

**PUBLIC UTILITY COMMISSION OF OREGON
AHD REPORT
SPECIAL PUBLIC MEETING DATE: February 1, 2022**

REGULAR ☐ **CONSENT** ☐ **RULEMAKING** ☒ **EFFECTIVE DATE** N/A

DATE: January 31, 2022

TO: Public Utility Commission

FROM: Christopher Allwein **SIGNED**

THROUGH: Diane Davis and Nolan Moser

SUBJECT: OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. AR 626) - Changes to Rules Governing Certificates of Public Convenience and Necessity.

AHD RECOMMENDATION:

Finalize proposed, additional rule changes governing petition requirements for and the issuance of Certificates of Public Convenience and Necessity (CPCN) as described below and as shown in Attachment 1, and issue notice of proposed rulemaking for changes to administrative rules governing the CPCN rules.

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 Public Utility Commission of Oregon for a CPCN. 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

This memo presents proposed changes to the CPCN rules for transmission lines. Proposed AHD changes are in addition to or modify those already proposed by Staff and stakeholders during the informal rulemaking process, for rule OAR 860-025-0030, and for new rules OAR 860-025-0035 and OAR 860-025-0040.

On September 24, 2019, the Commission adopted Staff's recommendation (Order No. 19-311) to begin the rulemaking process. Over the course of two years, Staff held workshops, worked cooperatively with stakeholders, and presented several iterations of proposed rule changes as detailed in the November 24, 2021 Staff Report. In the report, Staff explained the background behind the proposed changes, the substance of the proposed changes, and recommended that the Commission issue notice of rulemaking.

At the December 2, 2021 Regular Public Meeting, the Commissioners noted the extensive work conducted by Staff and stakeholders to update the CPCN rules. The Commissioners requested that AHD make additional proposed changes to the existing and proposed rules prior to issuing notice of rulemaking.

Overview

AHD subsequently worked to consider additional changes to rules, as directed by the Commission, and reflected in Attachment 1. Those changes are discussed below, and seven numbered areas of Commission consideration are highlighted:

Summary and Discussion of AHD Changes to Staff's Proposed Draft Rules

OAR 860-025-0030

OAR 860-025-0030 sets forth requirements for a CPCN petition. The November 24, 2021 Staff Report details Staff's proposed changes, which included housekeeping changes, grammatical edits, and additional information to be included in a CPCN petition. The proposed AHD edits in Attachment 1 include grammatical edits for clarity. Additional AHD edits include the following:

- The mapping requirements are now consolidated under 2(c) in order to list all required information in one place. Map requirements were also previously listed under 2(f).

Outstanding items for Commissioner Discussion at the February 1, 2022 SPM include:

1. Part 2(e) requires the petitioner to include “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.”

Discussion: Item 2(e) requests “an explanation,” or an expansion, of items 2(n) and 2(o). Item 2(n) requests the most recent load forecasts and, when feasible, a load forecast extending at least ten years. Item 2(o) requests the petitioner’s analysis of how the line assists with redundancy or reliability. Therefore, Item 2(e) could remain in the rules, as it requests additional narrative of both of these items, or it could be consolidated within 2(n) and 2(o) to add the narrative requirement to one or both of these individual requested items.

2. Part 2(j) requires the petitioner to include “Estimated bill impacts.” This requirement could be altered to a require estimated rate impacts or eliminated.

Discussion: A demonstration of specific customer impacts may not be necessary for evaluating a petition. A proposed alternative is that this item should instead request a revenue requirement estimate coupled with the language of the request being “used solely for the purposes of evaluating the petition.”

Staff commented that bill impacts may be helpful to assess what the cost impact would look like beyond just total costs of a project. Staff further noted that during initial discussions there was significant, initial stakeholder support for such an analysis. Staff also noted objections from utilities for requesting a revenue requirement. Utilities stated that that a revenue requirement was too onerous, as it would require a rate case-level analysis would be necessary to arrive at rate impacts. Further, utilities were concerned that such rate estimates would be subsequently binding when seeking cost recovery.

Stakeholders offered that a bill impact analysis would be more viable as opposed to a rate impact analysis. It was also noted that bill impacts may provide more useful information in terms of ultimate customer impact. However, Staff noted there was also significant pushback for a bill impact analysis in more recent discussions. Finally, Staff noted that it found a bill impact analysis useful in a recent case.

3. Part 2(l) requires the petitioner to include “all costs incurred by petitioner to develop the transmission line prior to filing the petition.”

