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ARCHIVES DIVISION  
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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 860  
PUBLIC UTILITY COMMISSION

**FILED**

03/31/2022 12:11 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Changes to Rules Regarding Certificates for Public Convenience and Necessity (CPCNs)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/07/2022 4:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Diane Davis  
971-375-5082  
diane.davis@puc.oregon.gov

PO Box 1088  
Salem, OR 97308

Filed By:  
Diane Davis  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 04/26/2022

TIME: 1:30 PM

OFFICER: Christopher J. Allwein

ADDRESS: By Zoom (See special instructions for link)

PO Box 1088

Salem, OR 97308

SPECIAL INSTRUCTIONS:

This will be a Special Public Meeting with Commissioners attending.

Join Zoom Meeting

<https://opuc-state-or-us.zoom.us/j/83683295945?pwd=Mm4vUIR4Q3pEZ2c5MHlsU1B0YWU4UT09>

Meeting ID: 836 8329 5945

Passcode: sDv%CE19=d

By Phone:

+1 971 247 1195 US (Portland)

Meeting ID: 836 8329 5945

Passcode: 4043129330

DATE: 05/24/2022

TIME: 9:30 AM

OFFICER: Christopher J. Allwein

ADDRESS: By Zoom (See special instructions for link)

PO Box 1088

Salem, OR 97308

**SPECIAL INSTRUCTIONS:**

This will be a Special Public Meeting with Commissioners attending.

**Join Zoom Meeting**

<https://opuc-state-or-us.zoom.us/j/87334286081?pwd=YVFNRzdRdndLYU90azIDNWlWTHhoQT09>

Meeting ID: 873 3428 6081

Passcode: b4Ye8U8+mA

**By Phone:**

+1 971 247 1195 US (Portland)

Meeting ID: 873 3428 6081

Passcode: 4769845167

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**NEED FOR THE RULE(S)**

These rule changes are necessary in order to reflect and incorporate the resource planning guidelines instituted subsequent to the original rule's inception. Amendment of the petition content requirements are necessary for the Commission to make an informed decision within the framework of the dynamic nature of western power grid infrastructure. Additional safety requirements are also needed to ensure adherence to OAR Chapter 860, Division 24. The rule changes are needed in order to clarify and distinguish the consideration criteria of necessity, practicability, safety and justification to allow applicants a better understanding of the perspective from which the PUC will review and scrutinize a proposed transmission line project.

The Commission encourages participants to file written comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 626 on comments and attach them to an e-mail to the Commission's Filing Center at [PUC.FilingCenter@puc.oregon.gov](mailto:PUC.FilingCenter@puc.oregon.gov). The Commission would like to receive initial comments by April 19, 2022, and a second round of comments by May 17, 2022, if needed, and final comments by June 7, 2022.

The Commission will also hold a special public meeting on April 26, 2022, at 9:30 a.m. to discuss the proposed rules with the Director of the Oregon Department of Energy. Please note this special public meeting is not the rulemaking hearing. The rulemaking hearing is at 1:30 p.m.

Participants who present oral comment at the rulemaking hearing on April 26, 2022 at 1:30 p.m. or at the rulemaking hearing on May 24, 2022 at 9:30 a.m. will be asked to also submit their comments in writing before the comment period closes at 4:00 p.m. on June 7 2022.

Interested persons may review all filings online at

<https://apps.puc.state.or.us/edockets/DocketNoLayout.asp?DocketID=21932> . For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=4027>.

ORS 197.180 found online at [https://www.oregonlegislature.gov/bills\\_laws/ors/ors197.html](https://www.oregonlegislature.gov/bills_laws/ors/ors197.html)

ORS 758.015 found online at [https://www.oregonlegislature.gov/bills\\_laws/ors/ors758.html](https://www.oregonlegislature.gov/bills_laws/ors/ors758.html)

OAR 660-030-0065 found online at <https://secure.sos.state.or.us/oard/view.action?ruleNumber=660-030-0065>

OAR Chapter 860, Division 024 found online at

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=4038>

OAR 860-027-0400 found online at <https://secure.sos.state.or.us/oard/view.action?ruleNumber=860-027-0400>

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#### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These proposed rules are likely to directly affect the interests of many different persons and communities throughout the state. Specifically, the CPCN rules require electric utilities to consider statewide planning goals and land use regulations when planning new transmission line routes. The rule changes provide additional scrutiny ensuring that eminent domain is the last resort.

To ensure that racial equity issues were considered, prior to issuing this Notice, the Commission engaged in an informal rulemaking process prior to its decision to open a formal rulemaking process and order this Notice of Proposed Rulemaking to be filed. As part of that informal process, the Commission provided notice to its electric industry service list, which includes a broad range of stakeholders.

Individual Commission Staff members also connected with regional planning agencies and coordinated with other state agencies' staff.

No party provided comments that the Commission's proposed Division 025 rule changes would have a negative effect on racial equity in Oregon.

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#### FISCAL AND ECONOMIC IMPACT:

The proposed rule changes contain revised and expanded requirements for filing a petition for a certificate of public convenience and necessity under ORS 758.015. New provisions set forth the Commission's decision criteria for reviewing a petition and create a separate rule addressing the requirements for land use compatibility findings by the Commission. A person required to file a petition under the proposed rules may incur additional costs to compile the required information, prepare a petition for filing and notify affected landowners. Landowners may be economically affected if a petition is granted under the proposed rules and an interest in their property is condemned for construction and operation of a transmission line. The impact to any such member of the public cannot be specified at this time, without information about the type of transmission line or affected properties.

