, and the standard data  
15 requests can be finalized to fill in essential gaps and support discovery of information that may  
16 lead to relevant evidence in a CPCN petition.

### 17 **III. Proposed Edits to OAR 860-025-0040(2).**

18 Since the notice of proposed rulemaking was issued, Staff has participated in informal  
19 discussions on the subject of allowing for submission of a land use compatibility statement.  
20 Based on interest expressed by representative of some local governments that may have land use  
21 jurisdiction over transmission line construction, Staff does not object to amending proposed  
22 OAR 860-025-0040(2)(c) to allow for additional flexibility to incorporate local land use review  
23 in a CPCN proceeding. Staff understands that an ownership in land or the consent of the  
24 landowner is necessary to initiate a local land use permitting process. A CPCN petitioner that  
25 seeks to condemn interests in land in order to construct a transmission line is unlikely to be able  
26 to obtain such interests or consent from the landowner before filing. A land use compatibility

1 statement may be used to support the Commission's land use filings. However, it is not a land  
2 use decision<sup>1</sup> and may be modified or revoked before a local land use decision is made. To  
3 allow for the use of land use compatibility statements and to address the unique character of such  
4 statements, Staff suggests the Commission consider the following amendments to OAR 860-025-  
5 0040(2) and additional language for a new OAR 860-025-0040(5):

6 (2)(c) Other written or oral land use information and documentation equivalent to  
7 OAR 860-025- 0040(2)(a) or (b) above properly presented to the Commission  
8 from an authorized representative from each affected city or county.

9 Documentation for this purpose may include a land use compatibility statement  
10 from the local government with land use jurisdiction that the transmission line  
11 project has been approved, a land use review is pending or that affirmatively  
12 demonstrates in sufficient detail that a future land use review is available under  
13 which the transmission line could be a compatible use authorized under the  
14 acknowledged comprehensive plan and land use regulations implementing the  
15 plan.

16 (A) A petitioner must notify the Commission promptly when a land use  
17 compatibility statement submitted to support findings under this subsection has  
18 been appealed or has been modified or withdrawn before a final order has issued  
19 in a CPCN proceeding.

20 (B) A land use compatibility statement from the local government with land use  
21 jurisdiction that the transmission line is an incompatible use under the  
22 acknowledged comprehensive plan or land use regulations implementing the plan  
23 is not equivalent documentation.

24 \*\*\*\*

25 (5) If a land use compatibility statement upon which the Commission bases its  
26 land use compatibility findings is successfully appealed, revoked or modified to  
include a finding that the transmission line is incompatible with an acknowledged  
comprehensive plan or implementing regulations after the Commission has issued  
a CPCN, the Commission may withdraw the CPCN final order.

#### 27 **IV. Proposed Edits to OAR 860-025-0040(4).**

28 Proposed OAR 860-025-0040(4) provides:

29 (4) If a proposed transmission line is subject to the jurisdiction of the Energy  
30 Facility Siting Council (EFSC), the Commission shall adopt findings which  
31 assure that EFSC has issued a site certificate for the transmission line, and the

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<sup>1</sup> See ORS 197.015(10)(b)(H).

1 requirements of OAR 860-025-0040(1), (2), and (3) shall not apply.

2 Staff supports amendments to this language, currently included in OAR 860-025-0030(4)  
3 to clarify that the Commission may rely on a site certificate issued by EFSC for its findings. The  
4 current language refers to certification of the route by EFSC, which is likely not accurate.  
5 However, Staff does not support the change to state that “the requirements of OAR 860-025-  
6 0040(1), (2), and (3) shall not apply”. Staff believes that existing language that states the  
7 requirements of “(2), and (3) shall not apply” remains appropriate as the Commission will still  
8 need to make the land use findings under (1), albeit by relying on the findings in the EFSC site  
9 certificate.

10 *Conclusion*

11 Staff supports adoption of the proposed permanent rules in Docket AR 626 as  
12 proposed with consideration of the revisions noted in the comments above.

