



TOMMY A. BROOKS

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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 'T. Brooks', with a stylized flourish at the end.

Tommy A. Brooks

AMENDED ANNUAL REPORT



Corporation Division
www.filinginoregon.com

E-FILED
May 03, 2021
OREGON SECRETARY OF STATE

REGISTRY NUMBER

3969516

REGISTRATION DATE

06/18/1937

BUSINESS NAME

UMATILLA ELECTRIC COOPERATIVE ASSOCIATION

BUSINESS ACTIVITY

COOPERATIVE

MAILING ADDRESS

1455 SW BROADWAY STE 1500
PORTLAND OR 97201 USA

TYPE

COOPERATIVE

PRIMARY PLACE OF BUSINESS

750 W ELM ST
HERMISTON OR 97838 USA

JURISDICTION

OREGON

REGISTERED AGENT

64983993 - CH REGISTERED SERVICES, LLC

1455 SW BROADWAY STE 1500
PORTLAND OR 97201 USA

If the Registered Agent has changed, the new agent has consented to the appointment.

PRESIDENT

BRYAN WOLFE

299 E PUNKIN CENTER RD
HERMISTON OR 97838 USA

SECRETARY

STEVE PLATT

47452 MCKAY CREEK RD
PILOT ROCK OR 97868 USA



I declare as an authorized signer, that this filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment, or both.

By typing my name in the electronic signature field, I am agreeing to conduct business electronically with the State of Oregon. I understand that transactions and/or signatures in records may not be denied legal effect solely because they are conducted, executed, or prepared in electronic form and that if a law requires a record or signature to be in writing, an electronic record or signature satisfies that requirement.

ELECTRONIC SIGNATURE

NAME

THOMAS GRIM

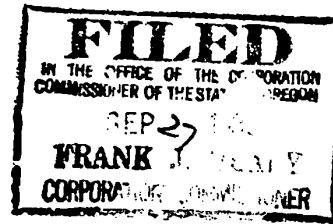
TITLE

AUTHORIZED AGENT

DATE SIGNED

05-03-2021

FILE NO. 3969516



STATEMENT OF ADOPTION
OF RESTATED ARTICLES OF INCORPORATION

UMATILLA ELECTRIC COOPERATIVE ASSOCIATION

The attached Restated Articles of Incorporation ("Restated Articles") were adopted by a majority of members of Umatilla Electric Cooperative Association (the "Corporation") on August 11, 1983.

1. The name of the Corporation is Umatilla Electric Cooperative Association.
2. The date of the adoption of the Restated Articles is August 11, 1983.
3. The Corporation has no shareholders.
4. 671 members of the Corporation voted in favor and 52 members of the Corporation voted against the adoption of the Restated Articles of Incorporation.
5. The Restated Articles of Incorporation do not provide for exchange, reclassification or cancellation of shares.

We, the President and the Secretary of the Corporation, hereby certify that we have examined the foregoing and to the best

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PAGE 1 - STATEMENT OF ADOPTION

UMATILLA ELECTRIC COOPERATIVE A



of our knowledge and belief it is true, correct and complete.

UMATILLA ELECTRIC COOPERATIVE
ASSOCIATION

Jerry E. Myers, President

Arthur A. Allen, Secretary

VERIFICATION

STATE OF OREGON)
) ss.
County of Umatilla)

I, the undersigned Secretary of Umatilla Electric Cooperative Association, being first duly sworn, hereby verify that the President and Secretary of the Corporation are fully authorized to execute and file this Statement and the Restated Articles of Incorporation and have done so for and on behalf of the Umatilla Electric Cooperative Association.

Arthur A. Allen, Secretary

Subscribed and sworn to before me this 24th day of
August, 1983.

Notary Public for Oregon
My Commission Expires: 12-3-86

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PAGE 2 - STATEMENT OF ADOPTION

RESTATED ARTICLES OF INCORPORATION

UMATILLA ELECTRIC COOPERATIVE ASSOCIATION

Pursuant to the provisions of ORS 62.570 and ORS 57.385, these Restated Articles of Incorporation supersede the heretofore existing articles and amendments thereto.

