

ORDER NO. 22-351

ENTERED Sep 26 2022

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 626

In the Matter of

Rulemaking Regarding Certificate of Public
Convenience and Necessity.

ORDER

DISPOSITION: RULES ADOPTED

I. INTRODUCTION

This order memorializes our decision, made and effective at our September 20, 2022 Special Public Meeting to adopt final rules in this matter. We adopt the proposed permanent rules to govern petitions for a certificate of public convenience and necessity (CPCN) presented in Attachment 1 of the September 15, 2022, Administrative Hearings D Report (AHD Report), as modified by the changes discussed during our meeting. The AHD Report with the recommendation is attached as Appendix A, and the rules reflecting modifications we adopted are attached as Appendix B. We highlight areas of discussion and reasons for modifying the AHD recommendation below.

II. DISCUSSION

A. Environmental Justice Considerations

STOP! B2H Coalition and several individual commenters recommended that OAR 860-025-0030(2)(c)(C) be modified to require the petitioner to provide information on available, alternative routes for a proposed transmission line, including presentation of environmental justice considerations relevant to alternative routes.

We decline to adopt the recommendation to place specific environmental justice requirements in the rules at this time. Instead, we direct Staff to include environmental justice considerations as a part of the standard data requests (SDRs) for CPCN petitions.

STOP! B2H Coalition is correct that environmental justice considerations may be germane to our evaluation of CPCN petitions. The CPCN statute requires us to evaluate the public interest, which we have expressed in OAR 860-025-0035(1)(d) as the interests of all Oregonians. We interpret this to include environmental justice communities, among others.

Moreover, the PUC is subject to the requirements of ORS 182.545(1), which requires us to consider the effects on environmental justice issues in our decision making.

Although the effects of a decision on environmental justice issues may be a relevant and necessary consideration in some instances, we decline to add specific environmental justice language to the CPCN rule at this time. Including requests for information about environmental justice analyses in the SDRs will help us to understand and develop our own inquiries relevant to specific projects. The SDRs are a more dynamic place for us to begin this important inquiry, and can be adjusted as we develop greater understanding of the appropriate approach to considering environmental justice issues in our review of CPCN petitions.

B. Demonstrating Notice of a Proposed Transmission Line Project

Joint comments from the consumer-owned utilities (COUs) recommended that we change the proof of notice required by OAR 860-025-0030(2)(f) from “certificate of service” to “certificate of mailing,” and AHD recommended that we instead make a change from “certificate of service” to “certification verifying that notice of the petition has been mailed[.]”

We agree with the recommendation, but clarify that our reason for the change is to eliminate any implication that our rules require formal legal service, not to allow electronic or other forms of notice. We emphasize that the rule continues to require that notice be mailed. While other forms of notice may be used in addition to mailing, they do not substitute for mailed notice.

C. Additional Information from the Petitioner

Joint comments from the COUs recommended that we narrow and clarify OAR 860-025-0030(2)(h), which sets forth requirements for information to be included with an initial petition filing, to read as follows:

“Such additional information as ~~may be needed~~ petitioner determines is necessary for a full understanding of the petition; * * *.”

Although AHD did not recommend this change, we adopt it. In this rulemaking process, we have sought to provide greater clarity and specificity about what petitioners must include in their initial filings. While more information may be requested from a petitioner through discovery or bench requests during our proceeding, we do not expect a petitioner’s initial filing to anticipate information needs beyond those set forth in the rules and, eventually, the SDRs. Therefore, it is appropriate for this “catch all” provision in the filing requirements to be based on the petitioner’s determination of what information is necessary to understand the petition, with information that other parties deem necessary to be requested as part of the proceeding.

D. Revenue Requirement Impacts

In previous workshops and rulemaking hearings, we discussed whether to require a petitioner's filing to include an estimate of revenue requirement impacts or estimated bill impacts from the transmission project. AHD proposed that we require bill impacts in OAR 860-025-0030(2)(j), but noted in its report a request and proposed language from Portland General Electric Company (PGE) to modify this rule and instead require revenue requirement impacts. PGE's recommended change is as follows:

Estimated ~~revenue requirement bill~~ impacts. At a minimum, petitioner must include an estimate of the levelized, annual revenue requirement of the transmission line as a percentage of its projected average monthly bill increase for its customers in each Oregon customer class that may experience a rate increase, given the estimated annual revenue requirement. A ~~bill impact analysis~~ revenue requirement estimate provided under this rule is may be used solely for the purposes of evaluating the petition; * * *.

