

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: CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
GRANTED

I. INTRODUCTION

This order addresses the petition of Portland General Electric Company (PGE) for a certificate of public convenience and necessity (CPCN) for its proposed Rosemont-Wilsonville transmission line project. We appreciate the robust participation in this docket from intervening organizations and individuals. We recognize that a proceeding that could lead to the taking of private property is an extremely concerning event for the individuals involved. In light of the potentially significant impacts of PGE's proposed Rosemont-Wilsonville project on individuals' property and their economic and personal well-being, we deeply appreciate that engagement with Staff, Commissioners, and other parties was so constructive, considerate, and well-informed. We are thankful for the time and effort to voice concerns and help us conduct a comprehensive and rigorous review of PGE's proposal.

The legislature has delegated to us the duty of determining whether transmission lines requiring condemnation, like the Rosemont-Wilsonville project, are necessary, safe, practicable, and justified in the public interest. Where we find that a transmission line meets those criteria, we are to grant a CPCN for the benefit of the greater public interest, despite the private properties that are implicated in its construction and operation. We take this obligation seriously and recognize the importance of scrutinizing such proposals. We make our decision only after carefully weighing the facts before us and the interests involved.

We conclude that PGE's proposed Rosemont-Wilsonville project meets the necessity, safety, and practicability standards set forth in ORS 758.015 and our rules, that it is

justified in the public interest, and that it has satisfied the relevant standards for showing that it will be consistent with Statewide Planning Goals and local land use regulations. PGE has demonstrated through robust analysis of increasing customer electricity loads in the South Metro area—both generally and specifically due to the Willamette Water Supply System Commission (WWSS) water treatment plant—and the corresponding increased risk of overloading and reliability contingency events that will occur without the Rosemont-Wilsonville project that there is a need for improved system reliability that will be served by the Rosemont-Wilsonville project. We find that the proposed line will be constructed, operated, and maintained safely according to best practices that are subject to ongoing improvement through our review of wildfire mitigation plans. We recognize that PGE considered many possible overall solutions and specific routes as part of its transmission planning process and as part of this docket, and we conclude that the company’s chosen route is practicable, feasible, and that it can be constructed in a commercially reasonable manner.

Finally, we conclude that the Rosemont-Wilsonville project is justified in the public interest. The Rosemont-Wilsonville project addresses a system reliability need for the South Metro area largely by expanding an existing utility and road corridor. While we acknowledge that some property owners along the Rosemont-Wilsonville route will bear negative visual impacts and temporary construction impacts, and that taller towers and a wider corridor may impact the area’s rural character, we do not find that these impacts outweigh the broader regional and societal need for reliable power, nor that individuals’ safety will be compromised, nor that there were superior alternatives available. We conclude, after weighing all the relevant evidence, that the project is in the public interest when compared to the alternatives. We therefore find it to be justified in the public interest and consistent with the statutory standards, as we discuss in detail below.

II. BACKGROUND AND PROCEDURAL HISTORY

On March 27, 2024, PGE filed a notice indicating its intention to petition the Commission for a CPCN for its Rosemont-Wilsonville transmission line project. On April 17, 2024, PGE filed its petition for a CPCN along with supporting testimony and exhibits. Concurrent with its petition, PGE filed a request for a waiver of the OAR 860-025-0030(3) requirement that it provide all the documentation required to support a finding under OAR 860-025-0040(2) or (7) with its petition. Specifically, PGE sought a waiver to file its petition for a CPCN prior to receiving the land use permit and right-of-way permit from Clackamas County.¹ PGE filed supplemental testimony on

¹ PGE Request for a Waiver of OAR 860-025-0030(3) at 11 (Apr. 17, 2024).

August 28, 2024, including new information regarding non-wire alternatives (NWA) and the construction of lower-voltage lines.

Staff of the Public Utility Commission participated in this matter as a party. WWSS, Save Stafford Road (SSR), and Ms. Kelly Bartholomew intervened and participated as parties in this proceeding.² SSR later withdrew from the proceeding.³

At its June 11, 2024, public meeting, the Commission adopted Staff's recommendation to grant PGE's request for a waiver of OAR 860-025-0030(3), allowing the Commission's CPCN review process to begin without final land use approval, as allowed by PUC rules. On July 16, 2024, PGE filed a status update stating that Clackamas County had determined that the company's permit application was incomplete, including that it was missing signatures from property owners, or condemnation authority in lieu of signatures, which was required to show that it had an adequate interest in the land. PGE stated that it would need to work with Clackamas County to identify a mutually acceptable resolution, because it would be unable to secure the required signatures from the owners of the property required to build the proposed line. PGE stated that it was potentially caught in a "catch-22" situation where the Commission expected it to have the land use permit before the CPCN could be granted, but Clackamas County's requirements required PGE to obtain condemnation authority, and thus a CPCN, before it would begin to review the permit application. PGE noted that it had identified several potential paths forward but that it would need more time to discuss with Clackamas County representatives.

The Commission held a virtual public comment hearing on July 23, 2024, and an in-person public comment hearing in Tualatin, Oregon on July 30, 2024; at both events, all Commissioners were present to hear oral comments from interested members of the public. The Commission also solicited written comments from the public on PGE's petition and received a significant number of comments through the issue date of this order.⁴ Several public commenters raised concerns around PGE's request for a waiver and urged the Commission to delay or reject PGE's request. Many public comments also

² On October 14, 2024, Kelly Bartholomew filed a petition to intervene, which was granted with conditions on October 22, 2024.

³ On October 10, 2024, SSR filed a letter withdrawing as an intervenor in the proceeding. On January 28, 2025, after the final round of testimony and approximately two weeks before the oral argument, John Lekas filed a petition to intervene as the president of SSR. Administrative Law Judge Sarah Spruce denied Mr. Lekas's petition to intervene on February 10, 2025. On March 31, 2025, the Commission issued Order No. 25-114 addressing Mr. Lekas's letter in response to ALJ Spruce's ruling.

⁴ See Staff/104, Kort-Meade; Staff/301, Kort-Meade; Staff/302, Kort-Meade. Additionally, many of the written comments (those submitted via email or our comment portal) may be viewed in the "Public Comments" section of the PCN 6 eDockets page, available at <https://apps.puc.state.or.us/docketpubliccommentreport?DocketID=24040>. Other written comments, including those submitted with attachments, are available in the general filings section of the PCN 6 eDockets page, available at <https://apps.puc.state.or.us/edockets/DocketNoLayout.asp?DocketID=24040>.

opposed PGE's proposed route and requested consideration of other routes, and a few commenters suggested alternatives such as undergrounding the line or forgoing the line in favor of battery storage technology or diesel generators. Some commenters maintained that PGE had not adequately involved affected communities and residents in developing the project and route. Several commenters raised concerns around the impacts of the proposed line on property values, wildfire risks, the local environment and wildlife, and the area's rural and scenic characteristics. Many commenters also raised concerns about exposures to electromagnetic fields (EMFs) from the line. Some commenters raised concerns around PGE's need for a land use permit from Clackamas County. Several commenters shared concerns that PGE had engaged in fraudulent, deceptive, or misleading actions in its pursuit of the Rosemont-Wilsonville line. The Commission also received extensive public comment on procedural issues.

On August 5, 2024, PGE filed a status update stating that it intended to file some of the information that Clackamas County said was missing from its land use permit application, but that it could not provide the landowner signatures or demonstrate condemnation authority. PGE reiterated that it was in a potential "catch-22" situation with the county. PGE stated that Clackamas County had indicated that it was willing to issue a Land Use Compatibility Statement (LUCS) as it had rejected PGE's Type II Non-Conforming Use Permit as incomplete due to the lack of landowner agreement or condemnation authority. On August 12, 2024, PGE filed a status update stating that it was continuing discussions with Clackamas County regarding a LUCS.

On August 12, 2024, SSR filed an application for reconsideration of Commission Order No. 24-191 granting PGE's request for a waiver of OAR 860-025-0030(3). On August 13, 2024, Staff filed a motion to suspend the procedural schedule pending PGE providing a more definite schedule to provide the necessary documentation to support the Commission's required land-use findings. On August 19, 2024, PGE filed a response opposing Staff's motion, and SSR filed a response supporting Staff's motion. On August 19, 2024, Administrative Law Judge (ALJ) John Mellgren issued a ruling suspending the procedural schedule. On August 22, 2024, PGE filed a request for certification of ALJ Mellgren's ruling. On August 26, 2024, PGE filed a status update stating that Clackamas County had issued a LUCS along with a copy of that LUCS. Thereafter, PGE filed a motion to reinstate the procedural schedule. On August 27, 2024, PGE filed a response to SSR's application for reconsideration urging the Commission to reject the application. On August 27, 2024, SSR filed a response to PGE's request for certification.

On August 28, 2024, the Commission issued an order denying PGE's request for certification as moot and directing the Administrative Hearings Division to establish a

procedural schedule consistent with the order.⁵ The Commission did not issue an order addressing SSR's application for reconsideration of Order No. 24-191 within 60 days, and the application was deemed denied.⁶

The parties submitted multiple rounds of testimony. On December 23, 2024, Ms. Bartholomew filed signatory pages for General Protective Order (GPO) No. 23-132⁷ and Modified Protective Order (MPO) No. 24-087.⁸ On December 30, 2024, ALJ Sarah Spruce held a prehearing conference to discuss Ms. Bartholomew's requested access to protected information and PGE's concerns with that access. On December 31, 2024, PGE filed objections to Ms. Bartholomew accessing information under the MPO and accessing customer names under the GPO. On January 8, 2025, Ms. Bartholomew filed her response to PGE's objection and raised alleged errors made by both ALJ Spruce and PGE in the proceeding. Ms. Bartholomew requested that the Commission suspend or terminate the proceeding. On January 21, 2025, the Commission issued an order denying Ms. Bartholomew's request to suspend or terminate the proceedings.⁹

On January 8, 2025, the parties submitted motions to admit evidence into the record. PGE also requested that the Commission take official notice of certain documents. On January 13, 2025, PGE filed objections to certain items in Ms. Bartholomew's motion to admit. On January 21, 2025, ALJ Spruce issued a ruling sustaining in part and denying in part PGE's objections and taking official notice of the final opinion and order in Land Use Board of Appeals (LUBA) No. 2024-057 (LUBA No. 2024-057 Order) rejecting SSR's appeal of the Clackamas County LUCS.¹⁰ On February 5, 2025, Ms. Bartholomew filed an objection to the ALJ's ruling taking official notice of the LUBA No. 2024-057 Order. On February 4, 2025, PGE requested that the Commission take official notice of the final order and opinion in LUBA No. 2024-069 (LUBA No. 2024-069 Order)¹¹

⁵ Order No. 24-300 (Aug. 28, 2024).

⁶ OAR 860-001-0720(6).

⁷ *In the Matter of the Public Utility Commission of Oregon, Modifications to the General Protective Order*, Docket No. UM 2054, Order No. 23-132 (Apr. 10, 2023).