13 DATED this 22<sup>nd</sup> day of June 2022.

14 Respectfully submitted,

15 ELLEN F. ROSENBLUM  
16 Attorney General

17 */s/ Johanna M. Riemenschneider*

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Johanna M. Riemenschneider, OSB # 990083  
19 Sr. Assistant Attorneys General  
20 Of Attorneys for Public Utility Commission Staff,  
21 State of Oregon  
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ITEM NO. RA1

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
SPECIAL PUBLIC MEETING DATE: December 2, 2021**

**REGULAR** \_\_\_ **CONSENT** \_\_\_ **RULEMAKING** **X** **EFFECTIVE DATE** **N/A**

**DATE:** November 24, 2021

**TO:** Public Utility Commission

**FROM:** Nadine Hanhan

**THROUGH:** Bryan Conway, JP Batmale, Kim Herb, and Diane Davis **SIGNED**

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION STAFF:  
(Docket No. AR 626)  
Request to issue notice of proposed rulemaking for changes to rules governing Certificates for Public Convenience and Necessity.

**STAFF RECOMMENDATION:**

Issue notice of proposed rulemaking for changes to administrative rules governing Certificates for Public Convenience and Necessity (CPCNs).

**DISCUSSION:**

Issue

Whether the Public Utility Commission of Oregon (Commission) should issue a notice of proposed rulemaking for changes to administrative rules governing CPCNs.

Applicable Law

Pursuant to ORS 756.060, the Commission “may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission...” The Oregon Administrative Procedures Act sets forth the process for administrative rulemaking.

Under ORS 758.015(1), when any person or transmission company providing electric utility service proposes to construct an overhead transmission line for which the condemnation of land or an interest in land is necessary, that person must petition the



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Public Utility Commission of Oregon for a certificate of public convenience and necessity. If the Commission grants a CPCN, the transmission line for which the land is required becomes a public use and necessary for public convenience.

### Analysis

#### *Background*

Commission Order No. 19-311 opened this docket to consider changes to the administrative rule regarding CPCNs. The current CPCN rule, OAR 860-025-0030, was initially adopted in 1974 and last amended in 1991.<sup>1</sup> Staff proposed seven changes to consider on review of the CPCN rule:

1. Updating the rule to take into account modern resource planning, which has evolved since the rules were first adopted.
2. Requiring additional information concerning a proposed transmission line in a petition for CPCN.
3. Requiring an evaluation of alternatives to construction of the transmission line in the petition.
4. Requiring a rate impact analysis in the petition.
5. Requiring specific information to be included in the petition on the issue of safety.
6. Requiring documentation of land use approvals from local governments or the Energy Facility Siting Council (EFSC) with the application as it may limit the premature filing of petitions.
7. Improving the clarity and transparency of the CPCN process by re-organizing the CPCN rule into separate rules that identify the application requirements, land use compatibility requirements, and the grounds that are sufficient to support issuance of a CPCN.

Staff conducted several workshops with stakeholders to discuss draft language for the CPCN rule. The Commission, Staff, and stakeholders participated in a Commission

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<sup>1</sup> See Commission Order Nos. 74-307 and 91-700.

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workshop on June 25, 2020. Based on the extensive informal comments received during the course of the initial workshops and on the discussion of issues at the Commission workshop, Staff revised its working draft of rule changes. Staff held a number of workshops to review this revised draft and related issues on July 15, August 30, and November 2, 2021, and stakeholders submitted additional comments. Following the last workshop, Staff made further revisions and proposes that the Commission issue a notice of rulemaking for the rule changes set forth in Attachment 1 to this report.

### *Overview*

A summary of proposed rule changes set out in Attachment 1 is provided below. In the section following this overview, Staff discusses key stakeholder comments that are not incorporated in the draft rules.

### *Summary and Discussion of Proposed Draft Rules*

#### OAR 860-025-0030

OAR 860-025-0030 sets forth requirements for a CPCN petition. In addition to housekeeping changes and grammatical edits, Staff proposes amendments to section (2) of this rule that identify additional information a petition must include in a petition for a CPCN. These amendments require:

- Additional information about the proposed transmission line and its intended operation with a comprehensive narrative of the project.
- A certificate of service from the petitioner verifying that notice of the petition has been mailed to all persons who have interests, known or of record, in the land to be affected or traversed by the proposed route.
- A summary of petitioner's safety compliance plan and a sworn certificate affirming that petitioner will adhere to the applicable Commission rules and other applicable safety standards for construction, operation, and maintenance of the transmission line.
- An estimate of the projected average monthly bill increase for customers in each Oregon customer class that may experience a rate increase.
- Public benefits and costs of the transmission line reasonably known to petitioner.
- A statement of all costs incurred by petitioner to develop the transmission line prior to filing the petition.
- A review of and reference to regulatory approvals and reviews that concern, analyze, or otherwise discuss the proposed transmission line.