We adopt the revision proposed by PGE, because we determine that estimating bill impacts would require the petitioner to make assumptions about cost allocation and rate spread that are too preliminary and uncertain to be meaningful in a CPCN review. Estimating revenue requirement impacts will provide a sufficient understanding of the overall cost and approximate impact on utility customers from the transmission line.

E. Additional Language Pertaining to Engineering or Regional Studies

STOP! B2H Coalition recommended that we require the petitioner's filing to include studies from regional entities such as the Western Electricity Coordinating Council (WECC). We generally agree, and therefore we adopt AHD's recommendation to amend OAR 860-025-0030(2)(p)¹ to require the filing to include studies performed by petitioner and others.

However, for the same reasons discussed in relation to OAR 860-025-0030(2)(h) above, we qualify this requirement to pertain only to studies "known by the petitioner at the time the petition is filed." Although we expect petitioners to be expansive in submitting all relevant regional studies, we seek to avoid claims that a petition filing is incomplete because it did not include obscure studies or studies a petitioner would not know that another party sees as relevant to their petition.

¹ Now rule part OAR 860-025-0030(2)(o) upon the adoption by the Commission to delete proposed rule OAR 860-025-0030(2)(n) during the September 20, 2022 Special Public Meeting.

F. Standard Data Requests

We agree with the recommendation from the AHD Report to modify OAR 860-025-0030(2)(r)² to require the petitioner to answer a series of SDRs concurrent with the filing of a petition. We believe the SDRs, as a companion to the rules, allow flexibility to adapt as information relevant to CPCNs changes over time and to reflect the diversity of transmission line project that may require CPCNs. We regret that resource constraints did not allow for SDRs to be developed concurrently with the rules, as participants reasonably preferred.

We do expect that Staff will move forward with the development of SDRs according to the standard practice for SDRs in rate cases—that is, SDRs will be developed by Staff in collaboration with stakeholders and approved by the Commission Chair prior to being used in any proceedings. As soon as reasonably practicable after adoption of these rules, we ask Staff to work with stakeholders to develop the SDRs to aid in our investigation of future CPCN petitions.

G. Changes to CPCN Orders After Changes in Land-use Compatibility Statements

We considered eliminating, but ultimately retained, proposed rule OAR 860-025-0040(5). This rule states that we may amend or withdraw an issued CPCN at our discretion when there has been a material change in a Land Use Compatibility Statement (LUCS) that we relied upon to demonstrate compatibility with a local comprehensive plan.

We have the authority to amend or withdraw a CPCN decision in response to a wide variety of circumstances regardless of whether we adopt an express rule to that effect. We worried that adopting an express rule related to the narrow circumstances of a LUCS could create confusion about our more general authority. To be clear, our adoption of this rule does not reflect a comment on or an intention to constrain our more general authority to amend or withdraw a CPCN.

Ultimately, we adopt this rule because a LUCS, in some circumstances, may be a uniquely provisional statement of compatibility with a local jurisdiction's comprehensive plan. A LUCS is not a final land use decision, but rather a means to gain the express opinion of authorized representatives within a particular jurisdiction that a proposed transmission line project is compatible with the plan. Following issuance of a LUCS, the jurisdiction may commence a full land use process to evaluate the proposed transmission line project and choose to modify or revoke the LUCS, including potentially finding that the project is not compatible with the jurisdiction's comprehensive plan. In order to make clear our intention to act in such a circumstance, we choose to include in our rules an express statement of our authority to amend or withdraw a CPCN when a LUCS is modified or revoked.

² Now rule part OAR 860-025-0030(2)(q) upon the adoption by the Commission to delete proposed rule OAR 860-025-0030(2)(n) during the September 20, 2022 Special Public Meeting.

H. Consultation on Land Use Issues

Consistent with existing rules, the proposed rules state that we may adopt our own findings of compliance with statewide land use planning goals under OAR 660-030-0065(3). The Planning Directors of Morrow and Umatilla Counties recommended that, before we adopt such findings, we should direct Staff to consult with appropriate local officials as a part of the development of their testimony on land use issues. We agree and direct Staff, when appropriate and feasible, to consult with appropriate state or local officials with expertise in land use as a part of any CPCN dockets where we will be asked to adopt independent land use findings.

I. Sequencing CPCN Action relative to Energy Facilities Siting Council Site Certificates

Our intention in proposed rule OAR 860-025-0040(7) is to clearly indicate that, for transmission line projects within the jurisdiction of the Energy Facilities Siting Council (EFSC), we will not make land use compliance determinations under OAR 660-030-0065(3). Instead, in circumstances where we have approved a waiver request and initiated review of a CPCN petition before EFSC issues its site certificate, we intend to defer issuance of CPCN orders until EFSC has issued its site certificate, at which time we will rely on EFSC's land use determinations. In short, our rules express our intention not to issue a decision on a CPCN petition prior to EFSC issuing a site certificate. The change to OAR 860-025-0040(7) recommended by stakeholders and AHD makes these conclusions less, rather than more, clear, and we decline to adopt it.

