BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

PCN 8

In the Matter of PACIFICORP, dba PACIFIC POWER Petition for Certificate of Public Convenience and Necessity.	))))))))	STAFF'S RESPONSE TO PACIFICORP'S MOTION

Staff of the Public Utility Commission of Oregon ("Staff") submits this response to PacifiCorp's request for partial waiver and clarification of scope (PacifiCorp Motion). *See* Ruling from ALJ Mellgren at 1 (July 7, 2025).

I. Introduction

PacifiCorp makes the following requests:

- That the ALJ waive certain Commission rules for a Certificate for Public Convenience and Necessity (CPCN) because a waiver is "appropriate" and "in the public interest from an efficiency standpoint." PacifiCorp Motion 2, 9, 12.
- That the ALJ clarify that certain Commission rules for a CPCN do not require land use approval and that a Land Use Compatibility Statement (LUCS) will suffice.

Staff responds that:

- Waiver of CPCN rules is best addressed in the parties' closing briefs, after the record is fully developed. In a final order on the Lone Pine to Whetstone CPCN application, the Commission may decide which rules to apply and which may be waived because of the new standard in HB 3681, Section 4.

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- Clarification of CPCN rules may similarly be handled in the Commission's final order, based upon a full consideration of the facts and legal arguments in the record.

Staff has four reasons for recommending that parties address waiver in closing briefs and the Commission decide on waiver in a final order. First, HB 3681, Section 4, does not necessarily apply to already-filed applications. Second, HB 3681 contains new terms that will be addressed as the parties work to develop testimony and briefs. Third, the Commission has separate land use and environmental justice duties that are not impacted by HB 3681. Lastly, Staff's recommendation for filings to proceed without any waivers is supported by caselaw and OPUC precedent. Collectively, these reasons lead Staff to conclude that good cause and a public interest finding does not exist for CPCN rule waivers at this time. OAR 860-025-0000(2).

II. Discussion

A. The information requirements in OAR 860-025-0030 applied when PacifiCorp filed its application and waiver at this time is not necessary.

The parties agree that HB 3681, Section 4, is effective on January 1, 2026 and will be effective when the Commission makes a decision on the CPCN in 2026. Staff reasons that, because the statute is not retroactive, the new standard does not necessarily govern PacifiCorp's application which was filed back on March 11, 2025, before passage of HB 3681. The informational requirements in OAR 860-025-0030 legitimately applied when PacifiCorp filed its application, and do not need to be waived because of HB 3681. Certainly, HB 3681 makes no provision for the Commission to take action prior to January 1, 2026, such as an emergency clause allowing for the Commission to take action to implement the bill before its operative date..

Staff concludes that the Commission and AHD are not required to apply HB 3681 to PacifiCorp's application filed back in March 2025. The application was already filed under OAR 860-025-0030, which was effective at the time and is still effective at the time of filing this

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response. Waiving the information requirements for filing in OAR 860-025-0030 is not required at this stage of the proceeding.

B. Waiving the review criteria in OAR 860-025-0035 now, without a full record or fully developed arguments, runs the risk of narrowing the Commission's review more than required by HB 3681.

As a practical matter, Staff supports addressing the HB 3681 standards in testimony now, in anticipation of the Commission applying the new standards in 2026 when this proceeding will be ready for a final order. But at this point in the process, Staff is not prepared to support the waiver of any rules, particularly the review criteria in OAR 860-025-0035, because the rules have potential overlap between the old criteria and the new standards.

Describing Staff's current work may help explain Staff's opposition to waiver. Staff recently toured the route for the Lone Pine to Whetstone line, visited the property of a landowner impacted by the line, and sent additional discovery requests to PacifiCorp. Staff has questions about the route selected and placement of transmission structures. These issues may be handled in at least four different ways:

(1) The question is fully explained in testimony and decided in the final order under the Commission's existing and unaltered authority in ORS 758.015(2)(a) "to consider[] facts presented at such hearing."

(2) Similar to option number one, the issue is explained in testimony, and then the Commission considers the route under the new HB 3681 standards which is whether the line "meets a need for increased transmission capacity and reliability." Staff may argue that the Commission may determine that "meets a need" allows the Commission to undertake a granular review of the type and placement of proposed transmission structures to determine if the route selected "meets a need."

(3) Staff and PacifiCorp may engage in settlement discussions and agree to modifications to the route, without the need to address the interpretation of HB 3681.

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(4) Staff could decide to drop the issue, perhaps if Staff determines the placement will be better addressed by the county or land use agency.