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- The most recent load forecasts available to petitioner.
- An evaluation of available alternatives to construction of the transmission line.
- Electrical engineering studies and reliability or resiliency analyses when relevant.
- A narrative that identifies all land use approvals and permits required for construction of the transmission line.

Staff has found the information to be produced under these requirements to be relevant and informative in recent CPCN dockets. Inclusion of these items will ensure the Commission receives the information it needs to review a CPCN petition and inclusion of this information with the petition will promote a more efficient review process.

Earlier drafts of the rule changes required additional background and supporting information. In response to feedback from stakeholders that these requests were too detailed or onerous and may not be pertinent to a particular petition given the nature of the transmission line project or the petitioner, Staff proposes language that requires a petitioner to submit responses to a set of Standard Data Requests (SDRs) with its petition. Accordingly, Staff has removed certain items from the initial draft rules and will provide a set of SDRs on a form for Commission approval. At least one stakeholder expressed concern that some SDRs may still not apply to a petitioner and failure to respond to that SDR would be viewed as submitting an incomplete application. Staff's expectation is that a concise response to an SDR explaining why the information request does not apply or the requested information does not exist would be a sufficient response.

A number of regulatory approvals may be necessary before a transmission line may begin construction, including obtaining a CPCN if the condemnation of private property interests in land becomes necessary. Whether a petitioner for a CPCN has or will acquire those approvals may indicate whether any route changes will be required and may be an indication that the proposed line is practicable. If the Commission grants a CPCN petition, a certified copy of the Commission's order is conclusive evidence in a condemnation proceeding that the transmission line for which the land is required is a public use and necessary for public convenience, allowing a successful petitioner to proceed with condemnation. Staff therefore views the CPCN as a capstone decision in the timeline for a project's development. Rule changes are included in Attachment 1 to ensure petitions are not filed prematurely. Under section 3, a petition must include all necessary documentation to support a finding of land use compatibility under OAR 860-025-0040(2) or (4). If the petitioner cannot include the documentation, the petitioner must include an explanation why and request that the Commission make its findings under OAR 860-025-0040(3). In initial drafts of the proposed rule, this section required documentation of all permits and approvals. However, based on stakeholder comments

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indicating that this would potentially be too broad, including minor construction-related approvals that would not have bearing on project development or siting, this language has now been limited to the specific information the Commission will need to support its required findings of land use compatibility. The draft rules confirm the Commission's authority to hold any petition in abeyance; however, in the interest of ensuring petitions are timely reviewed once filed, Staff supports requiring all necessary documentation at the time the petition is filed. In addition, under section (4), a petition that does not have all the required information, including SDR responses, may be deemed incomplete and will not be considered.

#### OAR 860-025-0035

This is a new rule that sets out the criteria the Commission will consider on review of a petition for a CPCN. Staff relied on recent orders granting CPCNs for guidance in listing the draft criteria.

The rule also clarifies that once a CPCN is granted, it will expire fifteen years after its issue, or, if construction does not begin, within ten years of issuance. Extensions of this term may be granted with a showing of good cause. Earlier drafts listed these terms at ten and five years, but Staff extended the basic term after receiving feedback that the shorter time periods may be unrealistic for larger projects.

An earlier draft of this rule also included a statement that, once issued, a CPCN would not be supplemented or amended to include additional property interests. After a number of stakeholders expressed concern with this limitation, and after discussion of what, if any, processes may be available to amend a CPCN, Staff has removed this language for the draft. The Commission may address whether it will consider a request for a supplemental order or amendment of a CPCN and the appropriate process for such requests on a case-by-case basis.