ARTICLE I

The name of the Corporation is Umatilla Electric Cooperative Association.

ARTICLE II

The object or objects and purpose or purposes for which the Corporation is formed are:

- (a) To generate, manufacture, purchase, acquire and accumulate electric energy for its members only and to transmit, distribute, furnish, sell, and dispose of such electric energy to its members only, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold maintain, operate, sell dispose of, lease as lessor, exchange and mortgage, plants, buildings, works, machinery, supplies, apparatus, equipment and electric transmission and distribution lines or systems necessary, convenient or useful for carrying out and accomplishing any or all of the foregoing purposes;
- (b) To acquire, own, hold, use, exercise and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate and in any manner dispose of franchises, rights, privileges, licenses, rights of way and easements necessary, useful or appropriate to accomplish any or all of the purposes of the Corporation;
- (c) To purchase, receive, lease as lessee, or in any ~~0002000100340003~~ manner, acquire, own, hold, maintain, use, convey, sell, lease as lessor, exchange, mortgage, pledge or

otherwise dispose of any and all real and personal property or any interest therein necessary, useful or appropriate to enable the Corporation to accomplish any or all of its purposes;

- (d) To assist its members to wire their premises and install therein electrical and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character (including, without limiting the generality of the foregoing, such as are applicable to water supply and sewage disposal) and, in connection therewith and for such purposes, to purchase, acquire, lease, sell, distribute, install and repair electrical and plumbing appliances, fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character (including, without limiting the generality of the foregoing, such as are applicable to water supply and sewage disposal) and to receive, acquire, endorse, pledge, guarantee, hypothecate, transfer or otherwise dispose of notes and other evidences of indebtedness and all security therefor;
- (e) To borrow money, to make and issue bonds, notes and other evidences of indebtedness, secured or unsecured, for monies borrowed or in payment for property acquired, or for any of the other objects or purposes of the Corporation and to secure the payment of such bonds, notes or other evidences of indebtedness by mortgage or mortgages, or deed or deeds of trust upon, or by the pledge of or other liens upon, all or any of the property, rights, privileges or permits of the Corporation, wheresoever situated, acquired or to be acquired.
- (f) To do and perform for itself or its members, any and all acts and things, and to have and exercise any and all powers, as may be necessary or convenient to accomplish any or all of the foregoing purposes or as may be permitted by Oregon Revised Statutes, Chapter 62. The Corporation shall render no service to or for the public. 0022 0031 0034 0030

ARTICLE III

The principal office and place of business of the Corporation shall be in the City of Hermiston, in the County of Umatilla, State of Oregon.

ARTICLE IV

The term of existence of the Corporation shall be: perpetual.

ARTICLE V

SECTION 1. The Corporation shall have no capital stock.

SECTION 2. Any person, firm, association, corporation, or body politic or subdivision thereof will become a member of the Corporation upon receipt of electric service from the Corporation, provided that he, she or it has first:

- (a) Made a written application for membership therein;
- (b) Agreed to purchase from the Corporation electric energy as hereinafter specified;
- (c) Agreed to comply with and be bound by the Articles of Incorporation and bylaws of the Corporation and any rules and regulations adopted by the Board of Directors; and
- (d) Paid the membership fee hereinafter specified.

No member may hold more than one membership in the Corporation and no membership in the Corporation shall be transferable except as provided in the Bylaws of the Corporation.

SECTION 3. The membership in the Corporation shall be Five Dollars (\$5.00), the payment of which shall make the member eligible for service.

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PAGE 3 - RESTATED ARTICLES OF INCORPORATION

SECTION 4. Each member shall purchase from the Corporation all electric energy purchased for use on the premises specified in his or her application for membership, and shall pay therefor at rates which shall from time to time be fixed by the Board of Directors. Production or use of electric energy on such premises, regardless of the source thereof, by means of facilities which shall be interconnected with facilities of the Corporation shall be subject to appropriate regulations fixed from time to time by the Corporation. Amounts paid for electric energy in excess of the cost of service are furnished by members as capital and each member shall be credited with the capital so furnished as provided in the Bylaws of the Corporation. Regardless of the amount of electric energy consumed, each member shall pay to the Corporation a minimum amount as shall be fixed from time to time by the Board of Directors. Each member shall also pay all amounts owed to the Corporation as and when the same become due and payable.

