

ORDER NO. 24-191
ENTERED Jun 12 2024

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 6

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY,

Petition for Certificate of Public
Convenience and Necessity.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED; REQUEST FOR
WAIVER OF OAR 860-025-0030(3) GRANTED

At its public meeting on June 11, 2024, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



Alison Lackey
Chief Administrative Law Judge



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

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Statewide Planning Goals and the acknowledged comprehensive plans and local land use regulations of each local government where the project is to be located.

OAR 860-025-0040(2) requires that, in adopting the findings described above, the hearing record must include appropriate land use approval information and documentation from an authorized representative of each affected city or county.

OAR 860-025-0030(3) requires that, if the petitioner cannot include all the required information and documentation to support findings under OAR 860-025-0040 at the time of filing a CPCN petition, it must file a request for waiver of this rule under OAR 860-025-0030(4).

OAR 860-025-0030(4)(a)-(d) lists the required elements in the waiver request, including listing all the missing documentation and an explanation of why the documentation has not been obtained at the time of filing.

OAR 860-025-0030(4)(e) requires that the waiver request include 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.

OAR 860-025-0000(2) creates a “good cause” standard for the Commission’s review of a request for waiver of the Division 25 rules.

OAR 860-025-0030(5) states that Staff will promptly review the waiver request and recommend approval by the Commission if the request is reasonable and adequately supported by good cause. If the Commission denies the waiver request, the CPCN petition will be deemed incomplete without the required information and will not be considered by the Commission.

Analysis

Background

On April 17, 2024, PGE filed both its Petition for CPCN in Docket No. PCN 6 and its Request for Waiver of OAR 860-025-0030(3). PGE is proposing to construct the Tonquin project, which consists of several transmission and distribution upgrades. The Petition and Request for Waiver are for one element of the Tonquin project: a proposed transmission line between the existing Rosemont and Wilsonville Substations (Rosemont-Wilsonville Line), which is located primarily within Clackamas County, with a small portion in Washington County. Per PGE’s Petition, the proposed line will be 7.4 miles long, with approximately 5 miles of new construction. The new construction

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portion will utilize existing utility right of ways except where it crosses the Interstate 205 Freeway.¹ Because condemnation of land will likely be required to allow PGE to construct and maintain the proposed line, PGE filed the Petition.

PGE included documentation of Washington County land use approval by including a Right of Way (ROW) permit that had been issued for the project as Exhibit PGE/502. PGE did not include the necessary information to support findings under OAR 860-025-0040 from Clackamas County when filing its Petition for CPCN.

PGE states that in December 2021 it communicated with Clackamas County regarding the proposed transmission line, based on preliminary project design.² Clackamas County informed PGE at that time that the Company would need to apply for a ROW permit with the County, approval of which should occur one to two weeks after filing.³ In May 2023, PGE submitted its ROW permit with the County based on further conversations with the County and the County's standard practices.⁴ However, in Fall 2023, County counsel reviewed its Zoning Development Ordinance (ZDO) and determined that the County's application of the ZDO was incorrect and that PGE would instead require a Type II Alteration of Non-Conforming Use Permit for the line under the existing rules.⁵ The County thus put PGE's ROW permit application on hold.

County staff proposed amendments to the ZDO that, if approved, would address this issue. Under the proposed amendments, PGE's project would be a use that does not require a Type II Alteration of Non-Conforming Use permit for the project, simply the ROW permit. It is Staff's understanding that the Clackamas County Board of Commissioners plans to consider the proposed amendments at its meeting on June 12, 2024.

Based on its determination of an urgent need for the Rosemont-Wilsonville Line, PGE filed the Petition with the Request for Waiver, prior to the County's vote on the proposed amendments. In the meantime, PGE submitted its pre-application for the Type II Alteration of Non-Conforming Use Permit on February 15, 2024, and plans to pursue approval of this permit if necessary.⁶

As per OAR 860-025-0030(5)(b), PGE provides three rationales for a Commission finding of good cause.⁷ First, PGE identifies a load request from the Willamette Water

¹ PGE/100, Beil/8:22-9:13.