#### OAR 860-025-0040

This is a new rule where Staff has relocated the existing sections (2), (3), and (4) of OAR 860-025-0030. This rule sets forth how the Commission will make findings that issuing a CPCN for a proposed transmission line will be in compliance with statewide planning goals and land use regulations and compatibility with acknowledged plans and regulations. In addition to housekeeping changes, the language for these sections has been updated to state that the Commission will rely on documentation from an affected city or county planning agency, building department, or governing body and that the Commission will only make its own findings if it cannot rely on documentation from affected entities. The Commission will continue to rely on a site certificate issued by the EFSC for the transmission line when EFSC has jurisdiction over the proposed transmission line.

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*Central Stakeholder Comments and Concerns*

Participation in the informal process was robust, including representatives from investor-owned electric utilities, consumer-owned utilities, Oregon Department of Energy, Oregon Department of Land Conservation and Development, and the public. Staff appreciates the time and contributions of each stakeholder to this process, which has resulted in a number of changes to draft proposed rules.

On several issues, Staff received comments suggesting edits that were not incorporated in the draft proposed rules. Staff reviews those comments here:

*-Alternatives Analysis*

The proposed rules require the following to be included in a CPCN petition:

(p) Petitioner must provide an evaluation of available alternatives to construction of the 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. The petitioner may provide this evaluation by reference to relevant sections of its most recent integrated resource plan (IRP) filed under OAR 860-027-0400, or a planning document substantially equivalent to an IRP.

Comment: Staff received multiple comments concerning this language, including suggestions to limit analysis to those alternatives studied by the petitioner; strike the examples; remove references to non-wires alternatives; or add reference to "commercially reasonable" alternatives.

Staff Response: Staff believes limiting the analysis to those alternatives studied by the petitioner and the exclusion of non-wires alternatives may lead to the exclusion of potentially viable alternatives from the analysis. Staff includes examples in the draft rule to better illustrate the analysis that is expected. The proposed scope of "available alternatives" is appropriate, while the "commercially reasonable" implies a subjective evaluation of a potential alternative by the petitioner without further guidance.

Comment: A comment was also received that the proposed language should require a rationale for rejection of alternatives; a no action alternative, non-wires, as well as all other avenues explored to provide the services the line would provide but without the line and why they were not chosen.

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Staff Response: Staff finds the draft rule does require the evaluation of alternatives, but to require the evaluation of “all other avenues” would not be helpful on review of a petition if those avenues are not available alternatives.

Comment: Other commenters expressed concern that this draft rule could supplant the alternatives analysis in the IRP process; the IRP may be a better forum for an alternatives analysis; and the language allowing for a planning document substantially equivalent to an IRP is unclear or not needed.

Staff Response: Staff did not incorporate these suggestions as the rule states the requirement is for an alternatives analysis in the CPCN petition. A petitioner may rely on sections discussing alternatives to the proposed transmission line in an acknowledged IRP, but such a review may not exist, either because the petitioner does not engage in IRP planning or the timing of the most recent IRP and the transmission line project do not sync up. The draft rule does not *require* an IRP or similar planning document to be created, but if they are available, may be referenced by the petitioner.

#### -Bill Impact Analysis

The draft rules require a petitioner to include an estimate of the projected average monthly bill increase for its customers in each Oregon customer class that may experience a rate increase, given the estimated revenue requirement. A bill impact analysis provided under this rule is used solely for purposes of evaluating the petition.

Comment: Staff received comments that this requirement is redundant as the rule already requires information on costs and benefits. Language stating that estimated rate increases will not affect recoverable costs in subsequent rate cases was requested.

Staff Response: Staff believes this information will better inform review of a petition, aside from data provided on costs and benefits, by clarifying the expected impact on each customer class. The proposed rule includes language clarifying that the analysis is to be used solely for evaluating the petition.

#### -Incomplete Petitions

Under draft OAR 860-025-0030(4), if a petition does not include all required information or responses to the SDRs, the Commission may find the petition incomplete and it will not be considered.

Comment: Staff received comments that this provision is overly rigid and would be inconsistent with the Division 25 waiver rule.