SECTION 5. Each member shall be entitled to one (1) vote and no more on each matter submitted to a vote at an annual or special meeting of the members. Each member qualified to vote shall be entitled to one (1) vote and no more on the election of a director submitted to a vote at a district meeting of members. At all meetings of the members at which a quorum is present, all questions shall be decided by a vote by ballot of a majority of the members voting thereon at such meeting in person or by mail, except as otherwise provided by law, the Articles of Incorporation or the Bylaws of the Corporation. The qualified candidate for director receiving the highest number of votes at a district

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PAGE 4 - RESTATED ARTICLES OF INCORPORATION

meeting, even if less than a majority of the votes cast, shall be elected as director. If a husband and wife hold a joint membership, they shall jointly be entitled to one (1) vote and no more upon each matter submitted to a vote at a district, annual or special meeting of the members.

SECTION 6. Membership in the Corporation shall be evidenced by a certificate of membership which shall be in such form and shall contain such provisions as shall be determined by the Board of Directors not contrary to, or inconsistent with, the Articles of Incorporation or the Bylaws of the Corporation. Such certificates shall be signed by the President and by the Secretary of the Corporation and shall be sealed with its corporate seal.

SECTION 7. No membership certificate shall be issued for less than the membership fee fixed in Section 3 of Article V of these Articles of Incorporation or until such membership fee has been fully paid. If a certificate is lost, destroyed or mutilated, a new certificate may be issued therefor upon such uniform terms and indemnity to the Corporation as the Board of Directors may prescribe.

SECTION 8. The Bylaws of the Corporation may define and fix such other duties and responsibilities of the members and prescribe such other terms and conditions upon which members shall be admitted to and retain membership in the Corporation not inconsistent with these Articles of Incorporation or Oregon Revised Statutes, Chapter 62.

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PAGE 5 - RESTATED ARTICLES OF INCORPORATION

ARTICLE VI

SECTION 1. Subject to the provisions of any mortgage or deed of trust given by the Corporation and within sixty (60) days after the expiration of each fiscal year the Board of Directors, after paying or providing for the payment of all operating expenses of the Corporation including an amount for prospective operating expenses for a reasonable period, and all interest and installments on account of the principal of notes, bonds or other evidences of indebtedness of the Corporation which shall have become due and be unpaid, or which shall have accrued at the end of the fiscal year but which shall not be then due, and after paying or making provision for the payment of all taxes, insurance and all other non-operating expenses which shall have become due and unpaid, and all taxes, insurance and all other non-operating expenses which shall have accrued at the end of the fiscal year but shall not be then due, shall apply the revenues and receipts of the Corporation remaining thereafter for the following purposes and in the following order of priority:

- (a) The establishment and maintenance of a reserve for the payment of interest on and principal of all outstanding notes, bonds or other evidences of indebtedness of the Corporation in an amount which shall equal the amount of principal and interest required to be paid in respect of such notes, bonds, or other evidences of indebtedness during the ensuing fiscal year;
- (b) The establishment and maintenance of a general reserve fund for working capital, insurance, taxes, improvements, new construction, depreciation, obsolescence and contingencies in an amount which the Board of Directors shall deem reasonable;

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- (c) the payment by credits to a capital account for each of the patrons of the Corporation of refunds in proportion to the amounts of their respective patronage (purchase of electric energy and goods from the Corporation during the fiscal year);

provided, however, that in no case shall any such refunds be paid to any member who is indebted to the Corporation until such indebtedness is paid or arrangements in respect thereof satisfactory to the Board of Directors shall have been made.

SECTION 2. The private property of the members of the Corporation shall be exempt from execution for the debts of the Corporation and no member shall be individually liable or responsible for any debts or liabilities of the Corporation.

SECTION 3. The Bylaws of the Corporation may be altered, amended or repealed by the members at any regular or special meeting, provided that the notice of such meeting shall have contained a copy of the proposed alterations, amendments or repeal.