⁸ Order No. 24-087 (Apr. 2, 2024).

⁹ Order No. 25-010 (Jan. 21, 2025).

¹⁰ *Save Stafford Road v. Clackamas County*, Or. LUBA No. 24-057, Final Opinion and Order (Dec. 12, 2024) (*hereinafter* LUBA No. 24-057 Order).

¹¹ *PGE v. Clackamas County*, Or. LUBA No. 2024-069, Final Opinion and Order (Jan. 23, 2025).

remanding PGE’s land use application back to Clackamas County to consider it on the merits.¹²

The parties submitted opening briefs on January 23, 2025, and reply briefs on February 6, 2025.¹³ The Commission held oral arguments on February 13, 2025.

On March 26, 2025, the Clackamas County Zoning and Planning Division issued a decision denying PGE’s application for a nonconforming use permit.¹⁴

III. PGE’S PETITION

PGE requests a CPCN for the construction of a 7.3 mile overhead, 115-kilovolt (kV) transmission line located primarily within Clackamas County with a small portion in Washington County.¹⁵ The proposed line would run between the existing Rosemont and Wilsonville Substations.

PGE’s petition includes descriptions, data, maps, and other information required by the Commission’s rules to enable the Commission and the public to assess PGE’s proposal. PGE asserts that the Rosemont-Wilsonville transmission line is a necessary component of the Tonquin Project, which is needed for the company to comply with its obligation to provide adequate, safe, and reliable energy services to its customers in the South Metro Portland area.¹⁶ PGE states that the line will be safe, that the company can construct the project in a practicable, feasible, and commercially reasonable manner, and that the project is justified.

IV. 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.¹⁷ The petition for a CPCN must provide “a detailed

¹² While Ms. Bartholomew objected to the Commission taking official notice of the LUBA No. 2024-057 Order, the substance of her objection appears to object to the LUBA No. 2024-069 Order. For the purposes of considering whether to take official notice, we treat her objection as an objection to noticing both LUBA orders. We take official notice of both the LUBA No. 2024-057 and LUBA No. 24-069 Orders under OAR 860-001-0460(1)(b) as administrative rulings of an Oregon agency, and we refer to these orders in this Order.

¹³ WWSS did not file briefs in these proceedings.

¹⁴ *Clackamas County Planning and Zoning Division, File No. Z0236-24*, Notice of Decision on a Type II Land Use Permit (Mar. 26, 2025), available at <https://aca-prod.accela.com/CLACKAMAS/Default.aspx> (under the “Planning” tab enter “Z0236-24” in the “File Number” field and then open “Record Info”). We take official notice of the Clackamas County Planning and Zoning Division’s decision under OAR 860-001-0460(1)(b).

¹⁵ PGE Petition for Certificate of Public Convenience and Necessity (CPCN) at 1 (Apr. 17, 2024).

¹⁶ *Id.* at 11; PGE/100, Beil/2.

¹⁷ ORS 758.015(1).

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.”¹⁸

After receiving such a petition, the Commission must “give notice and hold a public hearing on such petition.”¹⁹ 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.”²⁰

OAR 860-025-0030 provides additional requirements for 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.

In reviewing a petition for a CPCN, the Commission must consider a number of factors.²¹ These factors include:

- (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 petition 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

¹⁸ *Id.*

¹⁹ ORS 758.015(2).

²⁰ *Id.*

²¹ OAR 860-025-0035(1).

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.²²

The Commission may also consider any “other factors it deems relevant to the statutory criteria.”²³ As an Oregon natural resource agency, the Commission must also consider the effect of its decision on environmental justice issues.²⁴

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.²⁵

V. DISCUSSION AND RESOLUTION

A. Notice Requirements

Under OAR 860-025-0030(2)(f), PGE was required to provide notice of the petition to each person with interests “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.” PGE was also required to provide certification that it had provided that notice. PGE provided proof of that notice with its petition and met our requirements.²⁶

Though PGE met the requirements under our rules, we note that some public commenters raised concerns with the quality of PGE’s community engagement in developing the line and informing affected property owners, as well as how it engaged with property owners regarding easements. The quality of PGE’s engagement with affected property owners and the community in general regarding the line is beyond the scope of this proceeding. However, we encourage PGE to engage with and seek feedback from communities as it develops future transmission projects prior to seeking a CPCN.

²² OAR 860-025-0035(1)(a)-(d).

²³ OAR 860-025-0035(1)(e).

²⁴ ORS 182.545(1).

²⁵ ORS 758.015(2).

²⁶ PGE Petition for a CPCN, Attachment 5.

B. PGE’s Petition for Certificate of Public Convenience and Necessity

1. Filing Requirements for a Petition for Certificate of Public Convenience and Necessity

Under ORS 758.015(1), a petition for a CPCN must:

[set] 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.²⁷

The Commission adopted rules articulating additional requirements for filing CPCN petitions in September 2022.²⁸ These rules require a petition to include:

a description of the proposed route, voltage, and capacity of the line; maps depicting the proposed route and alternative routes; maps of each parcel of land that the petitioner has acquired or may need to acquire an interest in; estimates of incurred and anticipated future costs; costs and benefits of the proposed transmission line; load forecasts; narrative descriptions of land use approvals required for the proposed transmission line; evaluation of alternatives; the names and addresses of individuals with an interest in land that may be physically impacted by the proposed transmission line; and certification that individuals whose land may be physically impacted by the proposed transmission line have received notice of the CPCN petition, amongst other requirements.²⁹

2. Parties’ Positions

a. PGE

PGE maintains that it filed its petition in accordance with the filing requirements under OAR 860-0025-0030.³⁰ Regarding concerns that its NWA analysis was not provided with its petition or was not robust enough to meet the requirements of the Commission’s rules, PGE argues that the new CPCN rules were not adopted until years after PGE had produced the white paper identifying the need for the Rosemont-Wilsonville line. PGE further argues that it analyzed NWA through supplemental and reply testimony, including

²⁷ ORS 758.015(1)

²⁸ OAR 860-025-0030.

²⁹ *In the Matter Idaho Power Company, Petition for Certificate of Public Convenience and Necessity*, Docket No. PCN 5, Order No. 23-225 at 7 (Jun. 29, 2023); OAR 860-025-0030.

³⁰ PGE Opening Brief at 14 (Jan. 23, 2025).

analyzing NWA that could theoretically address the identified reliability issues, and that there is a robust analysis on the record.³¹

b. Staff

Staff states that it found that as filed on April 17, 2024, PGE's petition did not meet the requirements of OAR 860-025-0030(2)(f), because it did not include a description of the intended use and specific necessity and convenience of each easement deemed necessary for construction of the proposed line.³² Staff maintains that PGE later provided this information in response to a data request and in rebuttal testimony.³³ Staff states that with this information, PGE's petition meets the filing requirements under ORS 758.015 and OAR 860-025-0030.

c. Ms. Bartholomew

Ms. Bartholomew argues that the Commission's rules require that a petitioner provide an evaluation of available alternatives to the construction of a transmission line, including, but not limited to, conservation measures, NWA, and construction of one or more lower-voltage single or multi-circuit lines.³⁴ Ms. Bartholomew argues that PGE did not provide an analysis of NWA until four months after it filed its petition. Ms. Bartholomew maintains that PGE's analysis of NWA was an afterthought rather than a realistic examination of their options to meet the identified reliability need using NWA.³⁵ Ms. Bartholomew contends that PGE did not justify why it did not look at NWA, including distributed energy resources (DERs) identified in its 2024 Distribution System Plan (DSP), and stated only that it did not think these options were realistic.³⁶ Ms. Bartholomew maintains that this was not the intention of the rules.

3. Resolution

We find that PGE's petition for a CPCN, as supplemented through testimony and exhibits in the contested case process, is complete and meets the requirements of ORS 758.015(1) and OAR 860-025-0030. Though we find the NWA analysis provided through testimony and exhibits is sufficient to meet the requirements of ORS 860-025-030 in the context of this proceeding, which concerns a reliability issue PGE identified and analyzed well

³¹ Oral Argument Tr. at 21-22.

³² Staff Opening Brief at 4 (Jan. 23, 2025).

³³ *Id.* citing PGE/902-903, Messinger.

³⁴ Kelly Bartholomew Opening Brief at 7 (Jan. 23, 2025).

³⁵ *Id.* at 11.

³⁶ Oral Argument Tr. at 56-57.

before we amended the CPCN rules, we appreciate Ms. Bartholomew's concerns regarding the NWA analysis provided by PGE and address those concerns below.

OAR 860-025-0030(2)(n) requires that a petition for a CPCN contain "[a]n evaluation of all 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."³⁷ Ms. Bartholomew raised concerns that PGE's NWA analysis was not provided with its initial petition filing and that the NWA analysis provided over the course of the proceeding was insufficient. Turning first to the issue of whether the rules require the initial filing to include all of the required information in OAR 860-025-0030 (or be accompanied by a request for a waiver consistent with the rules), we clarify that we expect petitions to be substantially complete at the time of filing. We expect that if a petitioner filed a petition that was clearly missing information required by statute or rule, Staff or another party would raise that issue as soon as possible so that the matter could be addressed early in the proceeding.

At the same time, we note that the purpose of a contested case process is to examine and test evidence and to develop a record. The petitioner is not solely limited to the information provided with the initial petition to make their case. As part of the contested case process to consider a petition for a CPCN, the petitioner has the burden of proof to demonstrate that they have met all of the requirements, including the ultimate burden of persuasion in responding to other parties' evidence.³⁸ At the end of the contested case process, we consider the entire record developed to determine whether the petitioner has met that burden. We find that the fact that PGE did not provide the analysis required by OAR 860-025-0030(2)(n) with its initial petition does not preclude us from finding that the petition can be evaluated based on the full record, particularly where the initial transmission analysis occurred before the rule requiring NWA analysis was adopted. PGE sought and received permission to file supplemental testimony analyzing NWA, and that testimony was tested through data requests and testimony throughout the contested case process.³⁹ It would not serve administrative efficiency to decline to grant a CPCN at the end of the proceeding solely on the basis that information was not provided at the inception, particularly where that information was ultimately provided at an early stage of the proceeding.

We recognize that transmission planning is usually a multi-year process, occurring well in advance of any land acquisition, permitting applications, or construction. For the

³⁷ OAR 860-025-0030(2)(n).

³⁸ *See, e.g. In the Matter of Northwest Natural Gas Company, Request for a General Rate Revision*, Docket No. UG 435, Order No. 22-388 at 52 (Oct. 24, 2022) (stating that there are two aspects to the burden of proof: the burden of persuasion and the burden of production of evidence to rebut a utility's proposal).

³⁹ ALJ Ruling Granting Leave to File Supplemental Testimony at 2 (Aug. 28, 2024).

