ORDER NO. 21-074

ENTERED Mar 05 2021

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

PCN 4

In the Matter of UMATILLA ELECTRIC COOPERATIVE, Petition for Certification of Public Convenience and Necessity.	ORDER

DISPOSITION: PETITION FOR CERTIFICATE OF PUBLIC AND NECESSITY GRANTED

I. INTRODUCTION

In this order, we grant the petition filed by Umatilla Electric Cooperative (UEC) for a certificate of public convenience and necessity (CPCN) to construct a 4.3 mile overhead 230 kilovolt (kV) transmission line from a planned Highway 730 Switchyard to a planned substation near Olson Road in Boardman.

II. BACKGROUND

A. Factual Background

UEC provides electric service to its Oregon members in Morrow, Umatilla, Union, and Wallowa counties. The UEC service territory is located west of Boardman in Morrow County and covers much of Umatilla County, surrounding the cities of Hermiston and Pendleton and into the Blue Mountains. As a consumer-owned utility, UEC is not subject to our jurisdiction with regard to its rates, service, and financial matters. However, UEC must petition for a CPCN if the construction of a transmission project will likely involve the condemnation of land or the taking of an interest therein.[1]

When a petition is received, the Commission must review and investigate the request. We are required to hold a public hearing and determine the necessity, safety, practicability, and public interest of the corresponding proposal. Our issuance of a CPCN is considered conclusive evidence that the project is necessary for public convenience. The CPCN is then employed as such in any subsequent eminent domain proceedings.[2] In this order, we grant UEC's petition based on the results of our investigation.

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[1] *See* ORS 758.015(1)

[2] ORS 758. 015(2).

B. Procedural Background

1. 2020 Public Meeting and Interventions

On March 19, 2020, UEC submitted its petition, along with testimony and exhibits supporting the construction of the proposed transmission line. We held a prehearing conference on April 8, 2020, to establish a procedural schedule. On June 4, 2020, we held a public comment hearing. To allow additional parties to participate in the proceedings, a second prehearing conference was held on June 25, 2020. Representatives appeared on behalf of Gary and Casey Frederickson, Terry and Cheryl Tallman, Randy and Kate Yates, Walo LLC, Umatilla Electric Cooperative, and Staff. During the prehearing conference, parties agreed to a procedural schedule which we subsequently adopted.

2. Testimony and Exhibits

On July 30, 2020, Staff filed its opening testimony and exhibits, followed by UEC reply testimony on August 19, 2020. Staff submitted rebuttal and cross answering testimony on September 9, 2020. UEC submitted rebuttal and cross answering testimony on September 22 2020. Staff filed an errata to its rebuttal and cross answering testimony on October 2, 2020.

3. Hearing

The administrative law judge conducted an evidentiary hearing remotely on October 29, 2020. Robert Echenrode, Louis Toth, and Jeffrey Mueller were witnesses for UEC. Staff proffered witnesses Nadine Hanhan and Yassir Rashid. The witnesses were primarily cross-examined by Mr. Terry Tallman and counsel for the Fredericksons. Post-hearing, UEC, Staff, the Tallmans, and the Fredericksons submitted initial and reply briefs.

4. Confidential Information

On September 22, 2020, Morrow County filed a request to issue a second modified protective order. Counsel for Morrow County obtained confidential information through the Huddle file-sharing program and downloaded it onto their servers. In our October 29, 2020 ruling, we denied the motion for a second protective order. Morrow County did not follow our process for challenging the confidential designation of the material, and did not inform UEC that it obtained the information until several weeks later. We determined the disclosure was inadvertent and that the material remained confidential.

On December 28, 2020, UEC requested that the Huddle file-sharing program be re-organized to more clearly designate and protect confidential material. As noted in the January 21, 2021 ruling by the Chief Administrative Law Judge, Huddle will maintain its

current organization. After the inadvertent disclosure, Huddle file folders and processes were reviewed, and found to be sufficient. Due to the COVID-19 pandemic, we developed a separate process in 2020 to receive confidential material electronically (as opposed to paper versions) outside of the Huddle program.[3] We continue to employ this process and therefore find a reorganization of Huddle unnecessary at this time.