SECTION 4. The Board of Directors shall have the power to make such rules and regulations not inconsistent with law, these Articles of Incorporation and the Bylaws of the Corporation as the Board of Directors may deem advisable for the management, administration and regulation of the business and affairs of the Corporation.

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PAGE 7 - RESTATED ARTICLES OF INCORPORATION

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of UMATILLA ELECTRIC COOPERATIVE, Petition for Certification of Public Convenience and Necessity.	PCN 4	ORDER
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DISPOSITION: PETITION FOR CERTIFICATE OF PUBLIC AND NECESSITY
GRANTED

I. INTRODUCTION

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

II. BACKGROUND

A. Factual Background

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

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

¹ See ORS 758.015(1)

² ORS 758.015(2).

B. Procedural Background***1. 2020 Public Meeting and Interventions***

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

2. Testimony and Exhibits

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

3. Hearing

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

4. Confidential Information

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

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

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

III. LEGAL STANDARD

A. Oregon Law

ORS 758.015 requires specific information accompany a petition for a CPCN, which includes “setting forth a detailed description and the purpose of the proposed transmission line, the estimated cost, the route to be followed, the availability of alternate routes, a description of other transmission lines connecting the same areas, and such other information in such form as the commission may reasonably require in determining the public convenience and necessity.”⁴

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

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

B. Oregon Administrative Rules

OAR 860-025-0030 provides additional detail regarding specific items that must be submitted in a petition for a CPCN. These additional items include that the description of the proposed line must contain information that “should be in sufficient detail to enable a full understanding of the public convenience, necessity and justification in the public interest for the proposed transmission line and the benefits to be derived therefrom, and to enable a determination of its safety and practicability.”⁷ The petitioner must include maps of the service area, the proposed route and alternative routes, descriptions of land to be condemned, costs and financial feasibility, explanations of alternative routes, and statements and supporting data regarding alternative routes.⁸ Finally, the rule describes

³ *In the Matter of Public Utility Commission of Oregon, Waiver of Rules to Accommodate Temporary Changes in Business Practices*, Docket No.UM 2061, Order No. 20-888 (Mar 18, 2020).

⁴ ORS 758.015(1).

⁵ See ORS 758.015(2).

⁶ ORS 469.300(11)(a)(C).

⁷ See OAR 860-025-0300(1)(b).

⁸ See OAR 860-025-0030(1)(b)(c)(A) to (G)(e)(g).

the findings we must make when approving a petition. This includes adopting findings that “the proposed transmission project complies with Statewide Planning Goals and is compatible with the acknowledged comprehensive plan(s) and land use regulations of each local government where the project is to be located.”⁹

C. Previous Decisions

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

“Necessity” means “great or absolute need.” In turn, “need” means “a lack of something requisite, desirable, or useful.” Thus, to establish the necessity of a project, the petitioner must demonstrate that Oregonians will forego something desirable and useful without it.

“Safety” means “the condition of being safe, freedom from being exposed to danger; exemption from hurt, injury, or loss. To establish the safety of a project, petitioner must show that the project will be constructed, operated, and maintained in a manner that protects the public from danger.”

“Practicability” means “the quality or state of being practicable * * *.” “Practicable,” in turn, means “possible to practice or perform; capable of being put into practice, done, or accomplished * * *. To establish the practicability of the project, the petitioner must show the project is feasible and will be effectively and efficiently constructed.”

“Justification” means “the act of or instance of justifying * * *.” “Justify,” in turn, means “to prove or show to be valid, sound, or continuing to fact or reason * * *. Thus, to show that a project is justified, the petitioner must show sufficient reason for the project to be built. To make this determination, we consider the public benefits and costs of the project. Where possible, we rely on benefits and costs that can be quantified in economic terms.”¹⁰

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

⁹ See OAR 860-025-0030(2).

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

¹¹ Order No. 17-111 at 4-6.

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

IV. DISCUSSION

A. Necessity and Justification

1. *UEC's Petition*

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

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

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

¹² UEC/200, Echenrode/2-3.

¹³ UEC/200, Echenrode/4.