We do not address, in the rules we adopt, whether we will issue our orders while an EFSC site certificate is being appealed; the rules neither require nor prohibit us from doing so, and we will consider this on a case-by-case basis, likely with reference to the nature and scope of the issues under appeal.

III. ORDER

IT IS ORDERED that:

1. We adopt the proposed permanent rules, including changes to OAR 860-025-0030, and new rules OAR 860-025-0035 and OAR 860-025-0040, to govern petitions for a certificate of public convenience and necessity as reflected in Appendix B.

2. The new rules become effective upon filing with the Secretary of State.

Made, entered, and effective Sep 26 2022.

UNAVAILABLE FOR SIGNATURE

Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner



A person may petition the Public Utility Commission of Oregon for the amendment or repeal of a rule under ORS 183.390. A person may petition the Oregon Court of Appeals to determine the validity of a rule under ORS 183.400.

ITEM NO. SPM 1

**PUBLIC UTILITY COMMISSION OF OREGON
AHD REPORT
SPECIAL PUBLIC MEETING DATE: September 20, 2022**

REGULAR ___ **CONSENT** ___ **RULEMAKING** **X** **EFFECTIVE DATE** **N/A**

DATE: September 15, 2022

TO: Public Utility Commission

FROM: ALJ Christopher Allwein

THROUGH: Nolan Moser **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION – ADMINISTRATIVE
HEARINGS DIVISION: (Docket No. AR 626) Rulemaking Regarding
Certificates of Public Convenience and Necessity.

AHD RECOMMENDATION:

Adopt the permanent administrative rules governing petition requirements for the issuance of Certificates of Public Convenience and Necessity (CPCN) as set forth in Attachment 1.

DISCUSSION:

Issue:

Whether the Public Utility Commission of Oregon (Commission) should adopt proposed 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.

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Analysis

Background

This memo presents the modified CPCN rules for transmission lines, as noticed with the Oregon Secretary of State and appearing in the Oregon Bulletin on July 1, 2022. AHD's proposed changes to these rules, discussed below, reflect comment received from stakeholders and interested persons for the Commissioners' consideration. These proposed changes are in addition to or modify those already proposed by Staff and stakeholders during the informal rulemaking process, and after the initial formal 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 a notice of rulemaking.

During the next phase of the rulemaking process, AHD conducted a rulemaking hearing on April 26, 2022. At that hearing, planning directors from Morrow and Umatilla Counties gave a presentation on their land use permitting process, and included a discussion on the use of a Land-Use Compatibility Statement (LUCS). Subsequent to the hearing, two informal meetings were held with stakeholders, which included the county planners and a representative of the Oregon Department of Land Conservation and Development. Discussions focused on the use of a LUCS in the CPCN process, so that the ultimate land-use decision could be made by local representatives in certain situations.

On June 30, 2022, the rulemaking was re-noticed with the Oregon Secretary of State. The proposed rules included the addition of a LUCS, discussed in greater detail below.

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General Overview of Comments Submitted During the Formal Rulemaking Process

During this formal rulemaking process, noticed in the Oregon Bulletin on July 1, 2022, comments were submitted by several stakeholders at the August 4, 2022 Rulemaking Hearing and in writing, up through the August 15, 2022 extended due date. Comments were received from PacifiCorp, the Consumer-Owned Utilities (COUs), Idaho Power, PGE, STOP! B2H Coalition, and the Greater Hells Canyon Council.

Comments from Individual Interested Persons

Comments were also received from over 30 individual Oregonians interested in the process. Most of the commenters reside in La Grande, but also in Adrian, Union, Pilot Rock and Union Counties. While these comments presented individual expression of interest, opinion and recommendations regarding certain actions taken or to be considered by the Commission, there were several common themes expressed by the commenters:

1. The potential of an eminent domain proceeding occurring prior to a utility obtaining all relevant permitting.

Nearly every individual commenter provided an opinion against allowing utilities to obtain a CPCN prior to obtaining all necessary local and other permitting. Commenters noted the potential economic disparity of landowners versus a well-funded utility effort in a condemnation proceeding. The commenters expressed firm opinion that a condemnation proceeding to obtain an easement or right-of-way should be the final step, or last resort in the process, rather than prior to all permitting has been issued.