III. LEGAL STANDARD

A. Oregon Law

ORS 758.015 requires specific information accompany a petition for a CPCN, which includes "setting forth 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."[4]

The law contains additional requirements we must complete in our consideration, including conducting an investigation of each item as noted above and entering an order based on the findings of the hearing and investigation.[5]

Further, unless the petitioner is also seeking approval from the Energy Facility Siting Council for the same transmission line, the order shall be subject to review as in other cases. Here, the line does not meet the threshold requiring approval from the Energy Facility Siting Council as it is less than 10 miles long.[6]

B. Oregon Administrative Rules

OAR 860-025-0030 provides additional detail regarding specific items that must be submitted in a petition for a CPCN. These additional items include that the description of the proposed line must contain information that "should be in 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."[7] The petitioner must include maps of the service area, the proposed route and alternative routes, descriptions of land to be condemned, costs and financial feasibility, explanations of alternative routes, and statements and supporting data regarding alternative routes.[8] Finally, the rule describes

[3] *In the Matter of Public Utility Commission of Oregon, Waiver of Rules to Accommodate Temporary Changes in Business Practices*, Docket No.UM 2061, Order No. 20-888 (Mar 18, 2020).
[4] ORS 758.015(1).
[5] *See* ORS 758.015(2).
[6] ORS 469.300(11)(a)(C).
[7] *See* OAR 860-025-0300(1)(b)
[8] *See* OAR 860-025-0030(1)(b)(c)(A) to (G)(e)(g).

the findings we must make when approving a petition. This includes adopting findings that "the proposed transmission project complies with 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."[9]

C. Previous Decisions

In previous cases, this Commission defined the terms necessity, safety, practicability, and justification as follows:

> "Necessity" means "great or absolute need." In turn, "need" means "a lack of something requisite, desirable, or useful." Thus, to establish the necessity of a project, the petitioner must demonstrate that Oregonians will forego something desirable and useful without it.
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> "Safety" means "the condition of being safe, freedom from being exposed to danger; exemption from hurt, injury, or loss. To establish the safety of a project, petitioner must show that the project will be constructed, operated, and maintained in a manner that protects the public from danger."
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> "Practicability" means "the quality or state of being practicable * * *." "Practicable," in turn, means "possible to practice or perform; capable of being put into practice, done, or accomplished * * *. To establish the practicability of the project, the petitioner must show the project is feasible and will be effectively and efficiently constructed."
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> "Justification" means "the act of or instance of justifying * * *." "Justify," in turn, means "to prove or show to be valid, sound, or continuing to fact or reason * * *. Thus, to show that a project is justified, the petitioner must show sufficient reason for the project to be built. To make this determination, we consider the public benefits and costs of the project. Where possible, we rely on benefits and costs that can be quantified in economic terms."[10]

In these previous cases, we relied on the plain, ordinary meanings of these terms.[11] We review and apply these same standards of necessity, safety, practicability, and

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[9] *See* OAR 860-025-0030(2).

[10] *See*, *In the Matter of Umatilla Electric Cooperative Petition for Certification of Public Convenience and Necessity*, Docket No. PCN 1, Order No. 17-111 (Mar 21, 2017); and *In the Matter of PacifiCorp dba Pacific Power*, Docket No. UM 1495, Order No. 11-366 (Sep 22, 2011).

[11] Order No. 17-111 at 4-6.

justification below. This discussion is organized by presenting necessity and justification together because they encompass intertwined issues relating to the purpose and rationale of the project. Safety and practicability are discussed individually. Finally, we review the land use compatibility.

IV. DISCUSSION

A. Necessity and Justification

1. UEC's Petition

UEC states that the transmission line is necessary for several reasons. First, UEC notes that its load growth rate since 2014 is 13.3 percent based on system capacity. Second, the current 115 kV line will exceed safe limits as UEC's load continues to grow. Forecast line loading shows that the existing lines would be subject to physical damage in the future without the addition of the new line. Along with increased capacity and reliability, UEC notes that the line will benefit development in the area.

More specifically, UEC witness Echenrode states that, as of the end of 2019, energy sales were up approximately 20 percent over the prior year, and approximately 125 percent over the last five years. UEC is now the largest electric cooperative in the ten western states in terms of power sales. As a result, UEC is expanding, replacing, and adding infrastructure to economically accommodate this growth in system capacity while at the same time taking advantage of opportunities to improve reliability economically. The transmission line will address local area capacity growth challenges and provide added system reliability through the addition of a new source to the Boardman/Morrow Flat area.[12]

UEC also states that the route chosen is justified. UEC examined three alternative routes and found that, in terms of cost, benefit and impact, the preferred route is justified by the comparative cost, benefit to its system and is the least impactful in terms of property, environmental and agriculture considerations. These items are discussed in more detail below. UEC notes that annual expenses associated with this capital investment are expected to be entirely offset by increases in retail electric sales in the Boardman/Morrow Flat area.[13]

[12] UEC/200, Echenrode/2-3.
[13] UEC/200, Echenrode/4.

