

# BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

AR 626

In the Matter of

Rulemaking Regarding Certificate of  
Public Convenience and Necessity

PORTLAND GENERAL ELECTRIC  
COMPANY'S SECOND ROUND OF  
COMMENTS TO THE 03/31/2022  
DRAFT PROPOSED RULES

## I. INTRODUCTION

Portland General Electric Company ("PGE") submits this second round of comments in response to the draft proposed rules addressing the filing and processing of petitions for Certificates of Public Convenience and Necessity ("CPCN") that were published by the Secretary of State on March 31, 2022 ("3/31/22 Proposed Rules"). While the 3/31/22 Proposed Rules are appreciated as improvements over all prior iterations, PGE still desires to see further revisions that afford the Commission more flexibility to avoid or mitigate unreasonable delays and afford Petitioners more certainty of a timely administrative process in order to meet Federal and State policy goals that highlight the need for, if not mandate, accelerated implementation of clean energy plans and improved infrastructure resiliency.

## II. DISCUSSION OF SUBTANTIVE CONCERNS

Specifically, PGE is concerned that the 03/31/22 Proposed Rules:

- Do not establish any objective standard upon which Staff can base its recommendation about a waiver request, or upon which the Commission will rely in approving or denying a waiver request. Thus, Petitioners lack certainty about whether their request will be sufficient without inadvertently contributing to any unnecessary delays of their project.
- Suggest the Commission will have up to 90-days, following receipt of a Petition for A Waiver, to *grant* approval of such a request, but there is no such timeline established for *denials* of such requests; moreover, under either circumstance, the additional three or more month delay before a Petitioner even knows whether or not the waiver will be approved and its CPCN Petition will move forward, seems unproductive and unnecessary.
- Continue to lack flexibility, despite the waiver process, for the Commission to help mitigate project delays, particularly for reliability-based projects where time is of the essence. Such flexibility could be achieved by allowing the granting of a Conditional CPCN that imposes an obligation on the petitioner to first obtain all remaining, applicable land use approvals.

- Contain an obligation for a petitioner to submit responses to Standard Data Requests, yet the link to such SDRs remains unpopulated and it's still unclear in the rules whether a response of "N/A" or "unknown" would constitute a response sufficient to allow a Petition for CPCN to be deemed complete, as Staff had previously represented would be the case.

- Require a petitioner to include an estimate of the projected average monthly bill increase for its customers in each Oregon customer class, per 860-025-0030(2)(j). As has previously been noted in prior verbal and written comments of various stakeholders, if the Commission's role in this process is one of confirming "why" a utility is building a transmission line, then this requirement seems out of sync as it would require a petitioner to perform a cost of service study to estimate bill impacts--an exercise that would be more appropriate in the context of a rate case rather than a petition for a CPCN. A modified version of 860-025-0030(2)(k)(A), that requires a petitioner to discuss the costs and benefits that the proposed transmission line will bring to petitioner's own Oregon ratepayers, would seem adequate for purposes of allowing the Commission to fulfill its statutory role of determining the necessity, safety, practicability and justification in the public's interest for the proposed transmission line.

- Require a petitioner to include costs and benefits to "ratepayers of other Oregon utilities and to Oregonians in general" per 860-025-0030(2)(k)(A). Such a requirement is unattainable due to: (i) the absence of clarity in the rules about who the "other Oregon utilities" are; (ii) the unavailability of credible information that would be necessary to calculate such costs and benefits assuming such "other Oregon utilities" were known; and (iii) the sheer lack of any reasonable means to assess the cost to "Oregonians in general". As such, this part of the requirement should be deleted. On a related note, OAR 860-025-0035(1)(d) should also be revised to remove from consideration the "benefits and costs as they relate to affected ratepayers of other Oregon utilities" and "all Oregonians".

- Contains no deadline for a Commission decision on CPCN petitions. As mentioned in PGE's previous comments, many of the transmission projects that PGE anticipates will be constructed in the near-term are likely going to be needed for load growth and system reliability/resiliency. Preliminary designs suggest they will be necessary in urbanized areas, they will be short in length, and they will be necessary to connect one existing substation to another existing substation, or to a new substation. And, despite best efforts at planning, local area load growth can materialize and change quickly based on economic drivers, policy decisions, and power system changes which can necessitate local area transmission projects to be planned and constructed with little advanced notice. These projects are typically built within a few years from project identification to completion, and the permitting primarily resides at the local and state level. Available space to locate and build transmission, particularly in urban areas, can be limited and is getting increasingly more complicated to secure. When a CPCN petition is needed for a short length transmission segment, the currently proposed process to obtain a CPCN could potentially take longer than it would take to design and construct the entire project, at least if there is not a reasonable timeframe established for the CPCN process. For all CPCN petitions, PGE recommends that the Commission adopt a definitive twelve-month timeline, during which an application is processed, and a Commission decision is rendered. PGE would also suggest that

for transmission projects that are short in length (i.e., less than 10 miles) the processing timeline be further reduced or streamlined to a six-month process.

### III. PROPOSED LANGUAGE CHANGES TO THE DRAFT RULES

With the above-referenced concerns in mind, PGE respectfully requests that the Commission incorporate changes recommended above as well as those reflected in the redlined draft of the 3/31/22 Proposed Rules, attached hereto as Attachment A. For ease of distinguishing between PGE's proposed edits and those made by the ALJ to reflect changes agreed upon by the Commissioners in February 2022, PGE has chosen to highlight its recommended changes in yellow.