Rosemont-Wilsonville project, PGE’s white paper produced as part of its study to determine the impact of the anticipated load from the WWSS plant was drafted in 2020.⁴⁰ Our new rules requiring the NWA analysis be provided with a petition for a CPCN were adopted in September 2022.⁴¹ By the time our revised rules were in effect, the transmission planning was already well under way. Under these timing circumstances, and given the near-term reliability need for the project, we find that the analysis provided through the course of these proceedings is sufficient for us to consider the merits of the application.

Going forward, however, we expect NWA analysis to occur when companies are initially analyzing solutions for meeting a reliability or capacity need. NWA analysis, whether conducted as part of the initial reliability analysis or in preparation for filing the petition, must be provided when filing the petition itself.

C. Waiver of OAR 860-025-0030(3) Filing Requirement

OAR 860-025-0030(3) requires that petitioners seeking a CPCN include with the petition all necessary documentation to support a finding under OAR 860-025-0040(2) or (7). Under OAR 860-025-0030(4), a petitioner that has not or cannot obtain all necessary document to support a finding under OAR 860-025-0040(2) or (7) must submit a request for a waiver of OAR 860-025-0030(3). On June 12, 2025, the Commission granted PGE’s request for a waiver of OAR 860-025-0030(3). Ms. Bartholomew raised issues regarding this waiver and the changing circumstances around the permits that PGE seeks from Clackamas County. We address these issues below.

1. Parties’ Positions

a. Ms. Bartholomew

Ms. Bartholomew asserts that PGE has shifted its reasoning for the waiver since the Commission granted its request for a waiver. Ms. Bartholomew maintains that PGE received the waiver so that the local land use permitting process and the CPCN could run parallel, but the processes have not been parallel. Ms. Bartholomew contends that Clackamas County voided PGE’s land use application, after which PGE changed its reason for seeking a waiver to bypassing the land use requirement. Ms. Bartholomew argues that the Commission requires land use approvals prior to initiating a CPCN application, and PGE should have pursued a different permit rather than requesting that the rules be waived. Ms. Bartholomew notes that when the Commission granted the

⁴⁰ Petition for a Certificate of Public Convenience and Necessity at 3; PGE/101, Beil (Highly Protected); *see also* Oral Argument Tr. at 21 (Feb. 13, 2025).

⁴¹ *In the Matter of Rulemaking Regarding Certificate of Public Convenience and Necessity*, Docket No. AR 626, Order No. 22-351 (Sep. 26, 2022).

waiver, PGE expected to obtain land use approvals within a few months. Ms. Bartholomew maintains that at the June 11, 2024 public meeting to consider PGE's waiver request, Staff assured the Commission that the CPCN would be the last step in the process. Ms. Bartholomew argues that Staff now states that Clackamas County is unlikely to consider the permit application prior to the Commission issuing a final order on the CPCN petition. Ms. Bartholomew also questions PGE's assertions that the waiver was necessary because the project is urgent, noting that PGE now plans to use the CPCN to gain advanced occupancy in court prior to applying for the county permit.

b. PGE

PGE asserts that it has appropriately used the waiver process based on the information it had at the time of making the request, and it subsequently adapted to changing circumstances by obtaining a LUCS. PGE contends that at the time it requested the waiver, it believed the company could run the land use permitting process parallel with the CPCN, but this situation changed after it received the waiver.

PGE argues that Ms. Bartholomew is confusing the filing requirements of OAR 860-025-0030(3) with the evidentiary requirements of OAR 860-025-0040. PGE states that it pursued and obtained a LUCS from Clackamas County, which satisfies the evidentiary requirements of OAR 860-025-0040(3)(c), and fulfills the same purpose for which it requested the waiver. PGE maintains that the urgency behind PGE's waiver request has not changed, and the line is still needed to address an imminent need.

c. Staff

Staff asserts that the Commission's waiver of OAR 860-025-0030(3) was not a waiver of land use compatibility, but a waiver of a filing requirement to allow the petition to proceed at the same time as the land use process. Staff contends that the waiver does not impact the Commission's substantive findings on land use.

2. Resolution

At the time of the June 11, 2024 public meeting, our expectation was that the permitting process would be resolved by the time we issued an order in this docket. As an initial matter, we clarify that in granting a waiver of OAR 860-025-0030(3), we waived only a filing requirement. Nothing in the waiver reduced or eliminated the overall evidentiary requirements that PGE is obligated to meet or that we are required to consider in making a decision. The waiver permitted the contested case process to consider PGE's application for a CPCN to begin without PGE having provided all the documentation required under OAR 860-025-0040(2), a possibility we contemplated when we adopted the filing requirements in rule.

At the time that we adopted Staff's recommendation to waive OAR 860-025-0030(3), PGE stated that it had applied for a permit with Clackamas County and believed that it would receive that permit prior to the end of this CPCN proceeding.⁴² We granted the waiver to allow the CPCN proceeding to begin with this understanding, but also with the recognition that we would actively manage the CPCN review schedule if the land use circumstances changed. Indeed, this was not the end of the matter, and we have continued to actively monitor the land use process and adjust the schedule for our consideration of PGE's petition for a CPCN as we deemed appropriate.

After PGE notified the Commission that Clackamas County had rejected its land use application as incomplete, Staff filed a motion to suspend the procedural schedule, which ALJ Mellgren granted. Ultimately, after PGE filed the LUCS issued by Clackamas County and a motion to reinstate the proceeding, we directed the Administrative Hearings Division to establish a new procedural schedule to continue the proceeding.⁴³ In considering whether to reinstate the schedule, we weighed the fact that PGE could not, based on the information available at the time, continue with its original land use permit application, which Clackamas County had concluded could not be filed without landowner consent; to proceed with a land use application absent such consent, PGE would need to gain the necessary interest in the land through condemnation. This is the type of circumstance we had in mind when we adopted rules allowing a CPCN petitioner to rely on a LUCS to meet the requirements of OAR 860-025-0040, as discussed further in Section V.H below.

The waiver operated as intended to allow us to initiate the CPCN review and proactively manage the CPCN schedule in response to the land use context changes that continued even up until the time of our oral argument. There, Ms. Bartholomew noted that LUBA had disagreed with Clackamas County's conclusion that PGE could not file a land use application without landowner consent and requested that we suspend the procedural schedule to engage in further consideration of factual issues related to NWA and alternative routes. We have considered the request from Ms. Bartholomew and public commenters to extend our procedural schedule and delay our decision, recognizing that project commencement now awaits further land use process. We have concluded, however, that the record is sufficient and further evidence is highly unlikely to change our conclusion on those substantive issues, which we discuss in Section V.H. A procedural extension is thus not warranted.

⁴² PGE Request for a Waiver of OAR 860-025-0030(3) at 2, 14 (Apr. 17, 2024).

⁴³ Order No. 24-300 at 3 (Aug. 28, 2024).

In sum, once we grant a waiver and initiate the CPCN process, we do not reconsider whether to start the CPCN process. We do continue to consider whether changes in the land use context warrant altering the CPCN schedule, and at this stage they do not.

D. Necessity

To determine whether a proposed transmission line is necessary, our rules require us to ask whether “the transmission line * * * meet[s] 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.”⁴⁴ As described below, we conclude there is a demonstrated need for improved system reliability that would be served by the Rosemont-Wilsonville transmission line.

1. Parties’ Positions

a. PGE

PGE maintains that the proposed Rosemont-Wilsonville Line meets the OAR 860-025-0035(1)(a) criterion requiring the line to “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.”⁴⁵ PGE contends that it performed a transmission and distribution constraints analysis that showed that the addition of new load from the proposed WWSS treatment plant and future load growth will result in several more N-1-1 outage scenarios in the South Metro area. PGE maintains that the models show that ameliorative actions such as switching substations to alternate sources or adjusting generation patterns are not sufficient to protect against overloading. PGE contends that in its Annual Transmission Planning Assessments it has consistently identified the Tonquin Project, including the Rosemont-Wilsonville line, as a project needed to maintain reliability on PGE’s system.

PGE argues that the Tonquin Substation alone is not sufficient to address the new load from the WWSS water treatment facility and that it does not address the upstream transmission system constraints identified in the company’s transmission studies. PGE states that its transmission study analyzed the addition of both the Rosemont-Wilsonville line and the McLoughlin-Tonquin line, because it would not be possible for PGE to operate the system with the McLoughlin-Tonquin line but without the Rosemont-Wilsonville line. PGE asserts that, contrary to Ms. Bartholomew’s arguments, PGE studied the need for transmission components of the project separately from the need for the distribution components of the project. PGE maintains that its studies demonstrated

⁴⁴ OAR 860-025-0035(1)(a).

⁴⁵ PGE Opening Brief at 16-17 *quoting* OAR 860-025-0035(1)(a).

that the distribution components were necessary for the addition of the anticipated new load, they were not sufficient to address the transmission reliability issues.

PGE contends that Ms. Bartholomew misconstrues statements made by its witnesses, as well as Staff. PGE maintains that its witness Jason Salmi Klotz did not suggest that the Rosemont-Wilsonville line was not needed or important but only that its scale was too small to be included in the integrated resource plan.⁴⁶ PGE states that Staff's statements regarding PGE's intention to continue construction of the remainder of the Tonquin Project with or without the Rosemont-Wilsonville line should not be construed as indicating that the Rosemont-Wilsonville line is unnecessary. PGE maintains that the Tonquin Project is necessary to accommodate the new load and must be constructed. The Rosemont-Wilsonville line is an essential component of the Tonquin project in order to ensure that every substation is served by at least two transmission lines, enabling critical redundancy. Thus, without the Rosemont-Wilsonville line the overall project would not relieve the overloads identified in the required N-1-1 reliability analysis.

b. Staff

Staff argues that PGE has demonstrated that there is a reliability need for the proposed transmission line sufficient to meet the requirements of OAR 860-025-0035(1)(a).⁴⁷ Staff contends that PGE has not demonstrated that the Rosemont-Wilsonville line is not necessary for increased capacity. Staff maintains that a need to maintain system reliability alone is sufficient under the rule. Staff notes that it initially expressed concern over a specific transformer associated with the Tonquin Substation as potentially an unnecessary over-investment, but after reviewing PGE's analysis on that matter, Staff agrees with the analysis and the necessity of that portion of the project. Staff states that it examined each of PGE's options to address the reliability need and ultimately agreed with PGE that the Rosemont-Wilsonville line was the best option of those available to PGE. Staff maintains that it did not find support in the record for Ms. Bartholomew's argument that the PGE base case analysis improperly combined transmission lines. Staff confirms that the testimony Ms. Bartholomew references regarding the loading maximums remains accurate and explains that this does not mean that Staff failed to focus on the necessity of the Rosemont-Wilsonville line. Staff maintains that its statement reflects that the option selected by PGE also includes additional infrastructure from the Tonquin Project.

⁴⁶ PGE Reply Brief at 14 *citing* PGE/1200, Salmi Klotz/3-4.