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Staff Response: As noted above, this rule is intended to deter the premature filing of petitions early in project development and ensure efficient review of the petition once filed. Determining whether a petition is complete is at the discretion of the Commission and the Division 25 waiver rule will apply to this rule as well as any other rule in the Division.

#### -Decision Criteria

The draft rules set out the Commission's decision criteria in draft OAR 860-025-0035(1).

Comment: Staff received a number of comments regarding this draft rule, specifically that: the draft rule implies that if alternatives to developing the transmission line exist, the transmission line may not be necessary; the consideration of alternatives to the line should be eliminated; the rule inappropriately suggests that the Commission should weigh the various potential alternative routes and select the "best" option; the Commission's role when reviewing a petition for CPCN is not to select among multiple viable alternatives; rule language should omit impacts to landowners; OAR 860-025-0035(1)(D) should address only public benefits and costs of the transmission line; language stating Commission may consider other factors it deems relevant should be deleted; rule stating that decisions in related regulatory reviews and permitting approvals should be given "substantial weight."

Staff Response: The draft rule lists the criteria that the Commission may consider on review of a petition. This list does not predetermine any result or set specific requirements, such as prohibiting approval if an alternative exists or a more preferred route exists. Given that transmission lines may be intended to serve a variety of purposes and any number of factors may affect balancing the public interest, Staff has not proposed to limit the Commission's discretion to consider other factors or only public benefits and costs.

With respect to "other regulatory reviews and permitting approvals", this reference acknowledges that findings of fact or policy considerations related to the transmission line may be addressed in other proceedings at the Commission (such as an IRP), other proceedings at the state or federal level (an EFSC site certificate or environmental permitting), or local proceedings (municipality decision to construct transmission line). Staff did not incorporate the "substantial weight" language because it suggests that the Commission would defer to such findings. Staff wanted to preserve the Commission's ability to exercise its own discretion with respect to other regulatory reviews and permitting approvals. Further, the Commission's decision under ORS 758.015 is a different standard than applied by other regulatory bodies, and any particular decision

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may or may not have involved review of the same data available to the Commission or evidentiary standards.

#### -Land Use Issues

Comment: Staff received comments requesting that draft OAR 860-025-0040 adopt an approach that defers to a local planning authority to determine if a transmission line is compatible with an acknowledged comprehensive plan and land use regulations, and issue the CPCN with a finding that there is a process for later obtaining approval, similar to a Land Use Compatibility Statement (LUCS).

Staff Response: The draft rule supports findings based on local planning decisions in three ways: 1) with a copy of the local land use permit with each affected local jurisdiction's approval; 2) with a copy of a letter from each affected local jurisdiction stating that the proposed transmission project is allowed, but does not require specific approval by the jurisdiction; or 3) with "[o]ther written or oral land use information and documentation equivalent" to 1) or 2) above from an authorized representative from each affected city or county. This rule is similar to the current rule, which has been in effect since the early 1990s. At the November 2, 2021 workshop, a representative from the Department of Land Conservation and Development (DLCD) expressed concern with the proposed alternative that would authorize a CPCN without a decision having been made at the local level, or simply a determination that the local jurisdiction could approve the transmission line. Staff concurs with DLCD and finds that option 3 in the draft rule, as noted above, provides sufficient flexibility when the Commission relies on local approval.

Comment: Staff received comments objecting to the requirement in OAR 860-025-0035(3) that requires a utility to have documentation to support the Commission's land use requirements under OAR 860-025-0040 prior to submitting a petition for a CPCN. Stakeholders commented that this requirement lacks clarity as to what documentation is required, may lead to local approvals expiring before a CPCN proceeding is complete, and proposed that the CPCN process be allowed to proceed simultaneously with the land use-approval process.

Staff Response: Allowing the process to proceed simultaneously is consistent with the process under the current rule. However, Staff proposes this new requirement to ensure complete filings and allow for efficient review of a CPCN petition, without the need for an abeyance period when local approval or EFSC approval is pending.

Comment: Another commenter stated that reliance on a site certificate from EFSC for the Commission's required land use findings requires that the site certificate be



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obtained before the CPCN is approved, and that may not be feasible. Other commenters expressed similar concern and suggested that a CPCN could be issued before any land use approvals are finalized.

