

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 8

In the Matter of

PACIFICORP dba PACIFIC POWER,

Petition for Certificate of Public
Convenience and Necessity.

ORDER

DISPOSITION: PACIFICORP’S MOTION FOR PARTIAL WAIVER AND
CLARIFICATION OF SCOPE DENIED

I. INTRODUCTION

This order addresses PacifiCorp’s motion for partial waiver and clarification of scope of certain rules related to petitions for certificates of public convenience and necessity (CPCN). We deny PacifiCorp’s motion at this time, but grant the parties leave to raise these issues later in this docket’s procedural schedule and will address them in the final order as appropriate.

II. BACKGROUND AND PROCEDURAL HISTORY

On June 11, 2025, the Governor signed House Bill (HB) 3681, which will go into effect on January 1, 2026. On June 26, 2025, Administrative Law Judge (ALJ) Mellgren issued a ruling noting that “HB 3681 appears to change the scope of the Commission’s review of petitions for public convenience and necessity” and that “it goes into effect at a key point in this docket’s procedural schedule.” ALJ Mellgren’s ruling established a deadline for “the parties to file brief letters outlining their respective views on whether and to what extent HB 3681 impacts the procedural schedule in this docket.”

On July 2, 2025, Commission Staff responded to the ALJ ruling, noting that it did not believe any changes to the procedural schedule were necessary and that it would begin to interpret what HB 3681 means for this docket as it prepares its opening testimony. The same day, PacifiCorp responded to the ALJ ruling by filing a request for the Commission to waive certain of its rules and clarify the scope of others.

On July 7, 2025, ALJ Mellgren issued a memorandum clarifying that PacifiCorp's July 2, 2025 request would be construed as a substantive motion under our rules.¹ On July 17, 2025, Staff filed a response to PacifiCorp's motion. On July 24, 2025, PacifiCorp filed a reply.

III. APPLICABLE LAW

When an Oregon electric utility “proposes to construct an overhead transmission line which will necessitate a condemnation of land or an interest therein,” it must seek a CPCN from the Commission.² The petition for a CPCN must provide “a detailed description and the purpose of the proposed transmission line, the estimated cost, the route to be followed, the availability of alternate routes, a description of other transmission lines connecting the same areas, and such other information in such form as the commission may reasonably require in determining the public convenience and necessity.”³ After receiving such a petition, we must “give notice and hold a public hearing on such petition.”⁴

In 2022, after a three-year rulemaking process, we promulgated rules regarding requirements for CPCN petitions before the Commission in light of existing law. OAR 860-025-0030 provides requirements for the contents of a petition for a CPCN, including information that must be provided to the Commission in or accompanying the petition and requirements to notify individuals with interests in potentially affected lands. OAR 860-025-0035 provides several factors the Commission will consider in reviewing a petition for a CPCN and explains when a CPCN expires. OAR 860-025-0040 describes requirements for CPCN petitions to allow the Commission to make findings related to statewide planning goals, land use regulations, and acknowledged comprehensive plans as required by ORS 197.180. The Commission's rules governing CPCN petitions were based on the statutory language that existed at the time they were adopted in September 2022.

Currently, in addition to considering facts presented at the hearing, the commission must make its “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.”⁵

HB 3681 was signed into law in June 2025, with an effective date of January 1, 2026, and

¹ OAR 860-001-0420(4)-(5).

² ORS 758.015(1).

³ *Id.*

⁴ ORS 758.015(2)(a).

⁵ *Id.*

amends ORS 715.015, and provides a new standard for Commission review of CPCN petitions. If we issue an order on PacifiCorp's CPCN petition in this docket after January 1, 2026, the new statutory standard from HB 3681 would apply to PacifiCorp's petition.

When effective, HB 3681 will amend ORS 758.015(2) to require us to determine:

whether the proposed transmission line meets a need for increased transmission capacity and reliability in the electric grid and shall enter an order accordingly. The commission shall consider a petition for a certificate of public convenience and necessity and enter an order without requiring a petitioner to first obtain any required state or local land use approvals.⁶

If granted, the order approving a petition for a CPCN is “conclusive evidence that the transmission line for which the land is required is a public use and necessary for public convenience” in any related condemnation proceeding.⁷ As an Oregon natural resource agency, the Commission must also consider the effect of its decision on environmental justice issues.⁸

IV. POSITIONS OF THE PARTIES

A. PacifiCorp's waiver request and arguments in support

PacifiCorp asks that we waive several of our CPCN-related rules in full or in part and clarify others given the potential effects of HB 3681 on these proceedings. The company argues that HB 3681 will make several Commission rules “obsolete and * * * irrelevant” by the time the Commission issues a final order on the company's CPCN petition in this docket. PacifiCorp states that as a result, it would provide efficiency benefits by saving us, Staff, the company, intervenors, and the public from wasting time and resources, and that a waiver would therefore be in the public interest.

⁶ HB 3681 section 4(2)(a) (2025).

⁷ ORS 758.015(2).

⁸ ORS 182.545(1).

