



Portland General Electric Company
121 SW Salmon Street • Portland, Oregon 97204
PortlandGeneral.com

January 18, 2012

VIA U.S. MAIL

Board of County Commissioners
Wasco County
511 Washington St, Ste 302
The Dalles, OR 97058

Re: Wasco County Chapter 19 Energy Code Amendments

Dear Commissioners:

On behalf of Portland General Electric ("PGE"), I am providing comments on the proposed code amendments to the Wasco County Land Use and Development Ordinance ("LUDO"), specifically as the proposed amendments relate to electric transmission lines.

PGE's interest in commenting on the proposed code amendments relates to its proposal to construct a portion of the Cascade Crossing Transmission Project, a 215-mile double-circuit 500 kilovolt ("kV") transmission line, in southern Wasco County. The project would connect new and existing electric power sources east of the Cascades to the Willamette Valley and help meet Oregon's growing energy needs, and enhance reliability of the region's electric grid. While the Cascade Crossing Transmission Project is subject to review by the Oregon Energy Facility Siting Council ("EFSC"), changes to the LUDO could impact the EFSC permitting process.

Wasco County Board of Commissioners ("Board") is one of the six county special advisory groups ("SAG") participating in the EFSC permitting process and in its capacity as a SAG, it recommends applicable substantive criteria from LUDO for use in the EFSC permitting process. If adopted as proposed, some of the general and siting standards in the LUDO, particularly those in LUDO Chapter 19, are inconsistent with the state law as it relates to the siting of transmission lines such as the Cascade Crossing Transmission Project. As a part of the EFSC permitting process, PGE has already confirmed with the Oregon Department of Justice that conditional use criteria from local county codes do not apply to portions of the Cascade Crossing Transmission Project on lands zoned Exclusive Farm Use ("EFU"). Therefore, while PGE commends Wasco County for diligently updating the LUDO to ensure responsible energy development in the County, PGE recommends that the Board revise the recommended LUDO language to make it consistent with state law, prior to adopting any decision.

Under state law, transmission lines are considered “public utility facilities necessary for public service” and are considered permitted uses on EFU land under ORS 215.213(1)(c) and 215.283(1)(c). The Oregon Supreme Court has held that the uses listed in ORS 215.213(1) and 215.283(1) must be reviewed exclusively under the provisions of those statutes as uses permitted outright (versus prohibited or conditionally allowed uses).¹ The Oregon Court of Appeals has interpreted the “necessary for public service” language in ORS 215.283(1)(c) as a statutory requirement that a utility facility not be sited on EFU-zoned lands unless the county finds that it is “necessary to situate the facility in the agricultural zone in order for the service to be provided.”² The legislature enacted ORS 215.275 in 1999 to eliminate confusion about the “necessity” issue. Thus, Oregon law makes “utility facilities necessary for public service” outright permitted in EFU zones subject to ORS 215.275.

Under ORS 215.275 and implementing Oregon Administrative Rule (OAR) 660-033-0130(16), the County may impose clear and objective conditions to ensure that a proposed transmission line does not result in significant adverse impacts to agriculture, but the County cannot regulate the transmission line as a conditional use. The language in LUDO Chapter 19, specifically the general standards in LUDO 19.030(C) and the specific siting standards for electric transmission facilities in LUDO 19.030(D)(4), attempt to impose conditional use standards on public facilities. While these standards may be appropriate for reviewing a transmission line located on non-resource lands, such standards are inappropriately applied to transmission lines located on EFU lands. If adopted, the standards will be inconsistent with the state regulatory framework for public utility facilities necessary for public service.

As the proponent of a linear energy facility crossing through six counties, it is essential to us that common standards, as imposed by Oregon’s EFU statutes, be consistently applied. PGE strives to comply with local requirements, to the maximum extent possible, but we are challenged to do so when local standards are inconsistent with mandatory state standards and requirements. Therefore, to ensure that the proposed amendments to LUDO are consistent with state law, PGE recommends that the Board adopt revised language to clarify that the general and specific standards in LUDO 19.030(C) and (D) only apply to public utility facilities necessary for public

¹ *Brentmar v. Jackson County*, 321 Or 481, 496 (1995); *Lane County v. LCDC*, 325 Or 569 (1997).

² *McCaw Communications, Inc. v. Marion County*, 96 Or App 552, 556 (1989); see also OAR 660-033-0120. With respect to the “necessity test,” *McCaw* is superseded by ORS 215.275.

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service when located on non-resource lands. When such uses are located on resource lands, like the EFU zone, the use is permitted outright subject to the applicant demonstrating compliance with ORS 215.275.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink that reads "Wendy Buck". The signature is written in a cursive style with a large, sweeping initial "W".

Wendy Buck
Government Affairs
Portland General Electric