⁴⁷ Staff Opening Brief at 7-8.

c. Ms. Bartholomew

Ms. Bartholomew argues that PGE has not met the burden required by OAR 860-025-0030(1)(b).⁴⁸ Ms. Bartholomew argues that all of the modeling, analyses, and N-1-1 contingency projections are based on PGE analyzing the Rosemont-Wilsonville line in conjunction with the McLoughlin-Tonquin lines. Ms. Bartholomew refers to a Staff statement noting that the recommended loading maximums experienced by the existing feeders will not be alleviated without the remainder of the Tonquin project.⁴⁹ Ms. Bartholomew maintains that this petition for a CPCN is about the Rosemont-Wilsonville line and not the larger Tonquin project. Ms. Bartholomew argues that it is not clear from the analyses provided what the contribution of the Rosemont-Wilsonville line alone would be and thus the analysis to demonstrate necessity are insufficient under the rules.

Ms. Bartholomew contends that a PGE witness has stated that the Rosemont-Wilsonville line is not a major transmission line and that the project would go forward as planned even if this line were not completed.⁵⁰ Ms. Bartholomew argues that this witness statement is incompatible with PGE's position that the project is essential and urgent.

Ms. Bartholomew argues that PGE has stated that the Rosemont-Wilsonville line would provide reliability beyond what is necessary to satisfy North American Electric Reliability Council (NERC) criteria. Ms. Bartholomew also argues that without the Rosemont-Wilsonville line, the South Metro area will still be served by seven substations.

2. Resolution

We find that PGE has demonstrated that there is a system reliability need that would be served by the Rosemont-Wilsonville line. We determine that the Rosemont-Wilsonville line is a necessary part of the project that PGE designed to overcome reliability deficiencies that surfaced in its N-1-1 analysis.

We appreciate Ms. Bartholomew's concerns that PGE failed to separate the Rosemont-Wilsonville line from the portions of the Tonquin project that are not part of this CPCN. We find, however, that it was reasonable for the analyses presented in these proceedings to consider the Rosemont-Wilsonville line as part of the larger whole, because it is expected that reliability deficiencies identified in an interconnected grid system will require multi-part solutions. Essentially, without the Rosemont-Wilsonville line, there would be insufficient redundancy serving the Tonquin substation following other

⁴⁸ Bartholomew Opening Brief at 11.

⁴⁹ *Id.* at 11 *citing* Staff/300, Kort-Meade/15.

⁵⁰ *Id.* at 11 *citing* PGE/1200, Salmi Klotz/3.

reconfiguration associated with the reliability solution and therefore an unacceptable reliability risk.⁵¹ Considering the Rosemont-Wilsonville line in this context is both reasonable and necessary.

PGE provided analyses demonstrating that with the additional load from the WWSS water supply facility and actual and projected load growth in the South Metro region, nine substations are at risk of a load shedding event.⁵² The company also identified a number of N-1-1 contingencies⁵³ that could cause overloading on the system.⁵⁴ Further, PGE has demonstrated that one substation in the area already has an existing transmission overload concern.⁵⁵ While NERC requires that PGE account for certain contingencies as part of its planning process, including N-1-1 and overload events, and technically permits load shedding as a planned response to such an event in order to prevent disruptions on PGE's transmission system from cascading outward to its neighbors on the bulk power system, PGE is also obligated under the Commission's rules to provide safe and reliable service to customers within its system.⁵⁶ Relying on load shedding to respond to loss of transmission system elements does not meet the state's fundamental expectation that PGE provide safe and reliable service to Oregon customers, and therefore is not a valid planning strategy, even if NERC allows it to protect the bulk electric system. PGE must find an infrastructure solution to the overloading risks in the South Metro area, and we find that the Rosemont-Wilsonville line, when combined with the rest of the Tonquin project, is a reasonable and necessary solution to that risk. We consider below, when we discuss justification in the public interest, whether PGE adequately considered other potential solutions.

E. Safety

To determine whether a proposed transmission line is safe, our rules require us to ask whether or not a transmission line will be constructed, operated, and maintained "in a manner that protects the public from danger and conforms with" Commission rules, other safety standards, and best industry practices.⁵⁷

⁵¹ See, e.g., Staff/102, Kort-Meade/189; PGE/101, Beil/4 (Highly Protected); PGE/100, Beil/34-37.

⁵² PGE/100, Beil/3-5, 26-38; PGE/101, Beil/17-30 (Highly Protected).

⁵³ N-1-1 contingencies are double outages of one transmission element followed by a subsequent loss of a second element, referred to as "P6 Multiple Contingency" in the NERC standards. PGE/100, Beil/; PGE/102, Beil/24; NERC Reliability Standard TPL-001-5.1, Table 1 – Steady State & Stability Performance Planning Events at 24.

⁵⁴ PGE/100, Beil/26-27, 34; PGE/700, Beil-Salmi Klotz/6-7; PGE/106, Beil/1-2 (Highly Protected).

⁵⁵ PGE/700, Beil-Salmi Klotz/6; PGE/101, Beil/18-19 (Highly Protected).

⁵⁶ PGE/102, Beil/8, 24; PGE/100, Beil/14-18; PGE/108, Beil/12; OAR 860-023-0091(1); see also ORS 757.020.

⁵⁷ OAR 860-025-0035(1)(b).

As discussed below, we conclude that the Rosemont-Wilsonville transmission line will be constructed, operated, and maintained in such a manner.

1. Parties' Positions

a. PGE

PGE maintains that it has demonstrated that the Rosemont-Wilsonville line will satisfy the Commission's safety criterion.⁵⁸ PGE asserts that its witness provided a sworn declaration that the Rosemont-Wilsonville line will meet or exceed all applicable NESC standards, as well as all applicable federal, state, and local laws, regulations, and ordinances. PGE argues that the record shows that the company has designed the line to meet or exceed all other relevant requirements, standards, and codes. PGE contends that it has demonstrated that it has extensive experience in safely designing, constructing, and operating transmission lines in Oregon.

PGE asserts that it has demonstrated that there is a low probability of ignition associated with the proposed line. PGE maintains that the proposed route is not in a high-risk fire zone (HRFZ) and that the newer equipment to be installed with the line will reduce the risk of ignition over existing conditions. PGE contends that it has further reduced the fire risk through mitigation actions that apply across the entirety of its service territory, consistent with its wildfire mitigation plan (WMP). Regarding arguments that the area lacks adequate local fire response services and prior fire incidents, PGE argues that Ms. Bartholomew provided no details regarding the cause of the fire she cites, nor the complications that the firefighters may have encountered. PGE represents that it has consulted with several local fire suppression agencies and there are significant response capabilities despite the rural nature of the area.⁵⁹

PGE contends that the modeled electric and magnetic field strengths for the proposed line are well within Oregon and industry safety standards. PGE notes that the Commission has not adopted specific standards regarding EMF strength and urges the Commission to consider the standards adopted by the Energy Facility Siting Council (EFSC) and the Institute of Electrical and Electronics Engineers (IEEE).

PGE asserts that the Rosemont-Wilsonville transmission line is designed to minimize the risk of electrical arcing and alternating current (AC) interference and that there is a very low risk for either concern. PGE maintains that NERC standards require it to design the line to avoid electrical arcing and AC interference. PGE argues that it installs relays and circuit breakers to address these issues and regularly inspects and performs maintenance

⁵⁸ PGE Opening Brief at 25.

⁵⁹ PGE/1500, Nuñez-Gordancier/3.

on lines to prevent overloading and to repair any worn or broken infrastructure that could cause electrical arcing.

b. Staff

Staff argues that the record demonstrates that PGE can construct, operate, and maintain the proposed line consistent with relevant safety standards.⁶⁰ Staff maintains that PGE is required to comply with all applicable NERC standards and that PGE also has identified several additional standards that it will comply with in constructing and managing the proposed line. Staff asserts that PGE will construct and operate the line in accordance with its WMP. Staff states that the proposed Rosemont-Wilsonville line will not be in a HRFZ and that PGE coordinated with local firefighting agencies regarding wildfire risks in developing the proposed line. Staff contends that PGE's analysis of EMF radiation shows that the risk is low.

c. Ms. Bartholomew

Ms. Bartholomew asserts that recent catastrophic fires in the United States have been attributed to high voltage power lines.⁶¹ Ms. Bartholomew contends that high voltage lines must not be placed directly over homes in rural residential farm communities with no public water infrastructure. Ms. Bartholomew maintains that the Stafford Road area is surrounded by brittle hay fields and dry trees during hot and dry summers, making it uniquely at risk of rapid-spreading fires. Ms. Bartholomew argues that these conditions are not adequately mitigated by fire response resources and the issue may only be solved by avoiding placing high voltage transmission lines over residential homes in this area.

2. Resolution

We conclude that the Rosemont-Wilsonville transmission line will be constructed, operated, and maintained in a manner that protects the public from danger and conforms with Commission rules, other safety standards, and best industry practices. The parties primarily focused on the risk of wildfires caused by the transmission line, and the Commission received several comments expressing concerns regarding EMF risks from the proposed line. We address the specific issues raised regarding wildfire and EMF risks below.

a. Wildfires

As we stated in our order in docket PCN 5, we recognize that electric transmission and distribution lines can be sources of fire ignition and that best practices for constructing

⁶⁰ Staff Opening Brief at 13.

⁶¹ Bartholomew Opening Brief at 12.

and operating electric infrastructure safely in the face of wildfire threats are evolving.⁶² Wildfires have been and continue to be a major concern in Oregon, as has ensuring that utilities are taking the necessary steps to mitigate the risk of utility infrastructure sparking fires. The Commission requires Oregon utilities to develop and regularly update WMPs, including identifying HRFZs.⁶³ The proposed route for the Rosemont-Wilsonville line is not within an HRFZ, but this is not the end of our analysis to determine whether the line meets the requirements of our rules. PGE must still demonstrate that it is taking and will continue to take adequate precautions to mitigate any increased risk that the proposed line could start a fire, such as through design features and operational practices set forth in its WMP, and that it has an adequate plan for coordinating with local public safety partners in the event of fire in the area, whether the ignition comes from utility infrastructure or another source.

We take seriously the concerns raised by Ms. Bartholomew as well as public commenters regarding the fire risk around Stafford Road. At the same time, there is no way to avoid the need for overhead transmission lines, and the focus must therefore be on evaluating the specific risks created by the project and how the petitioner has mitigated those risks. We find that PGE has provided persuasive evidence that this project reduces baseline risk and that remaining risks are mitigated through its operational practices and coordination with public safety partners, both of which are subject to our ongoing oversight under WMPs.

Newer equipment, such as the equipment to be installed with transmission line, is less prone to the failures that may result in fires.⁶⁴ PGE has cameras to monitor the lines for fires and real-time ignition detection technology that alerts first responders and public safety partners.⁶⁵ The majority of the line is within a five-minute response from local firefighting agencies that have water trucks.⁶⁶ PGE is also able to implement a public safety power shutoff in response to direct requests from fire agencies to reduce fire risk.⁶⁷ We conclude that these infrastructure, technology, and operational mitigation actions, combined with ongoing oversight of PGE's WMP, vegetation clearance policy, and vegetation management protocols, will ensure public safety during construction, operation, and maintenance of the Rosemont-Wilsonville transmission line.