² PGE's Response to OPUC Data Request 038.

³ PGE/500, Armstrong/3.

⁴ *Id.*; PGE's Response to OPUC Data Request 034.

⁵ PGE/500, Armstrong/2.

⁶ PGE/500, Armstrong/4.

⁷ PGE's Request for Waiver of OAR 860-025-0030(3) at 11-13.

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Service Program (WWSP) for a new water treatment facility requiring 11 megavolt-amperes of electricity that will require full electrical load from PGE by July 1, 2026. PGE asserts that its existing transmission and distribution infrastructure in the region is not sufficient to handle this new load, along with expected residential and commercial growth in the area, and thus the Tonquin project and the associated Rosemont-Wilsonville Line are necessary to avoid the risk of outages and overloads. Second, PGE claims that it has worked diligently to secure the necessary land use approvals from Clackamas County, and that obtaining either of the pending permits is feasible. Third, PGE asserts that running the Clackamas County and Commission processes in tandem ensures that the line is in service by the planned date to meet the service request timeline.

PGE also details its compliance with the informational requirements of a Request for Waiver in OAR 860-025-0030(4).⁸ After review, Staff determined that PGE complied with the filing requirements for the Waiver, and thus focused its analysis on the good cause standard.

Further, upon initial review of PGE's Petition, Staff finds that the Petition contains all required information under OAR 860-025-0030(2) except for the Clackamas County approval. As such, this Request for Waiver is the only exception to these rules required at this time, and the Petition is otherwise complete.

Staff's Review of the Waiver Indicates that there are Three Possible Outcomes
Staff's review of PGE's filing, as well as communication with Clackamas County, indicates that there are three possible outcomes to Clackamas County's process.

First, the Clackamas County Board of Commissioners may approve the proposed amendment. If it does, PGE may promptly amend or supplement its Petition to provide the necessary documentation for land use findings.

Second, the Clackamas County Board of Commissioners may deny the proposed amendment and later approve PGE's Type II Alteration of Non-Conforming Use Permit. PGE will likely then be in a position to provide the necessary documentation for the required land use findings.

Third, the Clackamas County Board of Commissioners may deny the proposed amendments and also subsequently deny the Type II Alteration of Non-Conforming Use Permit application. In this scenario, PGE will likely not be in a position to provide the necessary documentation for the required land use findings.

⁸ PGE's Request for Waiver of OAR 860-025-0030(3) at 10-13.

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Good Cause Review

OAR 860-025-0030(5)(b) requires Staff to consider “good cause” as part of its review of a waiver request. Staff’s review of good cause for waiver requests under these rules is based on the specific circumstances in the docket.⁹

The waiver provisions in the Commission’s rules direct the Commission to grant waivers “to more efficiently regulate utilities under conditions of rapidly changing environments and technologies and under extenuating circumstances.”¹⁰ In certain cases, it may be most efficient to allow the Commission’s CPCN docket and the pending permit process run simultaneously, and in other cases directing the petitioner to refile once it receives all necessary permits may be more efficient.

Focusing on efficiency additionally recognizes the intent of the CPCN docket to be a “capstone” in the timeline of the proposed project’s development, coming after the petitioner has completed all other steps.¹¹ This ensures an efficient review of the Petition and an effective use of Staff and intervenor time and resources. Further, it avoids any Commission interference with the land use processes of other government agencies.

Staff Finds that the Request for Waiver is Reasonable and Supported by Good Cause
After reviewing PGE’s Request for Waiver, Staff finds that the evidence presented in PGE’s Request, direct testimony, and responses to Staff’s Data Requests shows the reasonableness of the request and that there is good cause to grant the request.