Many commenters expressed this by characterizing it as “fastracking” condemnation proceedings, to the detriment of individual landowners, characterized such action as being in violation of Oregon’s eminent domain laws, and recommended that the Commission not adopt such a measure. Commenters stated that such a matter should be referred to the legislature to consider any changes to how and when eminent domain proceedings are to be conducted. Similar comments were made in protest to any change that allowed a utility to pursue eminent domain were submitted by the Greater Hells Canyon Council and the STOP! B2H Coalition.

2. Commenters urged that the Commission include environmental justice concerns as a part of petition.

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Several commenters noted the absence of environmental justice concerns as part of the primary CPCN petition process. The commenters recommended that the Commission include environmental justice discussion requirements as a part of the petition process.

Other commenters mentioned environmental concerns more generally by recommending that the Commission utilize the process to ensure that the natural beauty of Oregon was preserved. The STOP! B2H Coalition also provides comment supporting the inclusion of environmental justice concerns, as discussed below.

3. Forest fires initiated by transmission lines.

Commenters noted that, in certain parts of Eastern Oregon, there are not sufficient measures or resources in place to deal with large forest fires. These commenters urged the Commission to consider this issue before granting a CPCN. Most commenters were specifically referring to Idaho Power's proposed Boardman to Hemmingway (B2H) project.

Idaho Power Comments

Idaho Power submitted two sets of comments, the first on July 28, 2022, and the second on August 11, 2022. The latter focused on comments made by other stakeholders at the August 4, 2022 Rulemaking Hearing and reiterated that the Commission consider specific changes presented in Idaho Power's first set of comments. These changes included language clarification on when a waiver of initial petition information requirements regarding land-use may be requested, and proposed changes to how and when the Commission may issue a CPCN in light of a pending EFSC proceeding or an appeal from an EFSC proceeding.

In addition, Idaho Power notes its support for PGE's recommendation of a specific timeline for consideration of a CPCN. Idaho Power disagrees that environmental justice considerations should be a part of the CPCN process, because Idaho power states that specific siting concerns are outside the scope of the narrow CPCN process and better suited to the siting process that includes land-use considerations. Idaho Power states that given the proposed flexibility afforded to local projects (*i.e.*, the use of a LUCS), the Commission should also consider extending this flexibility to EFSC jurisdictional projects. Idaho Power makes specific recommendations for this in proposed rule section OAR 860-025-0040, discussed below.

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COU Comments

The COUs express appreciation for the proposed inclusion of a LUCS in certain circumstances. The COUs make several additional recommendations, which include some language changes for consistency, modifications to certain initial petition requirements in 860-025-0030, and a recommendation that the Commission consider applying a limited time period in which the Commission will complete its consideration of a CPCN petition. Some of these recommendations are addressed in the specific rule sections below.

PGE Comments

PGE proposed several language changes for clarification. PGE recommends that the Commission limit the CPCN process to 180 days from the initial filing date of the petition. PGE also renews its request to review the SDRs and provide comment prior to the close of this rulemaking. Finally, PGE notes its support for Idaho Power's recommended modifications to the rules when the proposed transmission line is also subject to an EFSC jurisdictional process.

Morrow and Umatilla Planning Directors' Joint Comments

The Umatilla and Morrow County Planning Directors participated in the rulemaking hearing on April 26, 2022, and in the subsequent informal discussions for incorporating a LUCS into the CPCN rules. All of the recommendations proposed are for a new rule section: OAR 860-025-0040. This set of recommendations provides additional clarifications and the comments pose some questions regarding certain scenarios, which are discussed in the appropriate rule section below. The recommendations include developing a PUC-specific LUCS form, similar to that used by ODEQ, in collaboration with city and county planners.

STOP! B2H Coalition Comments

The STOP! B2H Coalition (Coalition) provided written comments on July 28, 2022 and August 11, 2022. Both sets of comments expressed disappointment that environmental justice considerations were not a part of the initial petition process. The Coalition noted that the Federal Energy Regulatory Commission established a two-year equity action plan and urged this Commission to do the same. The Coalition also noted the existing Oregon Environmental Justice Task Force (EJTF), and the specific duties of the EJTF. The Coalition states that the EJTF was not consulted, nor was any member of the public involved, other than a representative of the Coalition.

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The Coalition noted the frustration of landowners with surveys being conducted by Idaho Power and their contractors for the B2H project. The Coalition declares that the waiver will create more frustration with the process. The Coalition notes its disagreement with Idaho Power's recommended changes on when a waiver may be granted for land-use documentation and the recommendation that a CPCN may be issued pending the outcome of an EFSC certificate or when an EFSC certificate is pending. The Coalition's position is that a utility seeking a CPCN should wait until all necessary permitting is obtained before filing a petition. Finally, the Coalition continues to express frustration that updated SDRs are not available for review, given that SDRs are mentioned in the initial petition requirements.