⁶² *In the Matter Idaho Power Company, Petition for Certificate of Public Convenience and Necessity*, Docket No. PCN 5, Order No. 23-225 at 22 (Jun. 29, 2023)

⁶³ OAR 860-300-0020; ORS 757.963.

⁶⁴ PGE/800, Nuñez-Gordanier/9

⁶⁵ PGE/1500, Nuñez-Gordanier/3; PGE/800, Nuñez-Gordanier/13; OAR 860-300-0010(7) (defining "Public Safety Partners" as "ESF-12, Local Emergency Management, and Oregon Department of Human Services (ODHS)").

⁶⁶ PGE/800, Nuñez-Gordanier/11; Staff/102, Kort-Meade/200-201; PGE/1500, Nuñez-Gordanier/3.

⁶⁷ Staff/102, Kort-Meade/200-201.

b. EMF

Public commenters expressed significant concern about the health risks associated with EMF from transmission lines. We have taken these concerns seriously and engaged in rigorous review of record evidence PGE provided in response to comments. To begin with, we are not persuaded that we should adopt different requirements around EMF levels than those adopted by EFSC and IEEE, institutions with significant state and national expertise, respectively, in these matters. After reviewing the evidence in the record, we are persuaded that EMF radiation from the proposed Rosemont-Wilsonville transmission line is extremely low, far below the state and national standards to which we refer and potentially below the status quo in light of the increased height of the lines. We therefore find that the line will be constructed, operated, and maintained in a manner that protects the public from danger.

For transmission lines under its jurisdiction, EFSC requires an applicant to demonstrate that it “[c]an design, construct, and operate the proposed transmission line so that alternating current electric fields do not exceed 9kV per meter at one meter above the ground surface in areas accessible to the public[.]”⁶⁸ There is no analogous Oregon limit for magnetic fields, and PGE relied on the IEEE requirement that magnetic fields not exceed 9,040 mG where the general public is allowed.⁶⁹ In response to public comments PGE performed an analysis placed in the record of this docket which assumed unrestricted public access directly below the line and conditions consistent with the highest potential EMF values.⁷⁰ PGE’s contractors analyzed the EMF from the Rosemont-Wilsonville line and concluded that levels would be substantially below both the EFSC and the IEEE limits; the highest value was 0.12 kV/m compared with EFSC’s 9 kV/m standard, and 3.80 mG compared with IEEE’s 9,040 mG standard.⁷¹ Staff further concurs that Rosemont-Wilsonville line will not present a safety concern with regard to EMF.⁷² No party has provided persuasive evidence that rebuts PGE’s analysis or that otherwise supports assertions that the EMF levels around the proposed line would exceed established limits, nor reasonably supportable alternative limits, and we conclude that PGE has demonstrated that its construction, operation, and maintenance of the proposed line meets the safety criterion for a CPCN.

⁶⁸ OAR 345-024-0090(1); PGE/800, Nuñez-Gordancier/16.

⁶⁹ PGE/800, Nuñez-Gordancier/16; PGE/803, Nuñez-Gordancier

⁷⁰ PGE/800, Nuñez-Gordancier/14-15

⁷¹ Id. at 16-17.

⁷² Staff/200, Rashid/22.

c. Electric Arcing and AC Interference

Public commenters, as well as testimony filed in this proceeding, raised concerns around electrical arcing and AC interference. As with the other safety concerns raised in this docket, we take these concerns seriously and reviewed the record closely regarding this matter. After reviewing the record, we find that PGE has provided persuasive evidence that the transmission line will meet the NESC requirements for avoiding arcing and AC interference, and that it will install equipment and take other precautions to reduce the risk.⁷³ No party provided persuasive evidence to rebut PGE's analysis or the company's assertion that it will comply with NESC requirements.

F. Practicability

To determine whether a proposed transmission line satisfies the statutory requirement of practicability, we are required to determine whether the proposed transmission line route is practicable and feasible, and whether it will be constructed in a commercially reasonable manner.⁷⁴ As discussed below, we conclude that the proposed Rosemont-Wilsonville line route is practicable and feasible and will be constructed in a commercially reasonable manner.

1. Parties' Positions

a. PGE

PGE asserts that the proposed Rosemont-Wilsonville line is practicable and feasible. PGE argues that it has obtained all the necessary land use approvals except for the Clackamas County land use and right-of-way permits, which the county would not issue prior to PGE obtaining a property interest in the affected parcels.⁷⁵ PGE contends that it has demonstrated that the company has extensive experience in constructing, operating, and maintaining transmission lines in a safe and efficient manner. PGE further contends that its contractor, Henkels & McCoy West, LLC, has extensive experience constructing

⁷³ PGE/1500, Nuñez-Gordanier/7-10; PGE/1501, Nuñez-Gordanier; PGE/1502, Nuñez-Gordanier.

⁷⁴ OAR 860-025-0035(c).

⁷⁵ As addressed in further detail in Section II above, Clackamas County initially rejected PGE's application for a nonconforming land use permit for failing to provide landowner signatures or condemnation authority for the land required to build the transmission line. PGE appealed this decision, and LUBA remanded the application back to Clackamas County to consider the application on the merits. *PGE v. Clackamas County*, Or. LUBA No. 24-069, Final Opinion and Order at 16-17 (Jan. 23, 2025). The Clackamas County Planning and Zoning Division subsequently issued a decision rejecting the nonconforming use permit as noted in Sections II and V.H.

reliable utility infrastructure networks, such as overhead transmission projects. PGE states that it has retained this contractor on several previous successful projects.

PGE maintains that it has carefully planned each phase of construction to ensure timely and efficient development. PGE states that, barring additional delays, it anticipates the online date for the Rosemont-Wilsonville line to be November 2026. PGE contends that it has demonstrated that the line will be constructed in a commercially reasonable manner, noting that it has negotiated cost controls in its contracts and holds its contractors to performance standards, warranty conditions, and time of performance requirements.

Regarding Ms. Bartholomew's arguments that PGE may never obtain its land use approval, PGE contends that it is not the Commission's role to evaluate the merits of PGE's land application. PGE notes that if Clackamas County does not approve its application for a nonconforming use permit, the company may still pursue a conditional use permit.⁷⁶

b. Staff

Staff recommends that the Commission find that the project is practicable. Staff contends that PGE has proven that it considered all reasonable alternatives to the proposed route and determined the proposed design for the Rosemont-Wilsonville line does not have any major impediments. Staff argues that the PGE has proven the current design also maximizes the possibility that the line will be effectively and efficiently constructed in a commercially reasonable manner. Staff maintains that a PGE consultant analyzed 29 square miles between the Rosemont and Wilsonville substations before settling on three possible route options. Staff asserts that PGE selected the proposed route because it was the shortest route, impacted the fewest number of parcels, and there were no major reasons the route was not feasible. In addition to extensive analysis of the selected route and alternatives, Staff maintains that PGE provided information on its outreach to property owners to secure easements that indicates the company took reasonable steps to secure the rights of way and easements necessary to construct the line.

c. Ms. Bartholomew

Ms. Bartholomew argues that there is reason to question the viability of a nonconforming use permit for the Rosemont-Wilsonville line. Ms. Batholomew contends that the alteration of nonconforming use permit that PGE seeks for the line is intended to be used where an applicant is altering a project, not for situations where an applicant intends to build five miles of new construction. Ms. Bartholomew maintains that is not clear how

⁷⁶ Oral Argument Tr. at 11.

PGE will meet the requirement that the project have no greater adverse impact to the neighborhood than the existing structure. Ms. Bartholomew asserts that aspects of PGE's proposal—including the removal of over 250 trees, condemnation of private property, visual impacts to nearby property, traffic congestion, and new high-voltage transmission lines—cast doubt on whether PGE can meet the requirement that the project have no greater impact than the existing structure.

2. *Resolution*

We conclude, based on the record before us, that the Rosemont-Wilsonville project is practicable, feasible, and can be constructed in a commercially reasonable manner.

No party to this proceeding has argued that PGE or its contractor will not be able to construct the line in a commercially reasonable manner. PGE has significant experience in constructing, operating, and maintaining transmission lines, has obtained two of the required permits, and is working to obtain the remaining two.⁷⁷ The company's chosen contractor also has significant experience constructing lines, including lines for PGE, and PGE's contract sets forth construction milestones, performance standards, and a budget with not-to-exceed requirements and a contingency.⁷⁸ Based on the record before us, we find that PGE has adequately demonstrated that the company and its contractor will construct the line in a commercially reasonable manner.

While we address the issues related to the Clackamas County LUCS and permitting in further detail in Section V.H of this Order, we address Ms. Bartholomew's concerns regarding the feasibility of the permits briefly here. That PGE has not yet obtained all of the necessary permits does not prevent us from finding that it is feasible to do so. We interpret feasibility to require only that there are avenues available for receiving all required permits, not that we should perform land use or other permitting analysis and make an independent judgment of the petitioner's likelihood of success. Our rules contemplate a situation in which a company may need to seek a CPCN prior to obtaining all of its permits or may need to rely on a LUCS, as PGE has done in these proceedings. Based on the record evidence in these proceedings, PGE has demonstrated that the proposed line is practicable, feasible, and can be constructed in a commercially reasonable manner, and we will not interpret Clackamas County's permit requirements as part of this Order. As discussed further below in Section V.H, we will address the hypothetical circumstance in which no avenues remain for PGE to secure required permits to construct the line if and when that situation arises.

⁷⁷ PGE/400, Gordanier-Messinger/22; PGE/500, Armstong/2; PGE/503, Armstong; PGE/501, Armstrong; PGE/502, Armstrong.

⁷⁸ PGE/400, Gordanier-Messinger/23-24.

G. Justification in the Public Interest

The statute and our rules require us to determine whether the petitioner has justified construction of the proposed transmission line as in the public interest.⁷⁹ To do so, we consider the proposal “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.”⁸⁰ Such other considerations could include “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.”⁸¹ As an Oregon natural resource agency, we must also consider the effect of our decisions on environmental justice issues and discuss and consider such issues here.⁸²

We conclude, for the reasons discussed below, that the proposed Rosemont-Wilsonville line route is justified in the public interest.

1. *Parties’ Positions*

a. *PGE*

PGE asserts that it has reasonably considered several alternative routes for the Rosemont-Wilsonville line, and the selected route for the proposed line is the least impactful and most cost-efficient compared to those alternatives.⁸³ PGE maintains that the selected route is the shortest of the alternatives, crosses the fewest number of parcels, crosses through the fewest number of streams and rivers, and passes through the fewest number of buildings within 100 feet and 300 feet. PGE states that it eliminated alternative routes within and along the I-5 and I-205 right-of-way, because ODOT regulations and policies restrict electric transmission lines in or adjacent to highway rights-of-way absent a demonstration of extreme hardship.