2. *Positions of the Parties*

a. Staff

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

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

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

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

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

¹⁴ Staff/200, Rashid/7.

¹⁵ Staff/200, Rashid/9.

¹⁶ Staff/200, Rashid/2.

¹⁷ Staff/100, Hanhan/7-8.

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

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

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

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

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

b. The Fredericksons

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

¹⁸ Alternative Route 1 was estimated to cost ~\$12.1 million, and Alternative Route 2 was estimated to cost approximately ~\$12.8 million. A third alternative, which required no condemnation, was a 115 kV upgrade and cost-prohibitive with an estimate of ~\$30.1 million.

¹⁹ Staff/102, Hanhan/43 (PUC Staff Data Request 65).

²⁰ Staff/100, Hanhan/14 (citing PUC Staff Data Request 41 (Staff/102)).

²¹ UEC/108, Toth/3.

²² Staff/100, Hanhan/18.

²³ *Id.*

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

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

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

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

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

3. UEC and Staff Response

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

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

²⁴ Frederickson Opening Brief at 7.

²⁵ Frederickson Opening Brief at 7, citing *Harshman v. Jackson County*, 41 LUBA 330 (2002).

²⁶ Frederickson Opening Brief at 9.

²⁷ UEC Reply Brief at 5, citing *Getz v. Deschutes County*, 58 OR LUBA 559 (2009).

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

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

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

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

4. Commission Resolution on Necessity and Justification

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

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

²⁸ UEC Reply Brief at 5.

²⁹ UEC Reply Brief at 6, citing *Bridal Veil Lumbering Co. v. Johnson*, 30 Or 205, 210 (1896). The Court allowed condemnation of private property to build a railway serving a single lumber company, declaring it a "public use" where any person could have used the railway for transportation or shipping – even though no one did.

³⁰ Staff Reply Brief at 1.

³¹ *Id.* at 2, citing Staff/102, Hanhan/37.

³² Staff/100, Hanhan/8-9, and Figure 1.

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

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

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

B. Practicability

1. UEC's Petition

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

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

³³ UEC/200, Echenrode/4.

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

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

2. *Positions of the Parties*

a. *Staff*

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

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

b. *Tallmans*

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

³⁴ *Id.* at 5.

³⁵ Staff/200, Rashid/13-14.

³⁶ Staff/102, Hanhan/15 (PUC Staff Data Request 18).

³⁷ Tr. at 19, line 14 through at 20, line 5.

3. UEC and Staff Response

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

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

4. Commission Resolution on Practicability

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

C. Safety

1. UEC's Petition

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

2. Positions of the Parties

a. Staff

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

³⁸ *Id.* at 19, lines 21-23.

³⁹ UEC/100, Toth/17.

⁴⁰ Staff/200, Rashid/11.

b. Tallmans

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

3. UEC and Staff Response

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

4. Commission Resolution on Safety

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

D. Land Use Findings

1. UEC's Petition

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

⁴¹ Tallman Initial Brief at 3-4.

⁴² Staff/200, Rashid/11.

⁴³ Staff Reply Brief at 4, citing OAR 860-024-0010.

⁴⁴ *In the Matter of Tillamook People's Utility District, Petition for Certificate of Public Convenience and Necessity*, Docket No. PCN 2, Order No. 19-293 at 16 (Sep 10, 2019).

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

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

2. *Positions of the Parties*

a. Staff

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

b. Fredericksons

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

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

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

c. Tallmans

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

3. UEC and Staff responses

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

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

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

4. Commission Resolution on Land Use Findings

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

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

V. CONCLUSION

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

VI. ORDER

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

Made, entered, and effective Mar 05 2021



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner


A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

AFTER RECORDING, RETURN TO:

Umatilla Electric Cooperative
P.O. Box 1148
Hermiston, OR 97838

GRANTEE REFERENCE: Tax Lot 402

MORROW COUNTY, OREGON		2021-48934
E-UT		
Cnt=2 Stn=32 KB	06/01/2021 03:55:02 PM	
\$75.00 \$5.00 \$11.00 \$10.00 \$60.00	\$161.00	
I, Bobbi Childers, County Clerk for Morrow County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.		
Bobbi Childers - County Clerk		