Summary and Discussion of Recommended Changes to the July 1, 2022 Proposed Draft Rules

OAR 860-025-0030

OAR 860-025-0030 sets forth required items to be included in a CPCN petition. Several commenters made recommendations to modify the initial petition requirements listed in this section. Recommended or similar language is added to certain rules for consideration for adoption as discussed below. Some recommendations, included in the brief comment summaries above (e.g., a time limit on the CPCN process) were discussed previously and not included for consideration this time. In this report, we lay out the issues for decision and AHD's recommendations as to the associated modifications to the rules.

Some of the modifications in redlined Attachment 1 include general edits for clarification of rule intent or to fix grammatical errors. Edits include:

- Replacing the term "ratepayers" with "customers" in OAR 860-025-0030(2)(k)(A) and OAR 860-025-0035(1)(d);
- The addition of the phrase "local transmission plan" as an option in OAR 860-025-0030(2)(o);
- Reconfiguring the Staff options in response to a waiver request in OAR 860-025-0030(5) into subsections;
- Breaking up the lengthy sentence in OAR 860-025-0035(1)(d) into two sentences.

860-025-0030(2)(b) and (c)

PGE and PAC note that both of these proposed rule subsections require a narrative. Subsection (2)(c), in addition to a narrative, also requires a "map or maps" that depict

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certain information. Both recommend the elimination of the duplicative “narrative” requirement in this subsection.

AHD Recommendation:

AHD agrees and recommends adoption of this modification. The phrase “comprehensive narrative of the transmission line project, which must be accompanied by a” is deleted, as shown in the redlined Attachment 1.

860-025-0030(2)(c)(A)

For this rule paragraph, the Coalition recommended that the petition requirements include a kmz of the route and notify landowners within a two-mile linear distance of the route. The Coalition did not provide support for these recommendations.

AHD Recommendation:

AHD does not recommend the adoption of either of these recommendations. A kmz is a type of file associated with internet-based maps such as Google Earth and allows a user to compress a series of Keynote Markup Language (KML) files. KML files have the ability to specify and present certain geographic features. While such files may provide benefits for a petitioner submitting a CPCN filing, AHD recommends allowing the petitioner to decide the method for presenting and meeting petition requirements.

Currently, the proposed CPCN rules require a petitioner to verify notice of the petition to “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.”¹ EFSC requires site certificate applicants to notify property owners of record from within 100 feet up to 500 feet of the subject property depending on the area (e.g., urban or rural).² Oregon Counties have various processes to provide notice, obtain permission from landowners, and solicit and collect public comment for different types of projects.

¹ Proposed Rule subsection OAR 860-025-0030(2)(f).

² OAR 345-020-0011(f)(A) states that EFSC requires an application for a site certificate to issue a notice of intent (NOI). The list of required (NOI) recipients is as follows: “A list of the names and mailing addresses of property owners, as described in this rule: (A) “must include all owners of record, as shown on the most recent property tax assessment roll, of property located: (i) Within 100 feet of property which the subject of the NOI, where the subject property is wholly or in part within an urban growth boundary; (ii) Within 250 feet of property which is the subject of the NOI, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or (iii) Within 500 feet of property which is the subject of the NOI, where the subject property is within a farm or forest zone * * *.”

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AHD recommends that the current notification requirements for the CPCN sufficient and does not recommend the adoption of this recommendation. The proposed rules are intended to allow the Commission to adopt land-use findings from an EFSC process, adopt local compatibility findings, or in the alternative, allow local authorities to ultimately decide whether a project is compatible with local, comprehensive land-use plans. These processes appear to have sufficient notice requirements, separate from and in addition to the notice requirements for a CPCN. Without additional support, clarification or explanation as to why an extensive notification process should be instituted, AHD does not recommend the adoption of such a significant change in the notice requirement at this time.

860-025-0030(2)(c)(C)

In this section, several individual commenters and the Coalition recommend the addition of environmental justice considerations to the requirement for analysis of alternative transmission line routes. The Coalition notes the statutory definition of environmental justice as “equal protection from environmental and health hazards, and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality, and play.”³

The Coalition notes that FERC established a two-year Equity Action Plan (EAP) to promote equity and remove barriers that underserved communities, including environmental justice communities, face in the context of FERC’s processes and policies.⁴ In addition, the Coalition noted the existence of Oregon’s Environmental Justice Task Force, which is now the Environmental Justice Council (EJC).⁵

Idaho Power stated its opposition to the inclusion of environmental justice considerations as a part of the CPCN process. Idaho Power states that: “Given the narrow role of a CPCN in the extensive permitting process for a transmission line, concerns regarding the siting of a transmission line should be addressed in the land use approval process, not in the CPCN proceedings.”⁶

Further, Idaho Power argues that while the Commission’s authority to consider environmental justice was recently expanded in HB 2475, this increased authority “did not expand the inquiry for a CPCN in ORS Chapter 758.” Therefore, Idaho Power states

³ ORS 756.010(4).