2. Positions of the Parties

a. Staff

Staff agrees with UEC that the cooperative experienced consistent and significant growth from 2014 to 2019. Staff performed its investigation of this increase in load by reviewing UEC's growth rate over the past 20 years.

Staff finds the term "necessity" to mean that, absent the construction of the project, the reliability of UEC's transmission system will be compromised and UEC will likely fail to provide reliable and safe electric service to its members, and will likely fail to meet growing demand in its service territory.[14]

Staff notes that UEC conducted a contingency analysis that considered nine scenarios for the current transmission system under N-1 contingency (meaning the loss of one transmission element) after factoring load growth in the years 2026 and 2036. The analysis demonstrated that UEC should implement 230 kV line upgrades in addition to its existing 115 kV system to meet the growing demand in its service territory.[15] Based on its investigation and analysis, Staff concludes that the line is necessary and recommends approval of the line as proposed by UEC.[16]

Regarding justification, Staff did not perform a cost-benefit study, stating that the majority of the line's benefits are unquantifiable. Improvements to reliability and the ability to serve current and expected load growth are benefits to which it is difficult to assign a monetary value. Staff expresses its expectation that, as a consumer-owned cooperative, UEC is acting on the behalf of all of its customers, and any costs incurred are the result of actions taken by the representatives of the customers themselves. In a cooperative, according to Staff, the customers are also the stakeholders, and any profits the utility makes are either returned to them or are re-invested in the cooperative. So, while Staff did consider the total costs in its assessment of the filing, Staff did not consider cost to bear the same importance as it would if UEC were an IOU.[17]

Staff concludes that the line as proposed is justified based on a comparison of the proposal with the three alternatives analyzed by UEC (two alternate 230 kV line routes and a third alternative that would upgrade an existing 115 kV line) and consideration of each route's impacts. First, the cost of the proposed line ($12.4 million) was comparable

[14] Staff/200, Rashid/7.
[15] Staff/200, Rashid/9.
[16] Staff/200, Rashid/2.
[17] Staff/100, Hanhan/7-8.

to two 230 kV alternatives.[18] Each of the two alternative 230 kV routes required condemnation of land, as each crossed 17 parcels (as does the proposed route). In contrast, the proposed line requires the least amount of new easements (29.6 acres). Alternative Route 1 would have required 32.1 acres of new easements and Alternative Route 2 required 40.6 acres in new easements.

In addition to the cost and acreage for the different routes stated above, Staff notes that UEC further justifies the preferred route by explaining that the third alternative, utilizing the existing 115 kV line (and thus avoiding the need for condemnation), would require significant upgrades to other infrastructure, increasing the cost of this alternative to more than $30 million. According to UEC, this more expensive option would not provide the improved reliability of the preferred route.[19]

Energy efficiency was also deemed an inadequate alternative. Staff provided UEC's response to questions about non-wires alternatives. Staff states that, although UEC's energy efficiency programs are robust, the savings produced by these programs have been outpaced by load growth experienced within UEC's service territory.[20]

Finally, Staff points out UEC's statements that Alternative Route 1 goes through a zone called the Service Center, which would have impacted additional properties, does not parallel BPA's lines, and potentially would have impacted safety planning with the Port of Morrow/Columbia River Highway Interchange. In contrast, Alternative Route 2 was rejected because of environmental impacts and challenges, including that it crosses an irrigation circle, wetlands, and properties that are zoned residential.[21]

Staff states that UEC "did its due diligence to explore alternative options, control costs, and worked with landowners to minimize impacts."[22] Staff believes that UEC "has demonstrated that it has exhausted its other options, and that the line is justified."[23]

b. The Fredericksons

The Fredericksons own property adjacent to a portion of the proposed route. In their initial brief and reply brief, the Fredericksons assert that the record fails to demonstrate the necessity of the line and question the justification for the route chosen. Specifically, the Fredericksons assert that the proposed route is the "best available for UEC's