UTILITY LINE OPTION AND EASEMENT AGREEMENT

Double T Farming ("Grantor"), for good and valuable consideration, receipt of which is hereby acknowledged, grants to **Umatilla Electric Cooperative**, an Oregon cooperative corporation ("**Grantee**"), and to its licensees, successors or assigns, the right to acquire, at its option and in accordance with the terms and conditions hereof (the "**Option**"), the Easement (hereafter defined) on, over and under that certain real property owned by Grantor and more particularly described on Exhibit A (the "**Easement Area**"). Grantor hereby grants to Grantee the Option for a period of three (3) years from the Effective Date hereof (the "**Option Period**"), as such Option Period may be extended as hereinafter provided.

ARTICLE I. THE OPTION

1.1 Consideration for the Option; Extension of the Option Period. In consideration of the foregoing grant of the Option, Grantor shall receive within sixty (60) days following the Effective Date (hereinafter defined) for each year of the Option Period, the Option Payment as defined in a separate letter agreement (the "**Letter Agreement**") executed contemporaneously with this Agreement between Grantor and {Option Payor Name} (the "**Option Payor**"). The Option Payment shall constitute all of the consideration due to Grantor for the grant of the Option for the duration of the applicable Option Period. Grantee shall have the right to extend the Option Period for two additional one (1) year periods by delivery of written notice of such extension together with an additional Option Period Extension Payment, defined in the Letter Agreement, to Grantor not later than the expiration date of the Option Period, as the same may have been extended.

1.2 Recording of Option. Upon execution of this Option, Grantee shall record the Memorandum of Utility Line Option and Easement Agreement executed by the Parties and attached as Exhibit B.

1.3 Exercise of Option. Grantee may exercise the Option by delivering a written notice of exercise (the "**Option Notice**") to Grantor at any time prior to the termination of the Option Period. Delivery of the Option Notice shall be deemed to be timely if personally delivered or postmarked on or before the first business day after the termination of the Option Period. The Option Notice will specify (a) that Grantee is electing to acquire the Easement, and (b) the date on which the Easement shall commence (the "**Easement Commencement Date**"). The Easement Commencement Date shall not be later than the last day of the Option Period, unless the Grantor otherwise agrees in writing.

1.4 Option Termination. Grantee may terminate the Option at any time by giving written notice to Grantor of the date of termination. If Grantee does not either (a) extend the Option in accordance with

Section 1.1, (b) exercise the Option in accordance with Section 1.3, or (c) terminate the Option in accordance with this Section 1.4, the Option shall expire on the last day of the Option Period. Upon expiration or termination of the Option without the exercise thereof, neither party shall have any further obligation or liability to the other under this Agreement, except that the provisions of Section 3.9 shall survive the expiration or termination of the Option for a period of two years.

1.5 Access to Easement Area. During the Option Period, Grantee, its contractors, subcontractors, agents and employees shall have the right to enter the Easement Area for purposes of conducting such tests, studies, borings, inspections, surveys, and soil or other analysis as Grantee deems advisable or necessary. Grantor shall cooperate with Grantee in such efforts and make available to Grantee, its contractors, subcontractors and agents, for inspection, copies of all surveys, plans and other such records of Grantor only as such information relates directly to the proposed Improvements (as hereinafter defined) to be constructed in the Easement Area. During the Option Period, without Grantee's express written consent, Grantor shall not grant any other easements burdening the Easement Area or that otherwise limit Grantee's use of the Easement Area if the Option is exercised.

ARTICLE II. THE EASEMENT

2.1 Exercise of Option. Upon the exercise by Grantee of the Option to acquire the Easement in accordance with Article I, without the need or requirement of any further action on the part of either Grantor or Grantee, this Agreement shall become an easement between Grantor and Grantee as of the Easement Commencement Date. Upon the exercise of the Option, and only upon the exercise of the Option, Grantee shall be entitled to record this Agreement in the land records of Morrow County, Oregon, as notice of the exercise of the Option, the existence of the Easement and the occurrence of the Easement Commencement Date.