⁴ More information about the FERC effort may be found at: <https://ferc.gov/equity>

⁵ STOP! B2H Coalition comments at 1-2 (Aug 11, 2022); House Bill 4077, effective June 3, 2022. See the enrolled version of the bill at: <https://legiscan.com/OR/text/HB4077/id/2539344>

⁶ Idaho Power Closing Comments at 2 (Aug 11, 2022).

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that this kind of consideration is limited to the ratemaking context, and not for a CPCN process. In the alternative, Idaho Power suggests that, if the Commission is inclined to include environmental justice considerations in a CPCN proceeding, that it does so by encouraging the participation of environmental justice groups. Idaho Power declares such considerations to be within the purview of EFSC and environmental permitting agencies, and therefore urges the Commission not to duplicate the process in a CPCN proceeding.

AHD Recommendation:

First, AHD agrees that the Commission is subject to certain provisions of law associated with the EJC.⁷ As noted by the Coalition, it is an important consideration in the context of federal siting and for certain projects within the state of Oregon. The Commission has taken significant action in recent years to incorporate environmental justice in its consideration of the public interest. Furthermore, a review of the public interest is a required part of the Commission's investigation into a CPCN petition.⁸ Thus, in practice the Commission has an obligation to include environmental justice considerations as a part of its CPCN review process. Commission Staff plans to include in its CPCN investigations a review of any relevant portions of a petition by PUC Staff focused on diversity, equity and inclusion. In order to recognize this, AHD recommends adding environmental justice concerns as an express part of the public interest criterion in proposed rule OAR 860-025-0035(1)(d).

In light of Idaho Power's concerns, there is no need to institute a duplicative process. AHD recommends that the project proponent's analysis of environmental justice considerations should be included in response to standard data requests (SDRs), not as a separate requirement for analysis within the CPCN rules. If the petitioner has already completed any applicable environmental justice analysis or related activities as a requirement for another state or federal agency, the petitioner will be required to provide that information in response to any SDRs put forth by Staff. Upon receiving such information as a part of the SDRs in CPCN proceedings, Staff and the Commission may evaluate the usefulness of such information as a part of the CPCN process, and if appropriate incorporate it as a requirement into future versions of CPCN rules.

860-025-0030(2)(c)(f), (2)(d), and 2(f):

These rule sections require a description of the parcels of land or interests acquired or to be acquired for the proposed transmission line. PGE recommends similar, clarifying

⁷ ORS 183.535(8).

⁸ ORS 758.015(2) states: "The commission, in addition to considering facts presented at such hearing, shall make the commission's own investigation to determine the necessity, safety, practicability and justification in the public interest for the proposed transmission line and shall enter an order accordingly."

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language for each section. PGE recommends substituting the phrase “physically impacted” for “affected” in (2)(f). The COUs recommend a modification of the type of notice provided to individuals possessing interests in the subject property.

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AHD Recommendation:

AHD recommends adopting these changes in part, including the phrase “physically impacted” for clarity, as shown in the redlined Attachment 1. The notice provision was also modified for clarity.

860-025-0030(2)(e)

This part of the rule requests an explanation of the financial feasibility of the proposed transmission line. The Coalition recommends additional requirements for expected revenues, profit sharing and financing as divided among ratepayers and shareholders.

AHD Recommendation:

AHD agrees with this recommendation in part. AHD recommends the Commission adopt the insertion of the phrase “including any expected costs, revenues, and financing tools” as shown in the redlined Attachment 1.

860-025-0030(j)

Whether the rules request the petitioner provide bill impacts versus ratemaking impacts is an issue that is still to be decided. This issue was considered in previous proceedings, but no final decision was reached. PacifiCorp and PGE both recommend substituting revenue requirements for bill impacts.

AHD Recommendation:

This issue is a discussion point for the Commissioners at the September 20, 2022 Special Public Meeting.

