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VIA ELECTRONIC FILING

Oregon Public Utility Commission
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RE: Docket AR 626 – Final Comments of Consumer-Owned Utilities

Dear Commissioners:

This letter is being submitted on behalf of the Oregon People's Utility District Association ("OPUDA"), the Oregon Rural Electric Cooperative Association ("ORECA"), Oregon Municipal Electric Utilities ("OMEU"), and Eugene Water & Electric Board ("EWEB"). Collectively, OPUDA, ORECA, OMEU, and EWEB comprise Oregon's consumer-owned electric utilities ("COU"). This letter serves as the COUs' final comments regarding the Commission's rules relating to the process for utilities to obtain a Certificate of Public Convenience and Necessity ("CPCN" or "Certificate").

As we noted during the rulemaking hearing in this docket, we appreciate the robust discussion that has occurred over the years with the Commission, Commission Staff, and stakeholders. We want to again acknowledge the work of the Commission in developing a final version of the proposed rules, which resulted in meaningful improvements to the rules compared to earlier discussion drafts.

A. Land Use Approval

The COUs support the latest version of the rules, which no longer require a utility to have full land use approval prior to submitting a petition for a CPCN or prior to the Commission approving the petition. As we understand the rules, a utility that has not yet obtained land use approval can either work with the local land use jurisdiction to obtain a Land Use Compatibility Statement ("LUCS"), or seek a waiver that, if approved, would allow the Commission to proceed with its consideration of the petition and adopt its own findings addressing whether the proposed transmission line is compatible with Statewide Planning Goals. Both of these options bring the Commission's rules into better alignment with other state agencies and acknowledge the important role local land use planner play in this regard.

B. Other Regulatory Approvals

The utilities in this docket, including the COUs, have supported language that would require the Commission to give deference to other regulatory approvals that have acknowledged the need for a transmission line. For some utilities, this may come in the form of an acknowledged Integrated Resource Plan. For the COUs, this comes in the form of its own governing body.

The proposed rules indicate that the Commission will give “due consideration” to other regulatory reviews and approvals for the transmission line. The COUs recommend this language be revised to expressly acknowledge that such consideration will be given to the governing body of a COU. As noted before in this docket, COUs are consumer-owned and not-for-profit. As a result, there is no incentive for a COU to construct a line that it does not need. Further, COU customers can play a direct role in the decision-making process and, if a COU makes a decision its customers do not agree with, there is direct recourse through the ballot that is used to elect the COU’s board, whether the COU is a private cooperative or a public entity like a city or people’s utility district. These public bodies should be afforded the same deference the Commission is willing to give to other public agencies.

If the Commission determines that the current rule language already provides for this consideration, the COUs request that the Commission note in its final order that this is the case.

C. Other Proposed Changes

In addition to the substantive language changes proposed above, the COUs have identified several specific changes that should be made to the proposed rules to make them clearer and easier to apply:

1. The rules interchangeably refer to the “proposed transmission line,” “transmission line,” “transmission line project,” “project,” and “line.” The COUs recommend the rules refer only to the “proposed transmission line,” which is the most accurate and complete of the various uses.
2. OAR 860-025-0030(2)(c)(F) includes language that parcels of land, or any interests therein, must be identified and “show the general contour, uses and improvements.” This language should be removed. First, it does not make sense to show a contour, use, or improvement for an interest in land. Second, this language is ambiguous and terms like “contour” and “use” are not defined. To the extent contours require surveys, it may not be possible to show such details until a petitioner has the right to enter onto the property. Similarly, the specific use of the property may not be evident. The rules should allow petitioners an option to generally describe uses based on what is evident in the area or allowed in the applicable zoning designation.

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3. OAR 860-025-0030(2)(f) requires a petition to include a “certificate of service” showing notice of the petition was mailed to persons “who have interests, known or of record, in the land to be affected or traversed by the proposed route.” This language would benefit from several revisions. First, the Commission rules for service are specific to contested case proceedings and relate to providing documents to parties. The language in this rule, which is triggered prior to any participant obtaining party status, should refer to a “certificate of mailing.” Second, petitioners should be required to provide notice only to owners of record and not to anyone else “known” to have an interest, as it is not clear whether or how it will be determined that a person was known to have an interest. Finally, the phrase “to be affected or” should be removed from this rule. “Affected” is subjective and could apply to property that the transmission line does not cross.
4. OAR 860-025-0030(2)(h) requires the petition to include “[s]uch additional information as may be needed for a full understanding of the petition.” This language should be modified. This rule relates to the initial petition. At the time a petition is filed, only the petitioner can determine what is necessary for a full understanding of the petition. This language should read: “Such additional information Petitioner determines is necessary for a full understanding of the petition.
5. As other stakeholders noted during the rulemaking hearing, the rules do not contain any sort of time period in which the Commission will make a decision. The COUs understand it may be difficult for the Commission to commit to a particular time period. However, other complex matters, such as general rate filings, do have time constraints. If it is not possible or desirable to have a prescribed time period, the COUs encourage the Commission to address in its final order what time period the Commission believes is reasonable for making a final decision.

Again, the COUs appreciate the Commission’s willingness to continue the discussions we have had and its commitment to continue refining the proposed rules. This process, while prolonged by COVID, was thorough and ultimately resulted in rules that are more workable by all participants in a CPCN proceeding.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Brooks', with a stylized flourish at the end.

Tommy A. Brooks