



TOMMY A. BROOKS

tbrooks@cablehuston.com
cablehuston.com

September 15, 2021

VIA EMAIL

Boardman Planning Commission
c/o Barry Beyeler
Community Development Director
200 City Center Circle
Boardman, Oregon 97818
bbeyeler@cityofboardman.com

**RE: File ZP21 – 031 – Olson Road Transmission Line
Applicant’s Open Record Period Submittal**

Dear Planning Commissioners:

Introduction

This firm represents Umatilla Electric Cooperative (“UEC” or “Applicant”) in this matter. At the conclusion of the Hearing in this matter, you left the written record open: (1) until September 15th for all participants (“Open Record Period”); (2) until September 22nd to receive evidence and argument only for rebuttal purposes in response to evidence submitted during the Open Record Period; and (3) until September 29th for the Applicant to provide a final legal argument. This letter and its attachments serve as Applicant’s Open Record Period submittal and should be included in the record. This letter also serves as confirmation that the Applicant waives the 120-day clock for a period of 21 days to accommodate the extended record period.

Additional Information

1. Private Utility vs. Public Utility

One issue raised during the Hearing is whether UEC is a “private utility” or a “public utility.” There should be no dispute that UEC is a private utility. UEC is a cooperative organized under ORS Chapter 62. The attached **Exhibit A** contains copies of UEC’s Restated Articles of Incorporation and UEC’s most recent Annual Report filed with the Corporate Division of the Oregon Secretary of State’s office.

One argument opponents raised during the hearing is that UEC is a “public utility” as defined in ORS 757.005. As UEC responded during the hearing, however, ORS 757.006 expressly states “the term ‘public utility’ does not include . . . an electric cooperative organized under ORS chapter 62.” The Planning Commission received an additional comment that UEC’s response could not be right because UEC is subject to the Oregon Public Utility Commission (“PUC”) as evidenced by the fact UEC obtained a Certificate of Public Convenience and Necessity (“CPCN”) from the PUC for its transmission line. To the contrary, it is true that UEC is both not subject to the PUC’s general regulatory jurisdiction but nevertheless required to obtain a CPCN from the PUC. This is a function of the statutory requirement for CPCNs that applies to all utilities, whether public or private. Indeed, the PUC recognized this in its order granting UEC the CPCN and stated in that order’s opening paragraphs: “As a consumer-owned utility, UEC is not subject to our jurisdiction with regard to its rates, service, and financial matters. However, UEC must petition for a CPCN if the construction of a transmission project will likely involve the condemnation of land or the taking of an interest therein.” A copy of the PUC’s order is attached as **Exhibit B**.

2. Easement Status

In comments provided by Ms. Doherty, she asserts that UEC does not have easements for three tax lots – Tax Lots 3205, 3302, and 402. Ms. Doherty is correct with respect to the first two, and those tax lots (now owned by the Tallmans through 1st John 2:17, LLC) are not the subject of this proceeding. UEC does have easement agreements for the transmission line on all other parcels for which it seeks a Zoning Permit, including Tax Lot 402. Attached as **Exhibit C** is a copy of the recorded document evidencing that easement, obtained through an option, and UEC’s notice that it had exercised that option. The easement is perpetual and did not expire as Ms. Doherty suggests.

3. Use for the Transmission Line

Although not clearly relevant to any land use criteria, comments in the record suggest that the transmission line is not for residential use and/or serves only one customer. As UEC indicated at the hearing, the transmission line is part of UEC’s entire system and carries power between substations. As confirmed by the PUC when it issued the CPCN, there is a broad public need for the transmission line, which ultimately serves all customers in the Boardman area.

4. Transmission Line Location

The Planning Commission received comments implying that the information the City received is not sufficient to determine the characteristics of the line. UEC provided materials to the City showing the characteristics of the poles and conduit that comprise the transmission line facilities, along with information about their location. Attached as **Exhibit D** are additional figures that show in better detail where the line is located on each property. Other information the City might normally review, like setbacks and yard dimensions, are not relevant to the transmission line, and the information provided is sufficient for the Planning Commission to determine that the transmission line is an outright permitted use.

Conclusion

UEC appreciates the opportunity to provide this additional information in response to comments submitted to the record. It will provide additional evidence for rebuttal, if necessary, and will provide a final legal argument by September 29th.

Sincerely,

A handwritten signature in blue ink, appearing to read 'TAB', with a stylized flourish extending to the right.

Tommy A. Brooks