If PGE’s language is adopted, (2)(j) would read:

Estimated revenue requirement ~~bill~~ impacts. At a minimum, petitioner must include an estimate of the levelized, annual revenue requirement of the transmission line as a percentage of its ~~projected average monthly bill increase for its customers in each Oregon customer class that may experience a rate increase, given the~~ estimated annual revenue requirement. A ~~bill impact analysis~~ revenue requirement estimate provided under this rule ~~is~~ may be used solely for the purposes of evaluating the petition.

860-025-0030(2)(n) and (2)(p)

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PGE and PacifiCorp suggest that these two requirements, having to do with reliability, resiliency and redundancy studies and analysis, appear to ask for the same information. PGE recommends eliminating one of them; PacifiCorp specifically recommends eliminating (2)(n). The Coalition recommends the inclusion of WECC integration studies for potential coordination and evaluation.

AHD recommendation:

AHD recommends eliminating (2)(n) to avoid duplicative requirements. WECC studies, if applicable, should be included by the petitioner. Subsection (2)(n) is deleted as shown in the redlined Attachment 1.

AHD recommends the adoption of additional language to capture other studies, whether performed by the petitioner or other entities, which would include WECC studies when applicable, as shown in redlined Attachment 1.

860-025-0030(2)(g)

The proposed rule is a requirement for the petitioner to concurrently submit responses to the most recent version of the Standard Data Requests (SDRs). As summarized above, several petitioners expressed disappointment that a more recent version of SDRs is not available as the CPCN rulemaking proceeds. Because the final version of these rules and the specific content requirements for a petition are yet to be determined, the SDRs will be reviewed and updated subsequent to the completion of the rulemaking process. These rules will be developed by Staff, as delegated by the Commission Chair. This is the process used for general rate revisions.⁹

860-025-0030(3)

This rule section prohibits the filing of a petition unless the petitioner includes all necessary information to support land use findings under OAR 860-025-0040(2) or (7). Idaho Power, PGE and Pacificorp all recommend adding the phrase “or files a request for a waiver as described in OAR 860-025-0030(4).”

AHD Recommendation:

⁹ See OAR 860-022-0019(2)(a), which states: “The initial filing of a general rate revision must contain the following: All information required by the most recent version of the Standard Data Requests for Energy Rate Cases, available at <http://www.puc.state.or.us> including tax-related information * * *.”

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AHD recommends that this phrase be added for clarity. It is added as shown in the redlined Attachment 1.

860-025-0030(4) and (4)(a)

This proposed rule provides the process for a petitioner to request a waiver in the event that land use permissions have not yet been obtained or cannot be obtained. Idaho Power recommends modifying the similar language appearing in both subsections (4) and (4)(a) for clarification to read “If petitioner cannot obtain, or has not yet obtained. . .” and eliminating: “will be unable to include. . .” and “will not be submitted” respectively.

AHD Recommendation:

AHD recommends that this phrase, in both subsections, be modified for clarity. The modifications are shown in the redlined Attachment 1.

OAR 860-025-0035

This proposed rule describes the criteria the commission will consider when evaluating a petition for a CPCN.

860-025-0035(1)(d)

AHD recommends the addition of the phrase “evaluations of socioeconomic benefits and burdens to identified environmental justice communities. . .” to the proposed justification criterion section to emphasize the Commission’s consideration of environmental justice considerations, as described in the discussion above for rule subsection 860-025-0030(2)(c)(C).

OAR 860-025-0040

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.

860-025-0040(6)

This part of the rule is not new. It allows the Commission to adopt goal compliance findings under OAR 660-030-0065(3). The Planning Directors state that if the

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Commission is going to keep this rule, it is recommended that a Staff consultation requirement with local planning authorities be required.

AHD Recommendation:

AHD does not recommend the adoption of this requirement for inclusion in the rules. This rule is only in the case where the Commission cannot adopt findings under section (2). However, AHD recommends that it appear in the Order upon adoption of the final version of the CPCN rules.

860-025-0040(7)

This rule states that the Commission will not take final action until EFSC has issued a site certificate for the transmission line, and will adopt EFSC findings regarding a proposed project's land-use compatibility. Idaho Power provided several recommendations for this section of the proposed rule. The Planning Directors also provided a recommendation for this section.

Idaho Power's first recommendation was to add clarifying language that explains that the Commission will adopt findings after an EFSC site certificate has been issued.

Next, Idaho Power requests that the Commission modify this proposed rule to allow flexibility for the Commission to satisfy land-use compatibility findings and issue a CPCN prior to the issuance of an EFSC site certificate. Idaho Power compares this to the flexibility allowed by a land-use compatibility statement (LUCS), which is part of the proposed rules for projects not subject to EFSC jurisdiction.

