

ORDER NO. 19-311

ENTERED Sep 24, 2019

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 626

In the Matter of

Rulemaking Regarding Certificate of Public
Convenience and Necessity.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our September 24, 2019 Regular Public Meeting, to adopt Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

Made, entered, and effective Sep 24, 2019.



Megan W. Decker
Chair



Stephen M. Bloom
Commissioner



Letha Tawney
Commissioner



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.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: September 24, 2019**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: September 16, 2019

TO: Public Utility Commission

FROM: Nadine Hanhan

THROUGH: Jason Eisdorfer and JP Batmale **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF (Docket No. AR 626)
Certificate of Public Convenience and Necessity Rulemaking: Motion to
Begin Informal Proceedings.

STAFF RECOMMENDATION:

Staff recommends that the Commission open a docket to consider changes to the administrative rule regarding Certificates of Public Convenience and Necessity (CPCN).

DISCUSSION

Issue:

Whether to open a docket to consider changes to the rule for CPCNs.

Applicable Rule or Law

ORS 756.060 authorizes the Commission to adopt reasonable and proper rules relative to all statutes administered by the Commission.

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 (Commission) for a certificate of public convenience and necessity. If the Commission grants a CPCN petition, a certified copy of the Commission's order is conclusive evidence in a condemnation proceeding that the transmission line for which the land is required is a public use and necessary for public convenience.

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OAR 860-025-0030 is the Commission's rule on petitions for CPCNs. OAR 860-025-0030 was first adopted in 1974 per the Commissioner's Order No. 74-307. Section (1) of the rule sets forth the required contents for a CPCN petition. This section of the rule has been unchanged in content, other than housekeeping changes, since its initial adoption. Sections (2), (3), and (4) were added in 1991 to identify the findings the Commission must make in a CPCN order to ensure the decision is compatible with state land use planning requirements.¹ Similar to section (1), sections (2), (3), and (4) have remained unchanged from the original content, other than housekeeping changes, since 1991.

Analysis

Staff's recommendation to consider changes to the rules pertaining to CPCNs is motivated by many reasons. First, the rules have not been updated in decades, and as such, predate relevant orders regarding utility regulation. In particular, OAR 860-025-0030(1) precedes modern resource planning guidelines. Review of pertinent planning analysis and approvals may aid the Commission in making findings of necessity and practicality. Investor-owned utilities regulated by the Commission are required to file an integrated resource plan for acknowledgment by the Commission, detailing future long-term resource needs, the costs and risks of alternatives, and an action plan.² Other utilities may seek funding from the USDA's Rural Utility Service (RUS), which requires evidence of an ongoing integrated planning system, including a construction work plan and other studies, to support loan applications.³ Staff supports amendments that require petitioners to include long-term and short-term planning documents with the petition and update the petition when such documents are updated.

Second, depending on the stated purpose of a proposed transmission line, the Commission may wish to require additional information. For example, if the purpose of the line is to add capacity, the Commission may want to consider whether the petitioner should be required to include any load forecasts, analysis of conservation measure options, outage data, or other information. Other information outside of integrated resource planning documents may be relevant if the stated purpose is to meet contractual obligations, create redundancy, or ensure reliability.

Third, the current rule requires some information to be provided on alternative transmission line routes, but it does not require a petitioner to provide information on the advantages or disadvantages of alternatives to constructing the transmission line in the initial petition. Staff supports amendments that require an evaluation of alternatives in

¹ See Order No. 91-700.

² OAR 860-027-0400.

³ See, generally, 7 CFR § 1710.250.

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the petition itself, rather than leaving such issues to be explored in discovery. Alternatives that may be considered may include construction of one or more lower voltage lines, conservation measures, or an agreement to allocate territory or customers to another utility.

Fourth, OAR 860-025-0030(1)(d) requires a petition to include a cost estimate for the project. Staff supports amending the rule to require inclusion of a rate impact analysis in the petition.

Fifth, the current rule does not require a petition to contain any specific information on the issue of safety. Staff supports the inclusion of additional safety information, such as a certification that the petitioner will adhere to the applicable safety standards of the Commission in OAR Chapter 860, Division 24, a description of the petitioner's experience in construction and operation of overhead transmission lines, and a description of the process and timeline petitioner will employ to construct the line (e.g. hiring of third party contractor v. use of petitioner's employees).

Sixth, to the extent the petitioner relies on land use approvals from local governments or the Energy Facility Siting Council (EFSC) to assert future compliance with land use requirements, Staff supports a requirement that the petitioner provide documentation of such land use approvals with the application.

Seventh, OAR 860-025-0030(3) requires the Commission to make findings regarding the proposed project's Statewide Planning Goal compliance and local land use compatibility, including at least one of:

(a) A copy of the local land use permit from each affected city or county planning agency, building department, or governing body stating that the proposed transmission project has received the jurisdiction's approval; or

(b) A copy of a letter from each affected local planning agency, building department, or governing body stating that the proposed transmission project is permitted under the jurisdiction's comprehensive plan, land use regulations, and development codes, but does not require specific approval by the jurisdiction; or

(c) Other written or oral land use information and documentation equivalent to OAR 860-025-0030(3)(a) or (b) above properly presented to the Commission from an authorized representative from each affected city or county; or

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(d) Commission goal compliance findings adopted pursuant to OAR 660-030-0065(3) and Dept. of Land Conservation and Development (DLCD) guidelines in situations when the Commission is unable to assure goal compliance by acting compatibly with one or more of the affected comprehensive plans.

As drafted, the current rule does not require the petitioner to provide documentation of approvals from authorized representatives of the affected jurisdictions, nor explain why it cannot provide them. Staff supports amendments to the rule that require such submissions and information because it may limit the premature filing of petitions.

Finally, Staff wants to improve the clarity and transparency of the CPCN process. Staff plans to use the rulemaking to re-organize the CPCN process into separate rules that much more clearly identify the application requirements, land use compatibility requirements, and, clarify the grounds that are sufficient to support issuance of a CPCN. The Commission has issued several orders on petitions for CPCNs over the years, and Staff supports reviewing and consolidating the criteria on which a petition will be considered into a new rule or set of rules.⁴

Conclusion

Staff's recommendation to consider changes to OAR 860-025-0030, pertaining to CPCNs, is motivated by what Staff believes to be a necessary review to consider updates consistent with Oregon statutes.

PROPOSED COMMISSION MOTION:

Staff recommends that the Commission open a docket to consider changes to the rule regarding Certificates of Public Convenience and Necessity (CPCN).

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⁴ See, e.g. Commission Order Nos. Order 11-366, 17-111, 19-293.