[18] Alternative Route 1 was estimated to cost ~$12.1 million, and Alternative Route 2 was estimated to cost approximately ~$12.8 million. A third alternative, which required no condemnation, was a 115 kV upgrade and cost-prohibitive with an estimate of ~$30.1 million.
[19] Staff/102, Hanhan/43 (PUC Staff Data Request 65).
[20] Staff/100, Hanhan/14 (citing PUC Staff Data Request 41 (Staff/102)).
[21] UEC/108, Toth/3.
[22] Staff/100, Hanhan18.
[23] *Id.*

purposes, but not the only viable one."[24] In addition to the four routes examined by UEC, the Fredericksons note four other potential routes identified in a letter received as part of the public comments.

The letter, dated June 4, 2020, submitted by Gary W. Coburn, describes four additional possibilities that utilize an industrial corridor north of Interstate 84. Mr. Coburn summarized the contents of the letter during the June public comment hearing. The Fredericksons note that Staff and UEC examined these routes and stated that, while they were possible, they were not the preferred route. The Fredericksons also state that placing the line underground was not considered.

Further, the Fredericksons note that UEC did not demonstrate how the transmission line was necessary to benefit farmers. The Fredericksons state that without such a demonstration, the transmission line cannot be sited on land zoned Exclusive Farm Use (EFU).

The Fredericksons cite a Land Use Board of Appeals (LUBA) case which they assert describes a similar situation (EFU-zoned land being appropriated for a utility facility). In that case, they say, the construction of a utility facility was denied by LUBA because, *inter alia*, "a finding that the proposed site is the best of available sites is inadequate."[25]

Finally, the Fredericksons state that the land is not being taken for public use. Rather, the Fredericksons rely on assertions from "community members" that the land is being taken for the increased energy needs of one UEC customer.[26]

3. UEC and Staff Response

UEC addresses the Fredericksons' brief by noting that it does not state the correct statutory standard for *necessity* in this proceeding. UEC points out that the Fredericksons instead use the definition of *necessity* as it is presented in ORS 215.275:

> As used in ORS 215.283 and refined by ORS 215.275, the "necessity" of a utility facility refers to the necessity to be in the EFU zone. LUBA has explained that, to comply with ORS 215.275, an applicant must first make a reasonable effort to identify reasonable non-EFU zoned sites. If non-EFU sites are identified, the applicant must demonstrate that those alternative sites are not feasible based on one or more of the factors set out in ORS 215.275(2).[27]

[24] Frederickson Opening Brief at 7.
[25] Frederickson Opening Brief at 7, citing *Harshman v. Jackson County*, 41 LUBA 330 (2002).
[26] Frederickson Opening Brief at 9.
[27] UEC Reply Brief at 5, citing *Getz v. Deschutes County*, 58 OR LUBA 559 (2009).

UEC notes that, even using the Frederickson's EFU standard, the transmission line siting on EFU-zoned land was necessary because the Highway 730 switchyard is surrounded by EFU-zoned land.[28] UEC states that the Fredericksons did not identify any route that would avoid the use of EFU zoned property. Thus, it is necessary to site the transmission line on EFU-zoned land for any possible route.

Regarding the "single customer" assertion, UEC first notes that the line is necessary to address reliability concerns. UEC cites Oregon case precedent to demonstrate that Oregon courts have long held that a use directly benefiting a limited number of persons—even one person – can nevertheless constitute a "public use."[29]

In its reply brief, Staff explains that neither the Tallmans nor the Fredericksons dispute the demonstrated and expected load growth as demonstrated by UEC and examined by Staff. Therefore, Staff concludes "a finding of necessity for the proposed transmission line does not appear in dispute."[30]

In addition, Staff notes that alternative routes may be considered in evaluating the practicability or justification in the public interest. UEC explained that it did not select a route north of Interstate 84 for evaluation as the proposed or an alternative route because routes north of Interstate 84 were not "less impactful" than the proposed route and alternative routes evaluated in the Petition. Segments for such a route would be "much more difficult, if not impossible, to site when compared to the preferred route and to the other alternatives UEC analyzed."[31] Staff reiterates UEC's analysis on these routes, and further notes that the Fredericksons do not identify evidence that rebuts these findings.