PGE asserts that it has assessed the use of standby generators, NWA, and battery storage as a substitute to the line and demonstrated that these alternatives would not maintain reliability in the event of the N-1-1 outage scenarios PGE analyzed. Regarding Ms. Bartholomew’s arguments that the forecasted DERs identified in its 2024 DSP present an alternative to the project, PGE asserts that these DERs are forecast for 2030 and are

⁷⁹ OAR 860-025-0035(1)(d).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² ORS 182.545(1).

⁸³ PGE Opening Brief at 42.

simply early-stage forecasts that are not as well tested as its transmission analysis forecasts. PGE notes that the DSP forecasts represent the nameplate capacity of the resources (the maximum they could produce) while the actual capacity value (the amount they are likely to produce at times of high electricity demand) would be much lower and insufficient to eliminate the need for the line.

PGE contends that the proposed line is necessary to resolve and reduce multiple N-1-1 outage scenarios that would require PGE to directly shed or curtail loads for up to tens of thousands of customers. PGE maintains that the line is beneficial for PGE customers, because it is necessary for PGE to continue to provide adequate, safe, and reliable electric service. PGE asserts that the line also will support future development of new customer load while maintaining system reliability in the South Metro area and will avoid the need for additional reconductoring to upgrade the line through 2034.

PGE asserts that its analysis demonstrates that the Rosemont-Wilsonville line will have minimal impacts on environmental justice communities. PGE states that a segment of the line is located in or adjacent to census blocks with a meaningfully greater percentage of communities of color or communities experiencing lower income. PGE contends that this section of the line is repurposing a portion of the existing McLoughlin-Wilsonville line, which does not require construction, and there will be no change or incremental impacts to these communities.

Regarding issues raised by Ms. Bartholomew regarding viewsheds, property values, and the recreational value of the nearby Farmlandia loop, PGE argues that the proposed line is routed along an existing utility corridor where it is replacing existing transmission or distribution lines. PGE asserts that it designed the line to mitigate the visual impacts of the line, including using a brown patina on the steel poles to mimic the existing wood poles and smoothing the heights of the poles. PGE maintains that Ms. Bartholomew has not provided any evidence or reasoning to support her claim that the line would adversely impact the recreational value of the Farmlandia loop.

PGE argues that any corona sound from the Rosemont-Wilsonville line will be below the Oregon and local standards for noise control and safety and will not pose a risk to public health and safety. PGE asserts that a Power Engineers study projected that corona sound would produce a maximum of 17.7 A-weighted decibels (dBA) for the 115 kV double-circuit sections of the line during inclement weather and 14.5 dBA for the 115kV single-circuit sections. PGE maintains that this is well below the 50 dBA noise control threshold imposed by Clackamas County.

Regarding Ms. Bartholomew's proposed I-5/I-205 alternative route, PGE argues that it fully assessed this proposal in testimony and explained why the selected route was

superior. PGE maintains that Ms. Bartholomew’s suggested route would be significantly more impactful to landowners, businesses, and farming practices.

In response to public comments suggesting that the line be undergrounded, PGE asserts that there are disadvantages to undergrounding the Rosemont-Wilsonville line that far outweigh the benefits. PGE maintains these disadvantages include a substantial cost increase that would be borne by all customers, increased ground and vegetation disturbance, and wider and more restrictive easements.

Regarding the term “rural” as used by public commenters and Ms. Bartholomew, PGE maintains that there are no rural environmental justice communities in the study area based on the Oregon Office of Rural Health (ORH) definition. PGE asserts that the ORH definition was adopted by Staff for the purposes of its data requests and that it is appropriate for the implementation of Oregon state statutes by a state agency.

b. Staff

Staff recommends that the Commission find that the Rosemont-Wilsonville transmission line is justified because it will provide reliability benefits to PGE customers.⁸⁴ Staff asserts that there is little evidence of monetary benefits from the proposed line besides property tax benefits. Staff contends that line has non-monetary benefits in the form of increased reliability and reduced outages for customers. Staff maintains that the proposed line has minimal incremental route impacts compared to current conditions and that those impacts have been mitigated by PGE’s design choices. Staff asserts that the line will go through census blocks with environmental justice communities, but these communities will not suffer disproportionate impacts. Staff maintains that PGE engaged in sufficient efforts to engage with stakeholders in developing the line.

Regarding arguments around the definition of “rural communities,” Staff states that it chose the definition used by ORH in order to have some agreement on the definition.⁸⁵ Staff also notes that other definitions that reference characteristics such as “rural scenic road” are applicable from a land use perspective and would be considered as part of the land use process.⁸⁶

c. Ms. Bartholomew

Ms. Bartholomew argues that PGE did not adequately consider NWA as part of its petition for a CPCN.⁸⁷ Ms. Bartholomew asserts that PGE’s DSP provides detailed

⁸⁴ Staff Opening Brief at 14.

⁸⁵ Oral Argument Tr. at 38.

⁸⁶ *Id.*

⁸⁷ Bartholomew Opening Brief at 8.

analysis of forecasted penetration of non-wires measures by 2030 at the individual substation level and that this analysis demonstrates that there may be sufficient NWA to offer equivalent capacity and reliability contributions to the proposed line. Ms. Bartholomew contends that for the substations she examined, PGE forecasted adoption of non-wires measures at 54 MW in the low case, 61 MW in the reference case, and 71 MW in the high case. Ms. Bartholomew maintains that the forecasted load reduction through non-wires measures appears to exceed the 35 MW of load reductions needed to materially reduce the risk of N-1-1 outages. Ms. Bartholomew asserts that PGE has not provided analysis for its conclusion that NWA are not a potential alternative, particularly given the forecast in PGE's 2024 DSP. Regarding PGE's arguments that the DERs are just a forecast, Ms. Bartholomew asserts that the load growth estimates that underlie the transmission analysis in this proceeding are based on forecasts as well.

In testimony, Ms. Bartholomew proposed an alternate route not previously considered by PGE.⁸⁸ Ms. Bartholomew argues that PGE stated ODOT would not allow the transmission line in ODOT's right-of-way but that PGE did not sufficiently investigate building the line along I-5 and I-205 outside of ODOT's right-of-way.⁸⁹

Ms. Bartholomew argues that PGE states the proposed Rosemont-Wilsonville line would impact only 14 parcels, but the images in a Staff exhibit indicate there are 37 parcels affected by easements and more affected by the project overall.⁹⁰ Ms. Bartholomew maintains that easements will likely cost millions of dollars given the average cost of land in the Stafford area.

Ms. Bartholomew maintains that Stafford Road has been designated as a "rural scenic road" and that the area has a public recreational benefit from the Farmlandia loop, as well as natural scenic beauty.⁹¹

2. Resolution

Based on the record, we determine that the proposed Rosemont-Wilsonville transmission line is justified in the public interest. In reaching this conclusion, we considered several factors, including feasible alternatives for meeting the identified need; weighing the costs and benefits to the public, including local impacts; PGE's existing facilities and equipment; the interest of PGE's Oregon customers in reliable electricity service; and environmental justice issues. Though we considered all of these factors in reaching our conclusion, we focus our discussion on the issues raised by the parties and public

⁸⁸ Bartholomew/100, 11-12.

⁸⁹ Oral Argument Tr. at 58.

⁹⁰ Bartholomew Reply Brief at 13 *citing* Staff/102, Kort-Meade.

⁹¹ Bartholomew Reply Brief at 20.

commenters: a. the availability and relative benefits of NWA to the proposed line; b. the availability and relative benefits of an alternate route; c. the impacts of the project on the surrounding area; and d. environmental justice communities and the definition of “rural” for the purposes of considering environmental justice communities. We discuss each of these issues below.

a. Non-Wires Alternatives

Ms. Bartholomew argues that there are potential non-wires alternatives to the proposed Rosemont-Wilsonville line that have not been adequately investigated, as well as a potential superior alternate route for the line. In Section V.D, we concluded that PGE satisfied the necessity criterion, because the record established that there were significant reliability concerns developing in the South Metro area and that the proposed line resolved those concerns. We now address arguments that the project is nonetheless not justified in the public interest, because there are other superior alternatives to address the reliability need that have fewer overall impacts to the public interest. As we stated in Order No. 23-225, “[o]ur rules do not require that a transmission line be the only available resource alternative to serve the demonstrated need. However, in evaluating the project’s justification in the public interest, we will consider how well the proponent justified the transmission line as the best choice relative to alternative resource strategies.”⁹²

Ms. Bartholomew points to the company’s 2024 DSP as evidence that non-wires alternatives could address the identified reliability issues, and that PGE failed to adequately analyze these alternatives. As we stated in Section V.B above, transmission planning is typically a multi-year process with significant lead time required for problem and solution analysis, permitting, procurement, and construction. We note also that the programs and products necessary for DER-based non-wires alternatives to be a generally available alternative to transmission infrastructure are still in development. The DSP identifies net load reduction resources expected to be on the system by 2030, but not currently available.⁹³ Importantly, the nameplate capacity values for DERs cited in the DSP translate to significantly less available capacity during times of high electricity demand. The reliability issues identified through evaluation of N-1-1 outage events exist now and are expected to worsen as new load comes on the system. Even assuming that all the forecasted DER adoption identified in the DSP is available by 2030 and would offer capacity values sufficient to offset the forecasted load increases, the reliability solution is needed now. There is an immediate need for a solution to these reliability issues that cannot reasonably wait for DER adoption to materialize and mature into viable NWA

⁹² *In the Matter of Idaho Power Company, Petition for a Certificate of Public Convenience and Necessity*, Docket No. PCN 5, Order No. 23-225 at 38 (Jun. 29, 2023).

⁹³ Bartholomew/300, 263 (stating that the DER adoption in the tables is for 2030).

options years into the future. As we said in Section V.B above, however, we expect PGE and other utilities to include NWA analysis with their petitions going forward.

We are satisfied that PGE's analysis of potential NWA on this record was sufficient given the transmission planning timeline for this project and the relative maturity of DER-based NWA at the time the solutions were developed. We find that this analysis and the immediate need for a reliability solution weighs in favor of a finding that the proposed transmission line is justified in the public interest.

b. Alternate I-5/I-205 Route and Undergrounding

In testimony, Ms. Bartholomew identified an additional route that PGE did not consider, namely that the line could run along I-5 and I-205 outside of the ODOT right-of-way. Ms. Bartholomew asserts that this route would likely be less impactful than the route along Stafford Road, suggesting that although the route would cross private land it would be situated further from residences as there are generally fewer houses built right next to the interstate.⁹⁴ Additionally, some public commenters suggested that the line could be undergrounded to reduce impacts from the line.⁹⁵

As we stated in Order No. 23-225, “[a]lthough we are mindful that the selected route impacts many individuals who would prefer to not have transmission towers, access roads, or transmission lines on or near their property, we also recognize that such impacts are inherent in transmission line design and that any selected route would impact people and resources in many ways.”⁹⁶ Our role is to ensure that PGE selected a route for the Rosemont-Wilsonville transmission line that represents an appropriate balance of public interest considerations as compared with other solutions available to meet the identified need, and we conclude that it has.