Staff Response: Staff does not support changes to the draft rule, OAR 860-025-0040(4) to allow a CPCN to issue without findings to support land use compatibility. The proposed rule regarding EFSC land use findings is similar to the current language, which has been in effect since the early 1990s, and the issue noted has not arisen. Allowing the EFSC process to move forward ensures efficiency of state resources expended on review of the issue. Staff does not support issuance of a CPCN conditioned on subsequent land use findings given the Commission's obligation to make a decision that is compatible with State land use planning goals and because a CPCN may be used to initiate condemnation proceedings.

#### -Timing of CPCN Filing and Commission Review

Comment: Staff received a request that the CPCN rules include a time limit for a Commission decision.

Staff Response: Staff did not include a time limit, given that the time required for review of a petition may depend on the degree to which a petitioner files all required information. However, Staff has sought to reduce the overall time needed for review of a CPCN petition by proposing rule edits that require a more comprehensive petition to be filed from the outset, and by requiring land use documentation sufficient to meet the Commission's required findings for compatibility.

#### Conclusion

Staff recommends that the Commission issue a notice of proposed rulemaking for the draft rule changes in Attachment 1. Staff notes that this step does not represent the adoption of the proposed rule changes. Instead, issuing a notice of proposed rulemaking begins the formal rulemaking process, which will include an opportunity for public comment.

#### **PROPOSED COMMISSION MOTION:**

Issue a notice of proposed rulemaking for changes to administrative rules governing CPCN petitions as set forth in Attachment 1.

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## Chapter 860 Public Utility Commission

### 860-025-0030

#### Petitions for Certificate of Public Convenience and Necessity (CPCN) for Construction of Overhead Transmission Lines

(1) Petitions under ORS 758.015, for a certificate of public convenience and necessity to construct an overhead transmission line, which will necessitate a condemnation of land or an interest therein, must be filed in accordance with OAR 860-001-0170, ~~shall contain the following information:~~

**(2) Petitions under ORS 758.015 must contain the following information:**

(a) The information required under ~~OAR 860-025-0005~~ **ORS 758.015 and the additional information set forth in this rule.**

(b) A ~~thorough~~ detailed description and the purpose of **the information listed in subsection (c) of this rule, including but not limited to** the proposed transmission line ~~which shall include but not be limited to a general description of the proposed route, voltage and capacity of the line. The project description should be in~~ **must include a comprehensive narrative that provides** sufficient detail to enable a full understanding of the public convenience, necessity and justification in the public interest for the proposed transmission line and the benefits to be derived therefrom, and to enable a determination of its safety and practicability **under normal and emergency conditions, as well as the foreseeable or potential consequences of not building the proposed transmission line.**

(c) **Petitioner's comprehensive narrative of the transmission line project must be accompanied by a** A map or maps **that are** drawn to appropriate scale ~~showing the general location and boundaries of petitioner's service area to be connected or served by the proposed transmission line and that utilize~~ **show** by appropriate distinguishing colors and symbols, ~~but not limited to depict the following information:~~

(A) **A general location and boundaries of petitioner's service area to be connected or served by the proposed transmission line.**

(B) Proposed route, voltage, and capacity of the proposed transmission line.

(C) **Available** alternate **transmission line** routes analyzed by petitioner, if any.

(D) Other transmission lines and substations of petitioner connecting, serving, or capable of being adopted to connect or serve the areas covered by the proposed transmission line, if any.

(E) The terminals, substations, sources of energy, and load centers, **existing or proposed**, related to the proposed transmission line **and its intended operation, including the proposed transmission line itself.**

(F) **Each parcel of land or interest therein that the petitioner has either acquired or must acquire to construct and operate the transmission line** ~~Land to be condemned.~~

(d) An estimate of the cost of developing the **transmission line** project including:

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- (A) Land and interests in land for which condemnation may be necessary.
- (B) Other land and interests in land ~~rights~~ acquired or to be acquired.
- (C) Transmission facilities, including but not limited to, poles, lines, substations, accessory and miscellaneous labor, plant, and equipment inclusive of any communication apparatus and environmental mitigations.
- ~~(D) Substation, accessor and miscellaneous labor, plant and equipment.~~
- ~~(E)~~ Indirect and overhead costs including engineering, legal expenses, taxes, interest during construction, and itemized administrative and general expenses.
- ~~(F)~~ Any other costs, direct or indirect, relating to the transmission line project including but not limited to operating and maintenance costs of the project.
- ~~(G)~~ ~~Such e~~Explanation of the foregoing ~~various~~ cost estimates as needed to enable a full understanding of their basis and derivation.
- (e) An explanation of the financial feasibility of the proposed transmission line, including the kind, nature, extent, and estimated growth of the energy requirements or reasonably anticipated need, load or demand, for as relevant to the proposed transmission line.
- (f) A description of the property and interests ~~to be condemned,~~ for which condemnation is necessary at the time of the petition, a full explanation of the intended use, and the specific necessity and convenience for the ~~taking of said~~ property:
- (A) Petitioner must include ~~A a map must be included~~ whereon the land to be condemned parcels of land and any interests therein that petitioner must still acquire is clearly marked, and the general contour, uses ~~culture~~, and improvements along that portion of the proposed route are clearly shown, inclusive of structures and agricultural uses.
- (B) Petitioner must provide ~~T~~the names and addresses of all persons who have interests, known or of record, in the land to be affected or traversed by the proposed route from whom ~~applicant~~ petitioner has not acquired the necessary interest, rights of way or option therefor. Petitioner must include with the petition a certificate of service verifying that notice of the petition has been mailed to said persons.
- (g) A statement and explanation with supporting data comparable to that described in subsections (d) and (e) of this section for possible alternative routes analyzed by petitioner.
- (h) Such additional information as may be needed for a full understanding of the ~~situation~~ petition.
- (i) ~~Such information and supporting data needed for the Commission to satisfy the land use findings requirement described in sections (2), (3), and (4) of this rule.~~ A summary of petitioner's plan to ensure compliance with applicable Commission rules, including but not limited to OAR Chapter 860, Division 24, and other safety standards for the safe construction, operation and maintenance of the transmission line. Petitioner must include a certificate executed by an

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authorized representative of petitioner affirming that it will adhere to the applicable Commission rules and other applicable safety standards for construction operation and maintenance of the transmission line. The representative's certificate must be a sworn statement under ORS 162.055 attesting to the truth of the certification.

(j) Estimated bill impacts. At a minimum, petitioner must include an estimate of the projected average monthly bill increase for its customers in each Oregon customer class that may experience a rate increase, given the estimated revenue requirement. A bill impact analysis provided under this rule is used solely for purposes of evaluating the petition.

(k) Public benefits and costs of the transmission line, if any, that are reasonably known to petitioner, including but not limited to:

(A) Costs and benefits to petitioner's Oregon ratepayers and ratepayers of other Oregon utilities and to Oregonians in general.

(B) Costs and benefits that the proposed transmission line will provide related to connection to regional and inter-regional grids.

(l) Petitioner must provide a statement of all costs incurred by petitioner to develop the transmission line prior to filing the petition.

(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, and a site certificate issued by the Energy Facility Siting Council.

(n) Petitioner must provide the most recent load forecasts available to petitioner supporting need for the line. The load forecasts shall, when feasible, include a load forecast of at least 10 years.

(o) If the petitioner alleges that the transmission line provides needed redundancy or reliability, provide all supporting analysis conducted and prepared by or for petitioner.

(p) Petitioner must provide an evaluation of available alternatives to construction of the 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. The petitioner may provide this evaluation by reference to relevant sections of its most recent integrated resource plan (IRP) filed under OAR 860-027-0400, or a planning document substantially equivalent to an IRP.

(q) Electrical engineering studies and reliability or resiliency analyses supporting the necessity of the transmission line when relevant, including those addressing single and multiple contingencies.

(r) A narrative that identifies all land use approvals and permits required for construction of the transmission line. This narrative must include information on whether petitioner has submitted an application for the approval or permit, the status of any such application, and an explanation as to why petitioner did not obtain the approval or permit before submitting a petition under this rule.