4. Commission Resolution on Necessity and Justification

Based on UEC's petition and Staff's review, we find the line to be necessary and justified. Staff examined and confirmed UEC's load growth. Staff reviewed UEC's load growth documentation from 2014 provided in UEC's initial application and requested and analyzed UEC's growth over the previous 20 years. By doing so, Staff corroborated a similar level of load growth.[32]

We agree with UEC that the Fredericksons appear to substitute the definition of "necessary" employed for land use questions surrounding EFU-zoned land for the definition in our precedent. The LUBA precedent cited is not applicable here. As

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[28] UEC Reply Brief at 5.
[29] UEC Reply Brief at 6, citing *Bridal Veil Lumbering Co. v. Johnson*, 30 Or 205, 210 (1896). The Court allowed condemnation of private property to build a railway serving a single lumber company, declaring it a "public use" where any person could have used the railway for transportation or shipping – even though no one did.
[30] Staff Reply Brief at 1.
[31] *Id.* at 2, citing Staff/102, Hanhan/37.
[32] Staff/100, Hanhan/8-9, and Figure 1.

demonstrated by UEC and Staff, the addition of the transmission line is necessary to accommodate load growth and maintain reliable service. Therefore, we determine that the proposed line is necessary and in the public interest, based on evidence of load growth, UEC's current and future capacity needs, and reliability considerations.

The justification for the line is based not only on the need for the project, but also a consideration the public benefits and costs of the project. As noted above, we rely on the benefits and costs that can be quantified in economic terms when available. From the record, it is apparent that UEC considered (and Staff reviewed) the cost of several alternatives, including those contained in the public record. As presented by UEC and reviewed by Staff, the cost of the line is comparable to the two 230 kV alternatives and significantly less expensive than the 115 kV upgrade. The preferred 230 kV route addresses UEC's demonstrated growth and future capacity concerns. The cost of the line will be offset by increased electricity sales in the Boardman/Morrow Flat area. Therefore, we conclude, based on the costs and benefits presented by the parties, that the preferred route is justified and in the public interest.

We note that Staff has stated an expectation that consumer-owned utilities, such as UEC, act in the interest of their customers because the customers have more direct control over the utility. We clarify that we are implementing our review of proposed transmission lines under ORS 758.015 in the same way, and subject to the same standards, regardless of the ownership nature of the utility. Although we share Staff's recognition that consumer-owned utilities have a different relationship with their customers, we are not inclined to assume that justification or need is demonstrated by the ownership structure of the utility in and of itself.

B. Practicability

1. UEC's Petition

UEC describes the starting and ending points for the preferred route as the planned Highway 730 Switchyard and the planned Olson Road Substation (which will provide distribution service). Between those points, the transmission line will utilize existing transmission corridors to the extent possible in order to minimize miles of new corridor, which, according to UEC, minimizes the impact to the community and the environment. The proposed route also makes use of publicly-owned property, areas where UEC already has existing easements, and properties where UEC was able to find willing landowners.[33]

UEC states that siting the crossing under Bonneville Power Administration's (BPA) existing transmission lines in this area was a major constraint guiding the overall route selection, and UEC located a crossing that is consistent with BPA's permitting

[33] UEC/200, Echenrode/4.

requirements. Siting the crossing over the West Extension Irrigation District canal is consistent with the Bureau of Reclamation's permitting requirements, which permit such crossings.

UEC also notes that it met with Oregon Department of Transportation representatives at the site where the transmission line would be located on highway right-of-way and received positive assessment of the proposed route. Morrow County's Planning Department has reviewed the proposed route and is aware of the county road crossings for which UEC will need to file crossing permits. The City of Boardman has reviewed the proposed route and has advised UEC's land use team about a planned loop road to enhance traffic safety in the Laurel Lane Road, Interstate-84 interchange area (Port of Morrow Interchange). The design of the proposed route will accommodate the City's road development plan.[34]

2. Positions of the Parties

a. Staff

Staff's opinion, based on information provided by UEC and additional information requested and received, is that the line is practicable. Staff states that UEC has selected the best available route, that the transmission line is financially feasible, and that the line will be constructed efficiently and effectively.[35]

Staff requested additional information about required crossing permits. UEC responded that the proposed route has two ODOT highway crossings, two county road crossings, a canal crossing, and a BPA line crossing. Though UEC has yet to apply for the necessary crossing permits, it represented to Staff that the crossing permits are typically sought after easements are secured.[36]

b. Tallmans

During the hearing, Mr. Tallman stated that the Tallmans were still uncertain about how the line would impact a planned loop road. In addition to owning two parcels that would be subject to condemnation under the proposed route, the Tallmans run a small business that could be adversely affected by road modifications. Mr. Tallman inquired about the status of the road and why no specific plans were publicly accessible.[37]

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[34] *Id.* at 5.
[35] Staff/200, Rashid/13-14.
[36] Staff/102, Hanhan/15 (PUC Staff Data Request 18).
[37] Tr. at 19, line 14 through at 20, line 5.