The record in this docket demonstrates that PGE considered three routes and six alternative configurations for addressing the identified reliability issue before ultimately selecting the proposed route and configuration.⁹⁷ PGE conferred with ODOT before eliminating the option to place the line in the I-5 and I-205 rights-of-way and selected the lowest cost option that impacted the fewest parcels of private land.⁹⁸ PGE has implemented measures to mitigate the impacts on the area, such as the visual impacts from taller steel poles replacing the existing wooden poles.⁹⁹

⁹⁴ Oral Argument Tr. at 58-59; Bartholomew/100, 11.

⁹⁵ Staff/102, Kort-Meade/2.

⁹⁶ Docket No. PCN 5, Order No. 23-255 at 28.

⁹⁷ PGE Petition for a CPCN at 12-14, 36-38; PGE/101, Beil/18-26; PGE/400, Gordanier-Messinger/8-10; Staff/100, Kort-Meade/9-12, 32-34.

⁹⁸ PGE/400, Gordanier-Messinger/17; PGE/403, Gordanier-Messinger/1.

⁹⁹ PGE/200, Bekkedahl/7; PGE/800, Nuñez-Gordanier/7.

We appreciate Ms. Bartholomew proposing a potential alternative that PGE did not previously consider, and we appreciate PGE considering Ms. Bartholomew's proposed alternative in its testimony.¹⁰⁰ For the specific route proposed by Ms. Bartholomew, we are persuaded that this route is likely to impact more private property owners and buildings and require more easements that may be more complex, among other impacts.¹⁰¹ We are satisfied that PGE's ultimate selection of the Rosemont-Wilsonville transmission line over other potential routes, including Ms. Bartholomew's proposed alternative route, is justified.

Undergrounding the line as an alternative to the proposed overhead design for the Rosemont-Wilsonville project was raised in public comments, though not a significant part of the parties' evidence and arguments. PGE's cost estimate for undergrounding the Rosemont-Wilsonville line was \$122.4 million, which is \$95 million more than the cost estimate of the overhead design, and PGE explained that some impacts of undergrounding (e.g., easement width and restrictions) would be more burdensome.¹⁰² We cannot conclude here that the localized visual impacts of the Rosemont-Wilsonville line, particularly given its location largely in an existing road and utility corridor and its specific design features to mitigate visual impact, warrant socializing the significantly higher cost of undergrounding to all PGE's customers. Communities may choose to work with a utility to underground lines, but those costs must be borne by the community requesting undergrounding, usually in the form of an electric bill rider.¹⁰³

c. Costs and Benefits

The Rosemont-Wilsonville transmission line would benefit PGE electricity customers by addressing reliability issues in the South Metro area, but we must balance these benefits against its costs, both monetary and non-monetary, in assessing the overall justification for the project. Ms. Bartholomew and many public commenters identified concerns that the line would have significant impacts on the Stafford Road area, including visual impacts from replacing the existing wood poles with taller steel poles, impacts from construction of the line, the potential for corona noise, and safety concerns related to fire risk and EMFs. Additionally, Ms. Bartholomew and public commenters raised concerns regarding PGE's need and intention to condemn private property to build the line, particularly concerns that condemnation could occur before the company receives the permit.

¹⁰⁰ PGE/1600, Gordanier-Messinger/7-13.

¹⁰¹ PGE/1600, Gordanier-Messinger/8-10.

¹⁰² PGE/800, Nuñez-Gordanier/10.

¹⁰³ See ORS 758.210 through ORS 758.270.

We concluded in Section V.E that the Rosemont-Wilsonville transmission line will not create or exacerbate safety issues that expose the public to danger, and we will not repeat that analysis here. We address concerns about the sequencing of condemnation and land use in Section V.H In this section, we address the relative balance of other negative impacts experienced by the people who live and recreate near the proposed route, including visual and noise impacts from the line, construction impacts, and the generally significant impact of condemnation on people and their property. We do not find, however, that these localized negative impacts are so large as to outweigh the broader benefits of the line in providing reliable electricity service to the South Metro area, as discussed above in Section V.D and therefore we conclude that the line is justified as in the public interest.

With respect to visual impacts, we conclude that while taller and wider towers will increase local impacts, such impacts must be considered relatively limited as compared with greenfield corridor development in light of the presence of existing utility infrastructure along much of the proposed route. Moreover, while there may be negative visual impacts from removal of existing vegetation, this is balanced by the positive impacts of lower wildfire risk from corridor maintenance and upgraded equipment. We are further persuaded that PGE has mitigated many of the visual impacts, such as using a thinner steel pole with a brown patina to mimic wood.¹⁰⁴ While some individual property owners may have disproportionate visual impacts, we are not persuaded that the visual character of the area will be fundamentally changed relative to current conditions.

With respect to corona noise, PGE's evaluation demonstrates that the maximum level of corona noise expected is 17.7 dBA in rough weather, well below Clackamas County's standard of 50 dBA.¹⁰⁵ We note, too, that the highest levels are expected when ambient noise is highest, which we understand to reduce the experience of corona noise.

We recognize the significant impacts that will be borne disproportionately by certain individuals whose land will be most impacted, but the broader benefits of the Rosemont-Wilsonville line are such that it remains justified in the public interest. Transmission lines are necessary to serve growing societal needs for reliable electricity and it is not possible to eliminate the impacts of transmission lines entirely, but we are persuaded that PGE has made efforts to minimize the impacts through the design of this project. We determine that the costs and impacts of the project are reasonable and offset by the significant reliability benefits of the line.

¹⁰⁴ PGE/200, Bekkedahl/3, 17; PGE/800, Nuñez-Gordaniér/7; Staff/100, Kort-Meade/45.

¹⁰⁵ PGE/800, Nuñez-Gordaniér/19.

d. Environmental Justice Communities

As an Oregon natural resource agency for purposes of ORS 182.545(1), we must also consider the effect of our decisions on environmental justice issues. Although our rules do not address this requirement, we considered it in our rulemaking process and we consider it here, as part of determining whether the CPCN has been justified as being in the public interest. In these proceedings, public commenters raised concerns over the definition of “environmental justice community” that both Staff and PGE used to determine whether these communities would be disproportionately impacted by the proposed transmission line.

We agree with Staff’s analysis of the environmental justice issues and impacts presented by the proposed line. In the absence of a definition of “rural communities” for the purposes of environmental justice that we must follow, we find that Staff’s chosen definition is reasonable. In Order No. 23-225, we recognized that rural communities are included in various definitions of environmental justice communities and further stated that “analyzing environmental justice includes considering whether impacts have been concentrated within a particular underserved community when alternatives existed to more fairly distribute the benefits and burdens or whether better-resourced communities were offered greater opportunities to avoid impacts.”¹⁰⁶ The ORH definition of “rural” that Staff used focuses on the lack of resources for the community rather than characteristics more relevant to land use considerations. We find that a lack of access to resources and economic power and opportunities are the relevant considerations for considering whether an area is a “rural community” under an environmental justice analysis. Land use characteristics, such as scenic value and aesthetic, are more appropriately addressed as part of the land use review and in the broader balancing we conduct to determine justification in the public interest.

Under the ORH definition, there are no rural environmental justice communities that are impacted by the route and none that are disproportionately burdened.

A segment of the Rosemont-Wilsonville line route would, however, pass through several census blocks that contain a meaningfully greater proportion of communities of color or communities experiencing lower income. These sections of the line repurpose the existing McLoughlin-Wilsonville line and thus no additional construction is required.¹⁰⁷ We agree with Staff that there are no disproportionate impact to environmental justice communities from the proposed line, and we are persuaded that the Rosemont-Wilsonville transmission line is justified in the public interest.

¹⁰⁶ Docket No. PCN 5, Order No. 23-225 at 42.

¹⁰⁷ Staff/100, Kort-Meade/49; PGE/200, Bekkedahl/21-22.

H. Statewide Land Use Goals

Before granting a CPCN petition, the Commission must find the proposed project complies with the Statewide Planning Goals and is compatible with the acknowledged comprehensive plans and land use regulations of each local government where the project is to be located.¹⁰⁸ The Commission's rules require that these findings be based on the record, which must include at least one of the following documents:

- 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.¹⁰⁹

Our rules also permit the Commission to rely on a LUCS issued by an authorized representative of an affected city or county if 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.¹¹⁰

As discussed below, we find that the transmission project is consistent with our rules, under which we may grant a CPCN based on the LUCS issued by Clackamas County. The LUCS confirms that, if PGE complies with Clackamas County's land use regulations by obtaining the necessary land use permit, this will demonstrate compatibility with the

¹⁰⁸ OAR 860-025-0040(1).

¹⁰⁹ OAR 860-025-0040(2).

¹¹⁰ OAR 860-025-0040(3).

county's acknowledged comprehensive plan and, thereby, the Statewide Land Use Planning Goals.

1. Parties' Positions

a. PGE

PGE asserts that it has obtained all necessary permits and approvals, except those from Clackamas County, and requests that the Commission rely on the LUCS issued by Clackamas County.¹¹¹ PGE contends that the LUCS complies with OAR 860-025-0040(3)(c) and confirms that any land use approval issued by Clackamas County will be consistent with its acknowledged comprehensive plan.

PGE maintains that it must obtain a CPCN to proceed with the condemnation process based on Clackamas County's requirement that it acquire signatures from the property owners or advanced occupancy through the condemnation process before it will consider the permit application.¹¹² PGE argues that it would be impossible to construct the Rosemont-Wilsonville transmission line if the Commission does not accept the LUCS. PGE asserts that the Commission's LUCS rule was adopted in part to allow utilities to avoid this sort of "catch-22" scenario.

PGE asserts that it is not the Commission's role to evaluate the merits of the company's land use application. PGE contends that it is "safe to assume" that Clackamas County will analyze the land use issues raised in this proceeding before it makes a final decision on the permits.¹¹³

PGE asserts that the Commission has previously addressed "challenging sequencing issues" in a petition for a CPCN where a utility was unable to apply for land use approval until it had a property interest in the land on which the line would be constructed.¹¹⁴ PGE maintains that in that proceeding, the Commission relied on a statement from Umatilla County that the proposed line was compatible with the county's comprehensive plan. PGE contends that the Commission has made it clear that it has the authority to take a flexible approach when it comes to "sequencing" its review of the petition relative to the

¹¹¹ PGE Opening Brief at 54.