Discussion: It was unclear whether this was necessary information to include in a CPCN petition for evaluation. Staff noted that it may be helpful as a demonstration of how much a utility has invested in furtherance of a particular route prior to submitting a CPCN petition. If this requirement is retained, this item could be consolidated in a different section requesting estimated project costs.

An alternative is to include similar language, such as “already incurred and forecasted” in item 2(d)(E), and then eliminate item 2(l). Another alternative is to request this information through Staff’s standard data requests.

4. Part (3) requires an explanation from the petitioner of why it cannot include land use compliance information as listed in OAR 860-025-0040(2) and (4).

Discussion: Staff explained that the intention of this proposed rule modification is to allow the review of a submitted petition to continue, rather than rejecting it for being incomplete, in the event it was not possible for the petitioner to include documentation demonstrating compliance with the Statewide Planning Goals. The development and insertion of a waiver process was recommended as a way to clarify the rule.

Recommendation: Replace the propose rule with a waiver process:

(3) At the time of filing, if the petitioner cannot 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 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 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 review the waiver request upon receipt of the petition. If Staff finds the waiver request is reasonable and adequately supported, it will recommend the Commission approve the waiver request within 90 days of the receipt of the petition at a regular public meeting.
- (f) If Staff finds the waiver request is not supported, it will recommend the Commission make a finding that the petition is incomplete and that it will not be considered by the Commission, pursuant to 860-025-0030(4).

OAR 860-025-0035

This is a new rule, added by Staff, that describes the criteria the commission will consider when evaluating a petition for a CPCN. Additional AHD edits include the following:

- Part (a) provides for whether a proposed transmission line will meet a demonstrated need. Discussion of alternative facilities is moved out of this section.
- Part (b) provides for whether a proposed transmission line will be constructed, operated and maintained in a safe manner and complies with applicable commission rules. The phrase “best industry” is added in front of “practices.”
- Part (c) provides for a consideration of the practicability and feasibility of a proposed transmission line. The phrase “in a commercially reasonable manner” is added to the description of how the proposed transmission line construction will be considered.
- Part (d) provides for consideration of the public benefits and costs of the proposed transmission line. The comparison with alternatives is now a part of this section.
- Part (4) of this rule is a redundant recital of existing Commission authority and is deleted.

Outstanding items for Commissioner Discussion at the February 1, 2022 SPM include:

- 5. Part (b): AHD considered other, specific items for addition in part (b), such as wildfire preparedness or climate change considerations.

Discussion: It is recommended to add specific items for which information is desired or necessary into Staff’s standard data requests (SDRs). Staff’s SDRs will provide a flexible space for adding in specific circumstances and evolving,

future industry standards related to transmission line construction, operation and maintenance.

6. Part (d): AHD considered other, specific items for addition in part (d), such as environmental justice.

Discussion: Similar to part (b), it was agreed that specific questions about particular items and issues would be added into Staff's SDRs. Staff's SDRs will provide a flexible space for adding in specific circumstances and future public benefit and public interest considerations related to approval of a proposed transmission line.

OAR 860-025-0040

This is a new rule created by Staff. Staff relocated the existing sections (2), (3), and (4) of OAR 860-025-0030. This rule sets forth how the Commission will make findings when issuing a CPCN for a proposed transmission line that will be in compliance with statewide planning goals and land use regulations, and compatibility with acknowledged plans and regulations.

Outstanding item for Commissioner Discussion at the February 1, 2022 SPM include:

7. Part (4) of this rule is meant to delay final action of consideration of a proposed transmission line until the Energy Facilities Siting Council (EFSC) issues a site certificate for the transmission line.

Discussion: This is included as a discussion item to review the language and ensure that this rule part achieves the intended result.

PROPOSED COMMISSION MOTION:

Adopt the proposed rules as modified by AHD, along with any changes made at the February 1, 2022 Special Public Meeting, and issue notice of proposed rulemaking for changes to administrative rules governing Certificates of Public Convenience and Necessity.

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) **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 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 the cost of developing the transmission line project including:

(A) Parcels of land and land rights to be condemned any interests therein for which condemnation is necessary at the time of the petition.

(B) Other parcels of land and 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, 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~~ 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~~ 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 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 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 filed with a regulatory body, and any relevant site certificate issued by the Energy Facility Siting Council.

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

(p) 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.

(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 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.

(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 of 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:

(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.

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 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.