3. UEC and Staff Response

On the stand, in response to Mr. Tallman's inquiry, UEC witness Echenrode stated that UEC "has received no information that our proposed design would impact or restrict the development of loop road" and that "the plans for the road will continue to be developed."[38]

In its reply brief, Staff continues to find the proposed line is feasible, can be efficiently and effectively constructed, and is justified in the public interest.

4. Commission Resolution on Practicability

We agree with Staff that the line is practicable. In addition to the information contained in the initial petition, UEC responded to several Staff data requests regarding the feasibility of the route and cost impacts. Based on the cost, crossing permits and other factors required to be addressed prior to and during construction, UEC's preferred route is feasible. Therefore, we find that the line meets our practicability standard.

C. Safety

1. UEC's Petition

UEC contends that it has substantial experience in constructing, operating, and maintaining transmission lines in a safe, efficient manner. UEC witness Toth explained that "[t]he Transmission Line will be constructed, operated, and maintained to meet or exceed all applicable National Electrical Safety Code standards, as well as all applicable federal, state and local laws, regulations, and ordinances."[39]

2. Positions of the Parties

a. Staff

Staff relies on the statements made in UEC's petition, including that the PUD has been operating for more than 83 years. Staff notes that UEC will meet the standard required in a CPCN evaluation. Staff witness Rashid notes that he has found no evidence that high voltage transmission lines pose health risks "to humans who live in proximity to those lines outside of the horizontal clearance zone."[40]

[38] *Id.* at 19, lines 21-23.
[39] UEC/100, Toth/17.
[40] Staff/200, Rashid/11.

b. Tallmans

In their opening brief, the Tallmans note several health hazards from overhead power lines, including potentially detrimental effects on pacemakers and implanted cardiac pacemakers in a study from 1983. The Tallmans also refer to a report from California which presents potentially harmful effects of electro-magnetic fields (EMF) from power lines on humans and animals.[41] However, a citation for the specific report is not included.

3. UEC and Staff Response

UEC does not respond to the Tallman's health assertions. Staff replies to this concern by noting that there is "no conclusive medical evidence that high voltage transmission lines, constructed under modern construction standards, pose health risks to humans who live in proximity to those lines outside of the horizontal clearance zone."[42] Thus, Staff does not concur with the Tallmans the project presents a health and safety risk. Staff further notes in its reply that, because UEC will comply with all National Electric Safety Code standards for construction and operation of the line, that the safety criteria for the CPCN is satisfied.[43]

4. Commission Resolution on Safety

As we have stated previously safe construction and operation an electric transmission system is paramount to the public interest.[44] We agree with Staff that UEC has a record of safe system operation, is committed to use the relevant and most recent safety standards to build, operate, and maintain the proposed line. Therefore, we find that the safety considerations have been adequately addressed by UEC, Staff, and by the record in this case. We encourage UEC to employ emerging best practices for wildfire prevention in construction and operation of the line.

D. Land Use Findings

1. UEC's Petition

The proposed line will cross through two jurisdictions with planning authority—the City of Boardman and Morrow County. UEC notes that both jurisdictions have comprehensive plans acknowledged by the Department of Land Conservation and Development (DLCD).

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[41] Tallman Initial Brief at 3-4.
[42] Staff/200, Rashid/11.
[43] Staff Reply Brief at 4, citing OAR 860-024-0010.
[44] *In the Matter of Tillamook People's Utility District, Petition for Certificate of Public Convenience and Necessity*, Docket No. PCN 2, Order No. 19-293 at 16 (Sep 10, 2019).

The City of Boardman planning department has advised UEC's land use team that the proposed project will intersect the Service Center (SC) zone and General Industrial (GI) zone. The proposed project is permitted outright in both SC and GI zones consequently it would require only a standard non-discretionary zoning permit. UEC's land use team will continue to work with local planning and regulatory staff as the project progresses.