2.2 Consideration for Easement. In consideration of the rights granted under this Article II including the Easement, Grantor shall receive the Easement Payment as defined in the Letter Agreement within sixty (60) days after the Easement Commencement Date.

2.3 The Easement. The Easement shall be a perpetual, grant exclusive to Grantee, its successors or assigns, to construct, operate, maintain, repair and replace utility lines and facilities, including, but not limited to, lines for the transmission or distribution of electrical power, and related communication lines, or any related system and facilities (the "**Improvements**") on, across, over, or under the Easement Area. The Easement shall further grant to Grantee the right to inspect and make repairs, changes, alterations, improvements, removals from, substitutions and additions to the facilities as Grantee may from time to time deem advisable, including, by way of example and not by way of limitation, the right to increase or decrease the number of conduits, wires, cables, handholes, manholes, connection boxes, transformers and transformer enclosures; to cut, trim and control the growth by chemical means, machinery or otherwise of trees, shrubbery and vegetation located within the easement area (including any control of the growth of other vegetation in the right-of-way which may incidentally and necessarily result from the means of control employed); to fell or trim any trees or brush located on Grantor's adjacent lands which may pose a hazard to the operation of the facilities within the easement area; to keep the easement clear of all buildings, structures or other obstructions;; and to cross over and to install guys and anchors on Grantor's land adjoining the above described easement area.

2.4 Installed Equipment. Grantor agrees that all poles, wires and other facilities including any equipment, installed in, upon or under the above-described lands at the Grantee's expense shall remain the property of the Grantee, removable at the option of the Grantee, and Grantor shall have no lien thereon.

ARTICLE III. GENERAL

3.1 Title to the Easement Area. Grantor covenants that it is the sole owner of the Easement Area, that it is authorized to convey this Option and the Easement, and that the said lands are free and clear of encumbrances and liens of whatsoever character except those matters of record as would be disclosed by a title report as of the Effective Date, or otherwise disclosed in writing to Grantee on or prior to the Effective Date.

3.2 Notices. Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and addressed to the parties at their respective addresses set forth below, and shall be deemed to have been duly given (a) on the date delivered if delivered personally, (b) two (2) business days after deposit in the United States mail, postage prepaid, (c) on the following business day when sent by overnight express courier. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

To Grantor : **DOUBLE T FARMING**
77458 THREEMILE RD.
BOARDMAN, OR 97818

To Grantee : **UMATILLA ELECTRIC COOPERATIVE**
P.O. Box 1148
Hermiston, OR 97838

3.3 Entire Agreement, Amendments and Waivers. This Agreement, together with all of the attachments and exhibits, hereto, contains the entire agreement and understanding of the parties in respect to the subject matter hereof, supersedes all prior agreements in respect to the subject matter hereof, if any, between the parties, and the same may not be amended, modified or discharged nor may any of its terms be waived except by an instrument in writing signed by the parties.

3.4 No Third-Party Benefits. This agreement is for the sole and exclusive benefit of the parties hereto and their respective successors and assigns, and no third party is intended to or shall have any rights hereunder except as expressly provided in Section 3.9.

3.5 Governing Law. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Oregon.

3.6 Recording. When authorized by the terms of this Agreement, this Agreement shall be recorded by Grantee in the appropriate public records of Morrow County, Oregon.

3.7 Severability. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those to

which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

3.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

3.9 Confidentiality. Grantor shall maintain in the strictest confidence, for the benefit of Grantee and Option Payor; (a) all the terms and conditions of this Agreement and the separate Letter Agreement; (b) all information provided by Grantee pursuant to this Agreement; and (c) all information obtained by or about Grantee's site or product design, methods of operation, and methods of construction, regardless of its source; unless such information either; (i) is in the public domain by reason of prior publication through no act or omission of Grantor or its employees or agents; or (ii) was already known to Grantor at the time of disclosure and which Grantor is free to use or disclose without breach of any obligation to any person or entity ("**Confidential Information**"). Grantor shall not use Confidential Information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Grantee. Notwithstanding the foregoing, Grantor may disclose Confidential Information to Grantor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Grantor regarding this Agreement or to any prospective purchaser of fee title to the Easement Area who has made a written offer to purchase or otherwise acquire fee title to the Easement Area that Grantor desires to accept; provided that in making such disclosure, Grantor shall advise the party receiving the information of the confidentiality of the information. Grantor may also disclose Confidential Information pursuant to lawful process, subpoena or court order requiring such disclosure, provided that Grantor shall give Grantee reasonable advance notice of the required disclosure and will cooperate with Grantee in limiting such disclosure and in obtaining protective orders where appropriate.