In this case, PGE represents that it is faced with timing constraints for construction of the project, should it receive the necessary approvals for construction. PGE’s Request for Waiver describes the WWSP load request, and the resulting need for transmission and distribution upgrades.¹² PGE included a declaration from the Program Director of WWSP David Kraska regarding the water treatment facility.¹³ PGE has presented evidence that Commission review of the CPCN Petition now will ensure that, if the CPCN is granted, the Rosemont-Wilsonville line can be constructed on time to meet load needs. Staff accepts this timing constraint for purposes of evaluating the waiver request. Staff reserves its right to review all aspects of the underlying need, practicality, feasibility, and justification for the transmission line in the event the Commission grants PGE’s waiver request.

⁹ See *In re Rulemaking to Update Waiver Provisions in the Commission’s Administrative Rules*, Docket No. AR 554, Order No. 11-346 at 4 (September 8, 2011).

¹⁰ *Id.*

¹¹ *In re Rulemaking Regarding Certificate of Public Convenience and Necessity Rule*, Docket No. AR 626, Staff’s Comments, Att. 1 at 4 (June 22, 2022).

¹² PGE’s Request for Waiver of OAR 860-025-0030(3) at 5-8.

¹³ PGE’s Request for Waiver of OAR 860-025-0030(3), Att. 2.

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A unique circumstance to this Petition is that the timing constraint identified by the Company does not appear to be due to a deficiency in the Company's planning or scheduling efforts. PGE appears to have engaged in due diligence in investigating the required permits and approvals for the Rosemont-Wilsonville Line, communicating with appropriate authorities, and submitting what the Company reasonably believed to be the appropriate permit applications on a timeline which would have allowed it to have all required permits prior to filing. Further, the delay in obtaining the necessary permits resulted from Clackamas County's decision, a third-party.

Staff is conscious of the burden on intervenors attempting to fully participate in several processes simultaneously. Here, Staff expects that some parties will wish to engage in both this docket and the possible Clackamas County land use process. PGE's case management proposal included with the Request for Waiver shows that the land use and CPCN processes may run simultaneously.¹⁴ While the proposal does not include detailed information about public participation in the Clackamas County process, it can be reasonably assumed that between June 2024—when PGE's land use application would be deemed complete—and November 2024—by which Clackamas County will make a determination on the land use application—there will be opportunities for public comment in the land use process while intervenors in this docket are reviewing filings and drafting testimony.

Ensuring that intervenors are able to effectively participate in proceedings is an important aspect of the Commission's goal of promoting procedural justice.¹⁵ However, Staff is confident that by aligning, to the extent possible, the procedural schedule in docket with any opportunities for public participation in the Clackamas County process, these concerns are mitigated and are outweighed by the efficiency benefits of running simultaneous proceedings.

Granting the Request for Waiver promotes an efficient review of PGE's proposed transmission line, as well as the use of Staff and intervenor resources. Staff will seek to ensure that the procedural schedule in this docket allows sufficient opportunity to fully participate in the Clackamas County land use process. As such, granting the request will allow the Commission process to move forward now without burdening participation in the Clackamas County process.

¹⁴ PGE's Request for Waiver of OAR 860-025-0030(3), Att. 1.

¹⁵ See ORS 182.535(3) (defining environmental justice to include "meaningful involvement in decision making of all people").

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Conclusion

Staff's review of PGE's Request for Waiver finds that there is good cause for granting the request. PGE has diligently worked to obtain the necessary approvals for the proposed transmission line but was unable to obtain the final permit due to unforeseen circumstances outside of the Company's control.

Staff weighed the pros and cons of approving the request and determined that allowing this docket and the Clackamas County proceeding to occur simultaneously is the most efficient outcome.

PROPOSED COMMISSION MOTION:

Grant Portland General Electric Company's Request for Waiver of OAR 860-025-0030(3).

PCN 6 PM Memo PGE's Request for Waiver