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#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

(1) There will be minimal administrative costs for the Public Utility Commission as a result of the proposed rules. Municipalities providing electric utility service may be required to file a petition meeting the requirements of the proposed rule if they propose to construct a transmission line for which condemnation is necessary. They may incur additional costs to compile the required information, prepare a petition for filing and notify affected landowners. Members of the public who are landowners may be economically affected if a petition is granted under the proposed rules and an interest in their property is condemned for construction and operation of a transmission line. The impact to

any such member of the public cannot be specified at this time and without information about the type of transmission line or affected properties.

(2)(a) A person providing electric utility service or any transmission company will be affected by the rule if required to file a petition under ORS 758.015 and such persons may be a small business. While the investor-owned electric utilities regulated by the Commission are not small businesses. While other service providers or transmission companies may be small businesses, the Commission is not aware that any such providers or companies are small businesses. Small businesses may also be located on property that may be subject to condemnation proceedings if a petition is granted under the proposed rules. The number of those small businesses cannot be specified at this time, and without information about the type of transmission line or affected properties.

(b) A petitioner under the amended rule will incur minimal additional recordkeeping and administrative expense associated with compiling additional data required for the petition, such as recent load forecasts, and to certify service of the petition on landowners of property identified in the petition.

(c) A petitioner under the amended rule will incur moderate expenses for labor, professional services, equipment, and administration associated with preparing a required petition under the amended rule, including but not limited to responses to standard data requests, required documentation of land-use decisions at the local level or from the Energy Facility Siting Council, an estimate of bill impacts for Oregon customers, a safety certification, and alternative analysis, and, where relevant, electrical engineering studies and reliability or resiliency analyses. In some instances, the additional information will have been prepared for other purposes and the expenses associated with preparing a petition will be reduced.

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#### DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Beginning in 2019 through 2021, Commission Staff circulated working drafts of the rule changes for stakeholder feedback and conducted several workshops open to the public to discuss the proposed changes and to ascertain the fiscal impact, if any of such changes. Informal written comments were solicited and received. The Commission conducted a workshop on a draft of the proposed rules on June 25, 2020, which was noticed to the public as a special public meeting.

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#### WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Beginning in 2019 through 2021, Commission Staff circulated working drafts of the rule changes for stakeholder feedback and conducted several workshops open to the public to discuss the proposed changes and to ascertain the fiscal impact, if any of such changes. Informal written comments were solicited and received. The Commission conducted a workshop on a draft of the proposed rules on June 25, 2020, which was noticed to the public as a special public meeting.

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#### RULES PROPOSED:

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

AMEND: 860-025-0030

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

#### CHANGES TO RULE:

860-025-0030

## Petitions for Certificate of Public Convenience and Necessity 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~~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 ~~OAR 860-025-0005.~~¶

~~(b) A detailed description and the purpose of the proposed transmission line which shall~~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 be limited to a general description of the proposed route, voltage and capacity of the line. The project description should be included 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.¶

~~(c) A map under nor-maps 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 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 showing, by appropriate distinguishing colors and symbols, but not limited to, 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.¶

(BC) Available alternate route~~transmission line routes analyzed by petitioner, if any.~~¶

(CD) 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.¶

(DE) The terminals, substations, sources of energy, and load centers, existing or proposed, related to the proposed project.¶

(E) Land to be condemned.¶

(d) An estimate of the cost~~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) L~~Parcels of land and land rights to be condemned~~y interests therein for which condemnation is necessary at the time of the petition.¶

(B) Other parcels of land and land rights~~y interests therein~~acquired or to be acquired.¶

(C) Transmission facilities.¶

(D) S, including but not limited to, poles, lines, substations, accessory and miscellaneous labor, plant, and equipment inclusive of any communication apparatus and environmental mitigations.¶

(ED) Indirect and overhead costs including engineering, legal expense, taxes, interest during construction, and itemized administrative and general expenses.¶

(FE) Any other costs, direct or indirect, relating to the project.¶

(G) Such e~~transmission line project including but not limited to operating and maintenance costs of the project.~~¶

(F) Explanation of the various~~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 project, including the kind, nature, extent and estimated growth of the energy requirements or reasonably anticipated need, load or demand, for the proposed transmission line.¶

(f) A description of the property and interest to be condemned, a full explanation of the intended use, and the specific necessity and convenience 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) T~~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 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 (4d) and (5e) of this rule/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.¶

(2) 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, 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 Goal 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 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 find/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, if any, shall be developed under the rules and procedures in the Commission's state agency coordination program pursuant to ORS 197.180/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.¶

(3m) The Commission's land use findings assuring the proposed project's goal compliance/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 plan compatibility shall be based on the hearing record, which shall include at least one of the following: a 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.¶

(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 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 project is permitted under the jurisdiction. This narrative must include information on whether petitioner has submitted an application's comprehensive plan for each approval or permit, the status of all such applications, land use regulations, and development codes, but does not require specific 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 jurisdiction; or Commission and available at [insert weblink].¶

(e3) Other written or oral land use information and documentation equivalent to At the time of filing, if the

~~petitioner cannot include documentation to support a finding under OAR 860-025-00340(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 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 860-03025-0065(3) in situations when the Commission is unable to assure goal compliance b40(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 Facting compatibly with one or more of the affected comprehensive plansilities 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.~~

~~(4f) 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. 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 OAR 860-025-0030(4).~~

~~(4) 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.~~

Statutory/Other Authority: ORS 183, ~~756~~, ORS 756, ORS 758

Statutes/Other Implemented: ORS 758.015

ADOPT: 860-025-0035

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.

CHANGES TO RULE:

860-025-0035

CPCN Review Criteria

(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 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.

CHANGES TO RULE:

860-025-0040

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

(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.

Statutory/Other Authority: ORS 183, ORS 756, ORS 758

Statutes/Other Implemented: ORS 758.015