1. Rules Related to a CPCN Petition's Contents – OAR 860-025-0030

Our rules include requirements for petitions for a CPCN, including what types of information and data we expect a petition to contain.⁹ PacifiCorp asks that we waive certain of these requirements in full or in part, and clarify another, because HB 3681 becomes effective on January 1, 2026.

The company asks that we “waive language [in OAR 860-025-0030(2)(b)] requiring the petition to provide sufficient detail to enable a full understanding of the ‘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[.]’”¹⁰

PacifiCorp asks that we waive OAR 860-025-0030(2)(i) because it requires information regarding “compliance with applicable Commission rules and other safety standards for the safe construction, operation and maintenance of the transmission line” as well as a “safety declaration by an authorized representative of the petitioner” and such “‘safety’ criterion are no longer germane to the Commission’s investigation and final order.”¹¹

The company asks that we waive OAR 860-025-0030(2)(k) and its requirement to provide an explanation of the public benefits and costs of the proposed transmission line because “information related to the ‘justification in the public interest’ criterion (i.e. the weighing of the costs and benefits of the line) is no longer germane to the Commission’s investigation and final order.”¹²

The company asks that we waive OAR 860-025-0030(2)(p) and its requirement to discuss all needed land use approvals and permits for the proposed transmission line because “information related to the ‘practicability’ criterion is no longer germane to the Commission’s investigation and final order.”¹³

PacifiCorp also asks that we clarify OAR 860-025-0030(3) and its requirement to provide all documentation to support land use compatibility findings. Specifically, the company “asks that the Commission confirm that a land use approval is not required consistent with HB 3681, and that a [land use compatibility statement] LUCS would meet this petition information criterion.”¹⁴

⁹ OAR 860-025-0030.

¹⁰ PacifiCorp Motion (July 2, 2025) at 5.

¹¹ *Id.* at 5-6.

¹² *Id.* at 6.

¹³ *Id.*

2. *Rules Related to the Commission’s Review of CPCN Petitions – OAR 860-025-0035*

Our rules include the standard of review the Commission is to employ in carrying out its statutory directive to investigate a CPCN petition, including further defining factors the Commission may consider in “determining the necessity, safety, practicability and justification in the public interest of the proposed transmission line[.]”¹⁵ OAR 860-025-0035 also describes when a granted CPCN expires.¹⁶

PacifiCorp asks that we waive OAR 860-025-0035(1)(b), (c), and (d) in their entirety and waive the phrase “the necessity, safety, practicability and justification in the public interest of the proposed transmission line upon consideration of the following[.]” because the company asserts HB 3681 removed safety, practicability, and justification criteria from the Commission’s standard of review of CPCN petitions.¹⁷ The rules the company asks us to waive require a utility to include information about how the transmission line would be constructed, operated, and maintained in a way that protects the public from danger and conforms with Commission rules, safety standards, and best industry practices; whether the proposed route is practicable and feasible and can be constructed in a commercially reasonable manner; and whether the proposed transmission line is in the public interest.¹⁸

3. *Rules Related to Compliance with Statewide Planning Goals, Land Use Regulations, and Acknowledged Plans – OAR 860-025-0040*

Our CPCN rules include requirements for Commission findings related to a proposed transmission line’s compliance with Statewide Planning Goals and other land use requirements.¹⁹ These rules provide several paths for an electric utility to choose to demonstrate compliance with these requirements.²⁰

PacifiCorp asks that we “confirm that a land use approval is not required, consistent with HB 3681, and that a LUCS in accordance with OAR 860-025-0040(3) is adequate for the Commission to make land use compatibility findings.”²¹

¹⁴ PacifiCorp Motion at 7.

¹⁵ OAR 860-025-0035(1).

¹⁶ OAR 860-025-0035(3).

¹⁷ PacifiCorp Motion at 8.

¹⁸ OAR 860-025-0035(b), (c), (d).

¹⁹ OAR 860-025-0040.

²⁰ *Id.*

²¹ PacifiCorp Motion at 8-9.

B. Staff's Response

Staff argues that resolving PacifiCorp's motion now would be premature and that it would be best to address whether to waive any Commission rules in closing briefs near the end of this docket's procedural schedule.

1. Rules Related to a CPCN Petition's Contents – OAR 860-025-0030

Staff argues that OAR 860-025-0030's requirements for the contents of a CPCN petition remain relevant to PacifiCorp's petition because HB 3681 does not go into effect until January 1, 2026, and does not have retroactive effect. Staff argues that the Commission is not required "to take action to implement the bill before its operative date" and that waiving the requirements for a CPCN petition is not required now.²²

2. Rules Related to the Commission's Review of CPCN Petitions – OAR 860-025-0035

Staff states that it "supports addressing the HB 3681 standards in testimony now, in anticipation of the Commission applying the new standards in 2026 when these proceedings will be ready for a final order[.]" but that it cannot support waiving any rules at this point.²³ Staff explains that as it is reviewing the petition, preparing discovery requests, and developing its opening testimony, it is confronted with several options for how it might handle these proceedings, and that "[i]t is too early for Staff to say which of these options it will pursue."²⁴ Staff asserts that the presence of OAR 860-025-0035 "does not impact Staff's work" and that it "is reluctant to waive a rule that could still have some value to the Commission's CPCN proceedings" because parts of ORS 758.015 are unaltered by HB 3681 and there is "overlapping meaning between the old and new statutory standards."²⁵