### IV. CONCLUSION

PGE appreciates the Commission's invitation to submit comments and its willingness to give consideration to the changes that stakeholders have proposed throughout the informal and formal stages of this docket. Progress has been made and PGE looks forward to continuing to work collaboratively with the Commission Staff, ALJ Allwein, the Commissioners, and other stakeholders, to address the concerns PGE has identified herein.

Dated this 22<sup>nd</sup> day of June, 2022.

Respectfully submitted,

*/s/ Jay Tinker*

Jay Tinker  
Director, Rates and Regulatory Affairs

**ATTACHMENT A**

**PGE'S PROPOSED EDITS TO THE 3/31/2022 PROPOSED RULES**

**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, **shall be filed in accordance with OAR 860-001-0170.** ~~shall contain the following information:~~

**(2) Petitions under ORS 758.015 shall 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~~ **shall 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) **A comprehensive narrative of the transmission line project, which 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 showing, 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, ~~or~~ 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 project **transmission line and its intended operation, including the proposed transmission line itself.**

(F) ~~Land to be condemned~~ **Each parcel of land that the petitioner has either acquired or petitioner determines it should acquire an interest in to construct and operate the transmission line. The parcels of land and any interests therein that the petitioner must still acquire must be clearly marked, and must clearly show the general contour, uses, and improvements along that portion of the proposed route, inclusive of structures and agricultural uses.**

(d) An estimate of **both already incurred and forecasted** costs of developing the transmission line project, including:

(A) Parcels of land and rights to be condemned that petition determines it should obtain an interest in for which condemnation is necessary at the time of the petition.

(B) Other parcels of land and/or any interests therein 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 project transmission line

(f) A description of the ~~property~~ parcels of land and any interests therein 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 of each. for the taking of said property:

~~(A) A map must be included whereon the land to be condemned is clearly marked, and the general contour, culture, and improvements along that portion of the route are clearly shown.~~

~~(B)~~ The description must be accompanied by ~~T~~ the names and addresses of all persons who have interests, known or of record, in the land to be physically impacted or traversed by the proposed route from whom applicant petitioner has not acquired the interest, rights of way or option therefor which petitioner deems appropriate. 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

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.

**(i)**

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

(A) A narrative statement about the costs and benefits to petitioner's Oregon ratepayers .

(B) A narrative statement about the costs and benefits that the proposed transmission line will potentially provide related to connection to regional and inter-regional grids, if applicable.

(l) 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.

(m) 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, and an accompanying narrative explaining the kind, nature, extent, and estimated growth of the energy requirements or reasonably anticipated need, load or demand, as relevant to the proposed transmission line.

(n) Supporting analysis, conducted and prepared by or for the petitioner, if the petitioner alleges that the transmission line provides needed redundancy or reliability.

(o) 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 make 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.

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

(q) A narrative that identifies all land use approvals (inclusive of those subject to conditions) and permits that petitioner anticipates will be required for siting and construction of the transmission line. This narrative must include information on whether petitioner has submitted an application for each approval or permit, the status of all such applications, and 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.

(r) 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 [\[insert weblink\]](#).**

**(s) For transmission lines that are less than 10 miles in length and outside of the Oregon Energy Facility Siting Council (EFSC) process, the Commission will review the petition and determine whether an expedited six month review process is feasible and a decision can be rendered within 6 months. For all other petitions, the Commission shall issue its decision within a timeframe that does not exceed 12 months.**

~~(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.~~

**(3) At the time of filing, if the petitioner reasonably determines that it will be unable to include documentation to support a finding under OAR 860-025-0040(2) or (4), the petitioner must submit a request for a waiver concurrent with the petition. The petitioner will provide notice that the petition includes a request for waiver at the time of filing. The waiver request must include:**

- (a) The specific part of the rule under OAR 860-025-0040 for which a waiver is being sought;**
- (b) An explanation that clearly and comprehensively explains the need for the waiver, including a narrative of why the petitioner has determined that it will be unable to acquire the required documentation, along with any reliable evidence to support and verify the petitioner's claim that petitioner will be unable to acquire such documentation despite petitioner's diligent efforts;**
- (c) In the event that the petitioner seeks a waiver for OAR 860-025-0040(2); the petitioner shall request that the Commission make its findings under OAR 860-025-0040(3).**
- (d) In the event that the petitioner seeks a waiver for OAR 860-025-0040(4), the petitioner will provide information from the relevant, pending Energy Facilities Siting Council (EFSC) proceeding to demonstrate that EFSC approval is being sought.**
- (e) Staff will promptly review the waiver request upon receipt of the petition. If Staff finds the waiver request is reasonable and adequately supported, it will submit its recommendation to the Commission for approval of the waiver request within 30 days of the receipt of the petition and the Commission will make its determination about the waiver request no later than at the next regular public meeting.**
- (f) If Staff finds the waiver request is not supported, it will submit its recommendation to the Commission within 30-days of receipt of the petition, and the Commission will thereafter promptly make a determination of the sufficiency of the waiver request no later than at the next regular public meeting.**



**(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:**

**(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.**

**(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 best industry practices;**

**(c) Whether the transmission line using petitioner's proposed route is practicable and feasible, whether it will be effectively and efficiently constructed in a commercially reasonable manner.**

**(d) Whether petitioner has justified construction of the proposed transmission line as in the public interest, as compared with feasible alternatives for meeting the identified need,**

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 connections to regional and inter-regional electricity grids and a petitioner's non-Oregon service territories.

(e) The Commission may also consider other factors it deems relevant to the statutory criteria.

(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 physical construction of the transmission line has not commenced, 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.

#### 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.

(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 approval or 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 will not take final action until 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.**