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**(s) When filing a petition, a petitioner must also submit its responses to the most recent version of the Standard Data Requests for Petitions for Certificates of Public Convenience and Necessity, approved by the Commission and available at [\[insert weblink\]](#).**

~~(23) The Commission, as part of its approval of a Certificate of Public Convenience and Necessity, 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 under the rules and procedures in the Commission's state agency coordination program pursuant to ORS 197.180.~~ **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 (4). If the petitioner cannot include documentation to support findings under OAR 860-025-0040(2) or (4), petitioner must include an explanation why it cannot do so and request that the Commission make its findings under OAR 860-025-0040(3).**

**(34) If a petition is filed that does not include the information required under this rule, or the petitioner does not provide responses to all of the Standard Data Requests for Petitions for Certificates of Public Convenience and Necessity, as required by this rule, the Commission may notify the petitioner that the filing is incomplete and will not be considered by the Commission.** 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 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 860-025-0030(3)(a) or (b) above properly presented to the Commission from an authorized representative from each affected city or county; or~~
- ~~(d) Commission goal compliance findings adopted pursuant to OAR 660-030-0065(3) in situations when the Commission is unable to assure goal compliance by acting compatibly with one or more of the affected comprehensive plans.~~
- ~~(4) If a proposed transmission line is subject to the jurisdiction of the Energy Facility Siting Council (EFSC), the Commission shall adopt findings which assure the project and route have been certified by EFSC, and the requirements of OAR 860-025-0030(2) and (3) shall not apply.~~

### **OAR 860-025-0035**

**(1) The Commission may approve a petition filed under OAR 860-025-0030 by determining the necessity, safety, practicability and justification in the public interest of the proposed transmission line upon consideration of the following:**

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(A) Whether the transmission line will meet a demonstrated need for transmission of additional capacity or improved system reliability that enables the petitioner to provide or continue to provide adequate and reliable electricity service, and whether this need cannot be addressed using alternative facilities, means, or measures other than construction of the proposed transmission line.

(B) Whether the petitioner has demonstrated that it will ensure the transmission line is constructed, operated, and maintained in a manner that protects the public from danger and conforms with applicable Commission rules, and other applicable safety standards and practices;

(C) Whether the transmission line using petitioner's proposed route is feasible and whether it will be effectively and efficiently constructed at reasonable cost with mitigation of the impacts on affected landowners and the public, in comparison to available alternate transmission line routes, and upon consideration of the project's financial impact on petitioner's ratepayers.

(D) Whether there is sufficient reason for the project to be built considering the public benefits and costs of the project, as they relate to the land and interests in land proposed to be condemned, petitioner's existing facilities and equipment, petitioner's Oregon ratepayers, and other considerations that may be relevant, such as 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.

(E) The Commission may also consider other factors it deems relevant.

(2) In evaluating a petition under this rule, the Commission will give due consideration to related regulatory reviews and permitting approvals as pertain to the proposed transmission line, if the transmission line has already been acknowledged or approved by regulatory or permitting authorities.

(3) In the event a CPCN is granted, the certificate shall expire fifteen years from date of issuance, or if construction does not begin, within ten years of the date of issuance. Upon written request of a petitioner, the Commission may grant an extension on the term of a certificate for good cause shown. A request must be served on the service list for the associated CPCN docket, and if applicable, the docket for the petitioner's last acknowledged integrated resource plan.

(4) Nothing in these rules shall prevent a petitioner from filing a petition for a CPCN at any time that condemnation of land or an interest therein becomes necessary to construct an overhead transmission line. The Commission may hold a proceeding in abeyance upon written request or its own motion.

#### 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

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findings shall be developed consistent with the rules and procedures in the Commission's state agency coordination program pursuant to ORS 197.180.

(2) 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 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.

(3) In the event that the Commission cannot make findings under section (2) of this rule for any of the reasons enumerated in OAR 660-030-0065(3), the Commission may adopt goal compliance findings pursuant to OAR 660-030-0065(3).

(4) If a proposed transmission line is subject to the jurisdiction of the Energy Facility Siting Council (EFSC), the Commission shall adopt findings which assure that EFSC has issued a site certificate for the transmission line, and the requirements of OAR 860-025-0040(1), (2), and (3) shall not apply.