3. Rules Related to Compliance with Statewide Planning Goals, Land Use Regulations, and Acknowledged Plans – OAR 860-025-0040

Staff argues it needs to assess "the Commission's remaining responsibilities under Oregon's statewide land use coordination process" and that it questions whether the Commission can "'clarify the scope' of the current land use rule * * * in the middle of a contested case."²⁶ Staff argues that to grant PacifiCorp's request, which Staff

²² Staff Response (July 17, 2025) at 2-3.

²³ *Id.* at 3.

²⁴ *Id.* at 3-4.

²⁵ *Id.* at 4.

²⁶ *Id.* at 4.

characterizes as “a mixed issue of fact and law,” we “would need to apply the facts to the law” and that Oregon courts require a hearing when there are relevant factual issues.²⁷ Staff explains PacifiCorp’s request for clarification should be resolved after a hearing and on a fully developed evidentiary record.²⁸

4. Other Staff Arguments

Staff indicates it needs time to evaluate “the Commission’s remaining duties under the environmental justice statute. ORS 182.545(1).”²⁹

Staff concludes by asserting the Commission need not act now and instead can wait to “analyze legal issues and establish new policy in a contested case final order within docket PCN 8, or open a rulemaking.”³⁰ Staff explains that while it understands PacifiCorp to believe “that ‘the Commission’s review is narrower as a result of HB 3681,’” Staff “has not reached this conclusion, and wants to continue with its current analysis while focusing on the future statutory language.”³¹ By declining to grant PacifiCorp’s requested waivers and clarifications, Staff argues the Commission can ensure “that Staff, and the Commission, do not miss issues that the Commission continues to have authority to review.”³²

C. PacifiCorp’s Reply

PacifiCorp asserts that Staff’s arguments support the need for waiver of certain rules, noting that it believes HB 3681 “has fundamentally changed the scope of the Commission’s inquiry.”³³ The company argues that “the change in law and narrowing of scope naturally extends to the information requirements” in the Commission’s rules. The company also argues that “Staff’s approach [to address the scope of the proceeding later in the case] is inefficient and will likely be confusing to the parties[.]”³⁴

PacifiCorp states it believes Staff misunderstood its request for clarification regarding a LUCS under our existing rules, noting that the company is not asking the Commission to “predetermine how it will fulfill its state agency coordination obligations under

²⁷ Staff Response at 4-5.

²⁸ *Id.* at 5.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 6.

³² *Id.* at 6.

³³ PacifiCorp Reply (July 24, 2025) at 1.

³⁴ *Id.* at 2.

ORS 197.180” nor is it asking the Commission to determine that the LUCS filed in this docket is adequate.³⁵

V. DISCUSSION AND RESOLUTION

We conclude that PacifiCorp’s motion is premature and we decline to grant it at this time. The ramifications of HB 3681 will take time to discern, and we do not agree with PacifiCorp that we need to decide now which of our rules continue to be relevant to our review of CPCN petitions. Similarly, we decline to clarify any of our rules.

The company’s briefing on its motion raises important and unanswered questions for us and does not lead us to agree with the company that the identified CPCN rules will be “obsolete and * * * irrelevant” in January 2026. We have further questions about unaltered portions of ORS 758.015, such as the unchanged requirement that a utility provide certain information and what the Commission is to do with that information in its review in light of the forthcoming changes to the statute. We also note the company is silent on Staff’s point regarding the intersection of HB 3681 and other statutory requirements such as ORS 182.545.

We believe it best to allow the parties to present arguments after sufficient factual development and further exploration of the legal issues presented by HB 3681.

PacifiCorp’s request that we waive certain rules and clarify others now could preclude Staff and any intervenors from effectively participating in our proceedings or raising arguments related to the new standard. As such, we will entertain arguments regarding the applicability of our rules in briefing and at oral argument in this docket and will address them in the final order.

We appreciate that electric utilities and interested stakeholders want clarity in how the Commission will review petitions in light of HB 3681. We anticipate the initiation of a rulemaking to amend our CPCN rules after resolution of currently pending CPCN dockets.³⁶ Such a process will allow all electric utilities and other stakeholders not present in this docket to participate in the development of new rules to govern our review of CPCN petitions in the future.

³⁵ PacifiCorp Reply at 4-5.

³⁶ OAR 860-025-0030; OAR 860-025-0035; OAR 860-025-0040.

VI. ORDER

IT IS ORDERED that PacifiCorp's motion for partial waiver and clarification of scope is denied with leave granted to raise similar issues later in these proceedings consistent with this order.

Made, entered, and effective Aug. 11, 2025.



Letha Tawney
Chair



Les Perkins
Commissioner



Karin Power
Commissioner