It is too early for Staff to say which of these options it will pursue. Under any of the options, the existence of the review criteria in OAR 860-025-0035 does not impact Staff's work. Staff will be focused on the statutory terms under any option, and is reluctant to waive a rule that could still have some value to the Commission's CPCN proceedings because of the portions of ORS 758.015 that are unaltered, or because of overlapping meaning between the old and new statutory standards.

C. In addition to interpreting the new terms in HB 3681, Staff needs to parse out the Commission's remaining responsibilities under Oregon's statewide land use coordination process and environmental justice issues.

Oregon's statewide land use coordination process requires agencies to make land use findings of compatibility. ORS 197.180. It is feasible that PacifiCorp's LUCS may satisfy the Commission's coordination requirement. But that determination is premature right now, before Staff has filed testimony and analyzed the issue.

Staff is not even sure that PacifiCorp's request to "clarify the scope" of the current land use rule in OAR 860-025-0040 may be decided in the middle of a contested case. PacifiCorp is essentially asking for a summary determination on a substantive issue, based only on its opening testimony and a few paragraphs in a motion. This issue, however, is not appropriate for summary determination. To "clarify" as PacifiCorp requests, the ALJ would need to apply the facts to the law, by considering the specific LUCS that PacifiCorp filed relative to the Commission's duties from ORS 197.180. The OPUC has explained "[s]ummary judgment is appropriate where there is no genuine issue as to any material fact, and based on those facts, the moving party is entitled to a judgment as a matter of law." *In re Metro One Telecommunication, Inc.*, Docket IC 1, Order No. 02-126 (Feb. 28, 2002). Further, the Court of Appeals has explained that a hearing is necessary "[i]f there is evidence creating a relevant fact issue, [] no

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matter how 'overwhelming' the moving party's evidence may be, or how implausible the nonmoving party's version of the historical facts." *See Watts v. Oregon State Bd. of Nursing*, 282 Or. App. 705, 714 (2016). Because PacifiCorp requests a land use finding that is a mixed issue of fact and law, Staff requests the ALJ decline to rule on PacifiCorp's requested clarification and allow for a hearing on this issue based on a fully developed evidentiary record.

A second topic that Staff needs to parse out is the Commission's remaining duties under the environmental justice statute. ORS 182.545(1). In the last CPCN proceeding, PCN 6, Staff did not need to pinpoint its statutory authority for environmental justice issues because the topic overlapped with the "public interest" criteria that HB 3681 removes from ORS 758.015. Therefore, Staff opposes waiving OAR 860-025-0030 because it discusses the public interest, and some of that public interest review may persist under ORS 182.545(1).

D. Staff's recommendation for the ALJ to decline issuing a waiver and clarification is supported by Oregon caselaw and OPUC precedent.

The Commission has the choice to analyze legal issues and establish new policy in a contested case final order within PCN 8, or to open a rulemaking. *PNW Metal Recycling, Inc. v. DEQ*, 371 Or. 673 (2023). The Commission does not need to take any action now to interpret HB 3681 before its effective date on January 1, 2026.

Secondly, OPUC precedent shows the Commission favors a full record. Staff found guidance in the PCN 5 order where the Commission stated:

> We have an obligation to respond to petitions in a timely manner and we are committed to doing so here. The parties have had a full and fair opportunity to present testimony and exhibits to us regarding Idaho Power's petition over the course of nine months and we decline to delay the proceedings.

In re Idaho Power Co., Petition for Certificate of Public Convenience and Necessity, PCN 5, Order No. 23-225 (June 29, 2023). Staff notes that the Commission declined to stay the proceeding in PCN 5, because it had all the information needed to reach a decision. PCN 8 is the opposite, because only opening testimony from the company has been filed.

III. Conclusion

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Staff and PacifiCorp have different perspectives on the impact of HB 3681 on PacifiCorp's Lone Pine to Whetstone CPCN application. PacifiCorp's perspective is that "the Commission's review is narrower as a result of HB 3681." PacifiCorp Motion at 2. Staff has not reached this conclusion, and wants to continue with its current analysis while focusing on the future statutory language. PacifiCorp also asserts waiver and clarification of current rules is "in the interest of saving Commission and party resources." PacifiCorp Motion at 11. Staff disagrees because closing briefs with legal arguments will address the facts in the record. Overall, Staff respectfully requests the ALJ decline to grant PacifiCorp's requested waivers and clarification to ensure that Staff, and the Commission, do not miss issues that the Commission continues to have authority to review.

DATED this 17th day of July 2025.

Respectfully submitted,
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