¹¹² As addressed in further detail in Section II above, Clackamas County initially rejected PGE's application for a nonconforming land use permit for failing to provide landowner signatures or condemnation authority for the land required to build the transmission line. PGE appealed this decision, and LUBA remanded the application back to Clackamas County to consider the application on the merits. *PGE v. Clackamas County*, Or. LUBA No. 24-069, Final Opinion and Order at 16-17 (Jan. 23, 2025). The Clackamas County Planning and Zoning Division subsequently issued a decision rejecting the nonconforming use permit as noted in Sections II and V.H.

¹¹³ PGE Opening Brief at 57-58.

¹¹⁴ PGE Reply Brief at 4-5, citing *In the Matter of Umatilla Elec. Coop., Petition for Certification of Pub. Convenience and Necessity*, Docket No. PCN 1, Order No. 17-111 at 6-7 (Mar. 21, 2017).

local use permitting process. PGE maintains that the risks of advanced occupancy prior to land use approval raised by Ms. Bartholomew in this docket were also noted in docket AR 626. PGE asserts that the Commission ultimately adopted the rules, balancing landowner interests and the public interest.

In response to arguments that the Commission should delay decision until Clackamas County makes a decision on the land use permit, now that LUBA has directed Clackamas County to review the merits of the permit application notwithstanding the absence of landowner consent, PGE argues that the LUCS meets the Commission's rules, and the Commission should rely on the LUCS. PGE maintains that the concerns raised by Ms. Bartholomew around NWA and alternate routes do not warrant keeping the record open and delaying consideration of the petition. PGE states that, given all the uncertainties around the timing for its land use application, the Commission should accept the LUCS.

b. Staff

Staff asserts that the Clackamas County LUCS should be accepted under OAR 860-025-0040(3)(c).¹¹⁵ Staff asserts that the LUCS meets the statutory requirements by providing clear evidence that the Rosemont-Wilsonville project, if approved by Clackamas County, will be compatible with the county's acknowledged comprehensive plan and will not substantially affect the acknowledged comprehensive plan.

Staff notes that the Commission has not yet directly considered a LUCS in any prior CPCN proceeding. Staff cites to language from the Commission-adopted recommendation supporting the LUCS as an option "because Oregon counties require a sufficient interest in all land needed for a transmission project prior to considering a permit application."¹¹⁶ Staff contends that the Clackamas County LUCS issued to PGE is sufficient to fulfill the Commission's vision for allowing a LUCS in a CPCN. Staff asserts that Clackamas County required PGE obtain an interest in the land required to build the line before it would consider its permit application and thus the LUCS is necessary for precisely the reason the Commission envisioned. Staff argues that the LUCS meets the requirements of OAR 860-025-0040(3)(c).

Staff asserts that if the LUCS is amended or revoked after the Commission issues a final order granting the CPCN, the Commission may amend the final order under OAR 860-025-0040(5). Staff notes that there is no requirement for PGE to file a final land use

¹¹⁵ Staff Opening Brief at 17, 19.

¹¹⁶ *Id.* at 18, quoting *In the Matter of Public Utility Commission of Oregon, Rulemaking Regarding Certificate of Public Convenience and Necessity*, Docket No. AR 626, Order No. 22-351, App. A at 15 (Sep. 26, 2022).

approval from Clackamas County in this proceeding, though it may be required to make a supplemental filing if the LUCS is withdrawn or modified.

Staff asserts that contrary to Ms. Bartholomew's arguments around the permit and LUCS, the Commission is not ignoring a requirement of the county land use permit or otherwise waiving the requirements for finding land use compatibility. Staff maintains that the Commission can make its land use findings based on the LUCS.

c. Ms. Bartholomew

Ms. Bartholomew asserts that PGE may be unable to secure either an alteration of nonconforming use permit or a conditional use permit from Clackamas County. Ms. Bartholomew argues that this fact should give the Commission pause, because PGE plans to seek advanced occupancy of the land needed to build the line. Ms. Bartholomew contends that if a court permits advanced occupancy of the land, this order would stay in place even if PGE never receives the permit or the CPCN order is subsequently revoked, placing property owners in an untenable situation.

Ms. Bartholomew argues that the nonconforming use permit that PGE seeks does not require compliance with the Clackamas County comprehensive plan and it is therefore not "safe to assume," as argued by PGE, that the county will conduct a full land use analysis. Ms. Bartholomew maintains that the LUCS states that the comprehensive plan will not be affected, because it does not apply, and contends that the comprehensive plan may never be considered by Clackamas County. Ms. Bartholomew asserts that LUBA did not rule on the merits of the LUCS, and there has been no assessment on the validity of the LUCS itself.¹¹⁷ Ms. Bartholomew contends that granting a CPCN before the land use approval is received would set a dangerous precedent.

Ms. Bartholomew asserts that the LUBA No. 2024-069 Order has removed the "catch-22" situation, because Clackamas County must now consider PGE's application without the landowner signatures. Ms. Bartholomew maintains that the Commission should delay consideration of the CPCN to require further consideration of alternatives, and that this extension of the proceeding could run parallel with the county land use permitting process. Ms. Bartholomew maintains that this would not be prejudicial, because the land use decision will take at least four to six months. Ms. Bartholomew notes that the Commission previously reopened a proceeding to receive additional testimony in docket PCN 2.¹¹⁸

¹¹⁷ Oral Argument Tr. at 43.

¹¹⁸ *Id.* at 32.

2. *Resolution*

We find that the proposed Rosemont-Wilsonville transmission line complies with the Statewide Planning Goals and is compatible with the acknowledged comprehensive plans of Washington and Clackamas Counties, based on the permits that PGE has already received, as well as the LUCS issued to PGE by Clackamas County. Our rules allow us to rely on a LUCS that meets certain requirements to make the land use compatibility findings required by OAR 860-025-0040(2). Ms. Bartholomew and many public commenters raised concerns regarding the sufficiency and the content of the LUCS, and we discuss the requirements and purpose of the LUCS below.

For a LUCS meeting the requirements of OAR 860-025-0040(3)(c), an authorized representative of the jurisdiction must state that the project will meet the jurisdiction's acknowledged comprehensive plan if a permit is granted. The LUCS must also confirm that the acknowledged comprehensive plan's general provisions will not be substantially affected by issuance of the CPCN if those permits are obtained.¹¹⁹ Essentially, the LUCS confirms that any permit ultimately issued to the utility will comply with its acknowledged comprehensive plan and that an issued CPCN will not affect the plan's provisions. The LUCS is not, and is not intended to be, an evaluation of the merits of a utility's application for a land use permit; rather, it is a statement that obtaining a land use permit will demonstrate compatibility with the jurisdiction's acknowledged comprehensive plan and thereby with the statewide land use planning goals, which the comprehensive plan implements.

When we adopted our CPCN rules, a primary reason for including the LUCS option was the circumstance of a utility being unable to engage in the land use process without an interest in the land; in such a circumstance, the CPCN becomes a necessary first step before the appropriate state or local authorities can apply their land use expertise to the project. Here, after PGE had filed its CPCN, Clackamas County determined that it would not proceed with its permit application until after PGE received the necessary interest in the land, and therefore PGE instead pursued and received a LUCS.¹²⁰ The LUCS identifies land use permit pathways for PGE's proposed transmission project and states that the project will be compatible with the county's acknowledged comprehensive plan if PGE obtains land use permits as identified in the LUCS.¹²¹ As detailed in Sections II and V.C above, we continued to review the CPCN petition with the LUCS as the record evidence we would review to make the required land use findings.

¹¹⁹ OAR 860-025-0040(3)(c).

¹²⁰ PGE/1000, Armstrong/2-7.

¹²¹ PGE/1003, Armstrong/2-4.

In the time since Clackamas County first rejected PGE's application for lacking the necessary interest in land, LUBA has remanded PGE's land use application back to Clackamas County with direction to the county to review the application on the merits.¹²² Many public commenters have urged us to withhold our decision on the CPCN until after Clackamas County has considered the merits of PGE's permit application. Recently, the Clackamas County Planning and Zoning Division issued a decision denying PGE's application for a Type II nonconforming use permit, though we understand that there remains the potential for PGE to appeal the decision or pursue another land use permit pathway under the LUCS.¹²³ Ultimately, in this situation, we see no reason to delay our decision until after the land use review process has concluded. We have a LUCS that complies with our rules on the record, which we may rely on for a land use compatibility finding. More importantly, we find the evidentiary record developed in our proceeding is complete and sufficient for our decision on the merits, and there would be no significant value to extending the process.

We do, however, appreciate the concerns that Ms. Bartholomew and public comments have raised regarding condemnation for advanced occupancy prior to PGE obtaining a land use permit. The condemnation process is beyond our jurisdiction, but we recognize that the CPCN may serve as a basis for obtaining advanced occupancy. While we do not see a reason to delay our decision, we do appreciate the concern that granting a CPCN, hypothetically, could allow PGE to condemn an interest in land for a project that it cannot pursue if it does not ultimately obtain land use approval.

PGE represents that these risks are not likely to materialize, and we agree, particularly in light of our ongoing oversight of PGE's actions and this CPCN approval. Our comprehensive rate regulatory oversight requires PGE to prove that its actions were reasonable and prudent before it can recover the costs associated with infrastructure upgrades in rates. The company takes the risk that any costs expended for activities such as obtaining land interests and clearing vegetation in preparation for the line, prior to receiving the required land use permits, may be found unreasonably and imprudently incurred if it cannot ultimately obtain land use approval and build the transmission line. Additionally, if PGE is unable to obtain a land use permit and Clackamas County revokes the LUCS, we may amend or revoke this order granting a CPCN under OAR 860-025-0040(5). We note, as we did in our order adopting our CPCN rules, that "[w]e also have the authority to amend or withdraw a CPCN decision in response to a wide variety of

¹²² *PGE v. Clackamas County*, Or. LUBA Appeal No. 24-069, Final Opinion and Order at 16-17 (Jan. 23, 2025).

¹²³ See *Clackamas County Planning and Zoning Division, File No. Z0236-24*, Notice of Decision on a Type II Land Use Permit at 1-2 (Mar. 26, 2025); PGE/1003, Armstrong/2-4.

circumstances.”¹²⁴ If in the future there is a major development that warrants revisiting this order, we will engage the issue appropriately.

VI. ORDER

IT IS ORDERED that:

1. Portland General Electric Company is granted a Certificate of Public Convenience and Necessity to construct the Rosemont to Wilsonville 115-kV transmission line as described in its petition; and
2. Portland General Electric Company’s Certificate of Public Convenience and Necessity will expire in accordance with OAR 860-025-0035(3).

Made, entered, and effective Mar 28 2025.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Les Perkins
Commissioner

Jurisdiction for judicial review of the Commission’s approval or rejection of an application for a certificate of public convenience and necessity under subsection (1) of ORS 758.017 is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days after the date of service of the commission’s final order. Date of service shall be the date on which the commission delivered or mailed the final order in accordance with ORS 183.470. For more information on the appeal process associated with a grant or denial of certificate of public convenience and necessity for transmission lines please see ORS 758.017.

¹²⁴ Docket No. AR 626, Order No. 23-251 at 4.