Regarding Morrow County, the transmission line is an outright permitted use and does not require land use approval except for the portion of the line that passes through the County's EFU zone. UEC applied for a Land Use Decision from the County after obtaining permission from all property owners within that zone.

2. Positions of the Parties

a. Staff

Staff notes the city and county comprehensive plans and zoning regulations, and states that, to its knowledge, neither jurisdiction has a plan amendment or regulation relevant to this petition that is pending approval at DLCD. UEC submitted a letter with its petition from the City of Boardman, which states that transmission lines are permitted outright in the two planning zones affected by the proposed route within the City. This letter supports a finding of compatibility under OAR 860-025-0030(2)(b). UEC's land use approval was issued by Morrow County on July 21, 2020, satisfying OAR 860-025-0030(2)(16)(a). According to Staff, UEC has demonstrated that the transmission project is compatible with land use regulations and statewide planning goals.

b. Fredericksons

The Fredericksons do not believe the line benefits farmers, which they assert is a requirement because the proposed line extends through farm territory. The Fredericksons cite to agricultural policy which is meant to preserve agricultural land.[45] The Fredericksons opine that the route extends "almost entirely" through land zoned as EFU, instead of utilizing corridors north of Interstate-84. Further, the Fredericksons assert that because UEC fails to demonstrate that the transmission line benefits area farms, and because the line degrades the beauty of the area and would allow for the expansion of non-farming activities such as the construction and operation of data centers in the area, that the preferred route of the transmission line is not compatible with Oregon's statewide planning goals regarding agricultural lands.[46]

[45] OAR 660-015-0000(3) states that "agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs to agricultural products, forest and open space and the state's agricultural land policy expressed in ORS 215.243 and 215.700."

[46] Frederickson Initial Brief at 5-6; Reply Brief at 4.

c. Tallmans

The Tallmans argue that the transmission line does not comport with the City of Boardman's prohibition on overhead lines.

3. UEC and Staff responses

UEC notes that the transmission line passes through six different land use zones in two different jurisdictions. Only four of the seventeen parcels the Transmission Line crosses are in the Exclusive Farm Use (EFU) zone.

UEC further notes that the Fredericksons' brief cites to a legislative policy—ORS 215.243 – rather than to any specific statewide land use planning goal. Although that statute is relevant to Statewide Planning Goal 3 (Goal 3), it does not actually establish the contours of Goal 3 nor impose any specific mandate. Instead, Goal 3 is implemented through a combination of statutes and rules, which includes ORS 215.283. That statute expressly allows non-farm utility facilities like transmission lines to be sited in an EFU zone by right. Thus, UEC asserts that, contrary to the Fredericksons' arguments, the transmission line complies with Goal 3 even without evidence of specific benefits to farm uses.[47]

Staff notes that the Commission may rely on decisions from affected cities or counties without making our own findings as to compliance with state land use requirements. Staff points out that the City of Boardman confirmed that the line is an outright permitted use, not requiring a discretionary permit. The Morrow County Planning Commission approved the Morrow County Planning Director's decision approving the line. Thus, Staff concludes that the Commission is not bound to make an independent finding, and may rely on the documentation on the record to find the transmission line is compatible with relevant land use goals and regulations.

4. Commission Resolution on Land Use Findings

We agree with Staff that, as stated in OAR 860-025-0030(3)(a), we may rely on decisions from the affected local jurisdictions. On the record there are express approvals from both the City of Boardman and Morrow County that the transmission line is compatible with each jurisdiction's land use plan and regulations. Therefore, we conclude that UEC's proposed facility and route complies with Oregon's statewide land use planning goals.

[47] UEC Reply Brief at 4; citing UEC/104, Toth/1.

V. CONCLUSION

We find that UEC has met the legal requirements under ORS 758.015 and OAR 860-025-0030(2) for a certificate of public convenience and necessity for the proposed line. We approve UEC's petition.

VI. ORDER

IT IS ORDERED that that the Umatilla Electric Cooperative is granted a Certificate of Public Convenience and Necessity to construct a 4.3 mile overhead transmission line from the planned Highway 730 Switchyard to a planned substation near Olson Road in Boardman, both to be constructed by Umatilla Electric Cooperative.

Made, entered, and effective Mar 05 2021.

Megan W. Decker
Chair

Letha Tawney
Commissioner

Mark R. Thompson
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 Court of Appeals in compliance with ORS 183.480 through 183.484.