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Sent: Monday, August 15, 2022 3:56 PM
To: ALLWEIN Christopher * PUC <Christopher.ALLWEIN@puc.oregon.gov>
Cc: Robert Waldher <robert.waldher@umatillacounty.gov>; Jim Doherty <jdoherthy@co.morrow.or.us>
Subject: RE: Latest Draft

Hello Judge Allwein – thank you for this latest version. Umatilla County Planning Director and I have reviewed this draft and have included comments in the attached Proposed Rule. Our comments are shown in the “comment” column under track changes.

Generally, we appreciate your recommendation to consider a Land Use Compatibility Statement (LUCS) as a tool for demonstrating compliance with a local comprehensive plan. The LUCS process is well established in Oregon among and between local and state agencies. We do note a few specific places where the new rule warrants some modification or clarification. With some minor changes there is a clear path forward to attain both local and state objectives.

Please feel free to contact myself or Bob Waldher.
Thank you again,
Sincerely, Tamra and Bob

RULES PROPOSED:

860-025-0030, 860-025-0035, 860-025-0040

AMEND: 860-025-0030

RULE TITLE: Petitions for Certificate of Public Convenience and Necessity for Construction of Overhead Transmission Lines

RULE SUMMARY: The changes to this rule specify the filing requirements for a petition for a Certificate of Public Convenience and Necessity.

RULE TEXT:

(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.

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

(a) The information required under 5ORS 758.015 and the additional information set forth in this rule.

(b) A thorough description of the information listed in subsection (c) of this rule, including but not limited to the proposed route, voltage and capacity of the line. The description 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) A comprehensive narrative of the transmission line project, which must be accompanied by a map or maps that are drawn to appropriate scale and show appropriate distinguishing colors and symbols 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 and any interests therein that the petitioner has either acquired or must acquire 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 any interests therein for which condemnation is necessary at the time of the petition.

(B) Other parcels of land and any interests therein 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) Indirect and overhead costs including engineering, legal expense, taxes, interest during construction, and itemized administrative and general expenses.

(E) Any other costs, direct or indirect, relating to the transmission line project including but not limited to operating and maintenance costs of the project.

(F) Explanation of the foregoing 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.

(f) A description of the parcels of land and any interests therein 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. The description must be accompanied by 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 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 petition.

(i) 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.

(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) 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 and permits required for 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, including anticipated timelines for issuance of any pending or outstanding approvals and permits, and the section of OAR 860-025-0040 under which the petitioner seeks to demonstrate compliance with that rule.

(r) When filing a petition, a petitioner must also certify that it has concurrently submitted 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].

(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 (7).

(4) If the petitioner cannot or will be unable to include all necessary documentation to support a finding under OAR 860-025-0040(2) or (7), the petitioner must submit a request for a waiver of section (3) of this rule in advance of or concurrent with the petition. If filed concurrently, 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 (7), and a list of all necessary documentation that cannot or will not be able to 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, or has not yet been obtained, along with any reliable evidence to support and verify the petitioner's claim that such documentation cannot be obtained or demonstrates when the petitioner expects to obtain all land use approvals, permits or equivalent before the Commission makes its final decision on the petition, and that the petitioner is requesting that the Commission consider the petition concurrently with the identified approval and permit processes;

(c) In the event that the petitioner seeks a waiver for OAR 860-025-0040(2) or (7); the petitioner shall request that the Commission make its findings under OAR 860-025-0040(2), (6) or (7) as appropriate;

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

(e) A case management proposal for conducting the CPCN process concurrent with any land use approval or permitting processes to promote efficient use of Commission resources and avoid duplicative or wasted effort;

(5) Staff will promptly review the waiver request. If Staff finds the waiver request is reasonable and adequately supported, Staff will recommend the Commission approve the waiver request at a regular public meeting.

(6) If Staff finds the waiver request is not supported by good cause, Staff will recommend the Commission deny the request at a public meeting. Staff will further recommend the Commission make a finding that the petition is incomplete without the inclusion of identified information and that it will not be considered by the Commission, pursuant to 860-025-0030(3).

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 758
STATUTES/OTHER IMPLEMENTED: ORS 758.015

ADOPT: 860-025-0035

RULE TITLE: CPCN Review Criteria

RULE SUMMARY: This rule sets out the criteria the Commission will consider on review of a petition for a Certificate of Public Convenience and Necessity.

RULE TEXT:

(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 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 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 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.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 758

STATUTES/OTHER IMPLEMENTED: ORS 758.015

ADOPT: 860-025-0040

RULE TITLE: Petition for CPCN Compliance with Statewide Planning Goals, Land Use Regulations, and Acknowledged Plans

RULE SUMMARY: 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.

RULE TEXT:

(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 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 making findings under section (2) of this rule, the Commission may rely on a Land Use Compatibility Statement ("LUCS") issued by an authorized representative from an affected city or county to the extent the LUCS:

(a) Confirms the city or county has issued a land use permit approving the proposed transmission project; or

(b) States the applicable city or county acknowledged comprehensive plan does not require specific approval of the proposed transmission project; or

(c) States the proposed transmission project will be compatible with the jurisdiction's acknowledged comprehensive plan if petitioner obtains the land use permits identified in the LUCS, and the LUCS confirms the acknowledged comprehensive plan's general provisions will not be substantially affected by issuance of a certificate if those permits are obtained.

Commented [TM1]: Reference to LUCS.

Commented [TM2]: This warrants some clarity about the "authorized representative."

Commented [TM3]: Recommend OPUC develop a LUCS form similar to ODEQ. Develop in collaboration with city and county planners.

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

(5) If a land use compatibility statement upon which the Commission bases its 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 amend or withdraw the CPCN final order.

(6) 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).

(7) 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. The Commission will adopt the findings made as a part of the EFSC-issued site certificate, and the requirements of OAR 860-025-0040 (2) - (6) shall not apply.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 756, ORS 758
STATUTES/OTHER IMPLEMENTED: ORS 758.015

Commented [TM4]: A LUCS is not a "Land use Decision." Public notice is not provided. Not clear how someone would be aware of a local government approval of a LUCS. This provision (4) is a bit misleading. Any land use permit is appealable but technically, a LUCS is not a "land use decision" and therefore the process to appeal is not clear. Recommend PUC clarify the process to appeal, if any, and remedy.

Additionally, if a local decision is appealed to say, the Land Use Board of Appeals (LUBA), how would the two state agencies reconcile jurisdictional authority?

Commented [TM5]: Planners and local government generally are not supportive of super siting authority that circumvents the local process. The only precedent for this super siting authority rests with EFSC for large energy projects or multi-jurisdictional transmission projects, or, for siting prisons.

If an applicant cannot secure a local land use authorization, then project SHOULD NOT be found to be in compliance with Statewide Planning Goals.

If PUC insists on retaining this provision, (an exemption from local permitting) the Commission should include a provision for consulting with local government who is provided an opportunity to interpret compatibility with the applicable local comprehensive plan.

Commented [TM6]: Why would the PUC treat a project under state (EFSC) review differently than a project under local review? When EFSC approves a project and issues a Site Certificate, a local government is compelled to issue a local land use permit. This paragraph could be removed. The LUCS process in (3) above should apply for both projects under EFSC jurisdiction and projects not under EFSC jurisdiction. Otherwise, applicants may be inclined to design project applications that go directly to EFSC if they foresee a conflict with a local landowner.