Third, Idaho Power recommends that add language to amend or withdraw an issued CPCN if the EFSC site certificate is subsequently "successfully appealed, revoked or modified" because the project is found to be "incompatible with an acknowledged comprehensive plan or implementing regulations after the Commission has issued a CPCN."

In the alternative, Idaho Power recommended that the Commission add additional language to the proposed rule that would allow it to "take final action during the pendency of an appeal of the EFSC site certificate." In addition, the Planning Directors for Morrow and Umatilla recommend that a LUCS be allowed for both EFSC and non-EFSC projects.

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AHD Recommendation:

AHD recommends adopting Idaho Power's first recommendation to clarify that the Commission will adopt land-use findings after EFSC issues a site certificate. This is reflected in the redlined Attachment 1.

AHD does not recommend adopting either of Idaho Power's next two recommendations. Commission rules have been consistent that a CPCN will only be issued for projects subject to EFSC jurisdiction after the EFSC project is complete. It is unclear why flexibility is needed for a project under EFSC jurisdiction. The reason for considering and instituting a LUCS as an option for non-EFSC projects is because Oregon counties require a sufficient interest in all land needed for a transmission project prior to considering a permit application. EFSC does not require a real property interest in all land needed for a project prior to considering and issuing a site certificate.

AHD does not recommend adopting the Planning Directors' recommendation, as it is unnecessary to substitute a LUCS process for the EFSC site certificate process, and may end up leading to a situation where there are conflicting decisions from different state agencies. AHD recommends that the Commission, in the event that a decision is made to grant a CPCN to a petitioner for a project that is also subject to EFSC jurisdiction, continue to wait until a site certificate has been issued by EFSC before issuing a CPCN.

AHD does not recommend Idaho Power's alternative recommendation, as it offers no additional action or option that is not already available to the Commission. The Commission may already choose, under the current and proposed rules, to issue a CPCN once EFSC issues a site certificate, regardless of whether it is appealed. The Commission may also choose to withhold the CPCN pending an appeal of an EFSC certificate, in particular if land-use portions of the EFSC certificate are part of an appeal.

PROPOSED COMMISSION MOTION:

Adopt the permanent administrative rules governing petition requirements for the issuance of Certificates of Public Convenience and Necessity (CPCN) as set forth in Attachment 1.

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 that 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 ORS 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 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 that the petitioner has either acquired or has determined it should acquire an interest in to construct and operate the transmission line. The parcels of land that the petitioner has determined it should acquire an interest in 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 that petitioner determines it should obtain an interest in for which condemnation is assumed to be 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, including any expected costs, revenues, and financing tools;

(f) A description of the parcels of land that petitioner determines it should obtain an interest in and for which condemnation is assumed to be 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 physically impacted or traversed by the proposed route from whom petitioner has not yet acquired the interest, rights of way or option therefor.

Petitioner must include with the petition certification 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 petitioner determines is necessary 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 revenue requirement impact. At a minimum, petitioner must include an estimate of the levelized, annual revenue requirement of the transmission line as a percentage of its estimated annual revenue requirement. A revenue requirement estimate provided under this rule may be used solely for the 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 customers and customers 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) 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, local transmission plans, or a planning document substantially equivalent to an IRP;

(o) All electrical engineering studies and reliability or resiliency analyses known to the petitioner at the time the petition is submitted, whether performed by the petitioner or other entities supporting the necessity of the transmission line when relevant, including those addressing single and multiple contingencies;

(p) 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;

(q) 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, developed by Staff and available on the Commission's website.

(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), or files a request for a waiver as described in OAR 860-025-0030(4).

(4) If the petitioner cannot obtain, or has not yet obtained 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 the petitioner cannot obtain, or has not yet obtained 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); the petitioner shall indicate clearly whether it requests that the Commission make its findings under OAR 860-025-0040(2) or (6);

(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 before the conclusion of any land use approval or permitting processes that will promote efficient use of Commission resources and avoid duplicative or wasted effort.

(5) Staff will promptly review the waiver request:

(a) If Staff finds the waiver request is reasonable and adequately supported, Staff will recommend the Commission approve the waiver request at a public meeting; or

(b) 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 interests in land proposed to be condemned, petitioner's existing facilities and equipment, petitioner's Oregon customers, and other considerations that may be relevant to the public interest.

Other such considerations include, but are not limited to, the benefits and costs to other Oregon utilities, their customers, and all Oregonians, the value of connections to regional and inter-regional electricity grids and to 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 pertinent 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 15 years from date of issuance, except that a certificate shall expire 10 years from the date of issuance if construction has not

commenced during those 10 years. 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.

(4) A petitioner must notify the Commission promptly when a land use permit or 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 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