SIGNATURE PAGES TO FOLLOW

MADE AND DATED this 19 day of Aug, 2019 (the "Effective Date").

Double T Farming

Joseph V. Taylor
Signature

Joseph V. Taylor

Printed Name

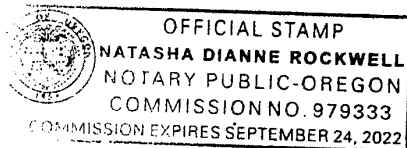
Partner
Title

ACKNOWLEDGEMENT

State of Oregon

County of Morrow §§

This certifies that on this 19 day of August, 2019, before me the undersigned personally appeared the above named **Joseph V. Taylor**, on behalf of **Double T Farming**, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.



Natasha Dianne Rockwell
Notary Public

My Commission Expires September 24, 2022

Double T Farming

Cheryl L. Taylor
Signature

Cheryl L. Taylor

Printed Name

Partner
Title

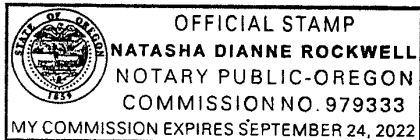
ACKNOWLEDGEMENT

State of Oregon

§§

County of Morrow

This certifies that on this 19 day of August, 2019, before me the undersigned personally appeared the above named **Cheryl L. Taylor**, on behalf of **Double T Farming**, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that she executed the same.



Natasha Dianne Rockwell
Notary Public

My Commission Expires September 24, 2022

Double T Farming

Roderick H. Taylor
Signature

Roderick H. Taylor

Printed Name

Partner
Title

ACKNOWLEDGEMENT

State of Oregon

County of Morrow §§

This certifies that on this 19 day of August, 2019, before me the undersigned personally appeared the above named **Roderick H. Taylor**, on behalf of **Double T Farming**, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Janette Dawn Eldrige
Notary Public

My Commission Expires October 15 2021

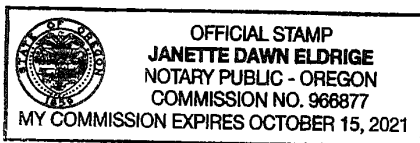


Exhibit 'A'
Taylor C/O Double T Farming

Easement Legal Description:

A 125 foot wide strip of land located in the Southwest Quarter of the Southwest Quarter of Section 11, Township 4 North, Range 25, East of the Willamette Meridian, in the County of Morrow and State of Oregon, more particularly described as follows:

Commencing at the Southwest Corner of said Section 11; thence North 1° 59' 16" West a distance of 329.97 feet to the Southwest corner of Parcel 3 of Partition Plat 2013-3, as filed in the files of Partition Plats of Morrow County; thence North 89° 37' 07" East along the South line of said Parcel 3 a distance of 349.80 feet to the Point of Beginning of this Easement Description; thence North 20° 54' 30" West a distance of 317.17 feet to the South line of Parcel 2 of said Partition Plat 2013-3; thence North 69° 55' 15" East along the South line of said Parcel 2 a distance of 125.01 feet; thence South 20° 54' 30" East a distance of 362.17 feet to the South line of said Parcel 3; thence South 89° 37' 07" West along the said South line of Parcel 3 a distance of 133.48 feet to the Point of Beginning.



Exhibit "A"

For:

Umatilla Electric Cooperative
P.O. Box 1148
Hermiston, OR 97838

Rev. 09-11-2019



R. V. MCKINNIS ENGINEERING
ENGINEERING - LAND SURVEYING - WATER RIGHTS
79980 Prindle Loop Road
Hermiston, Oregon 97838
(541) -567-2017

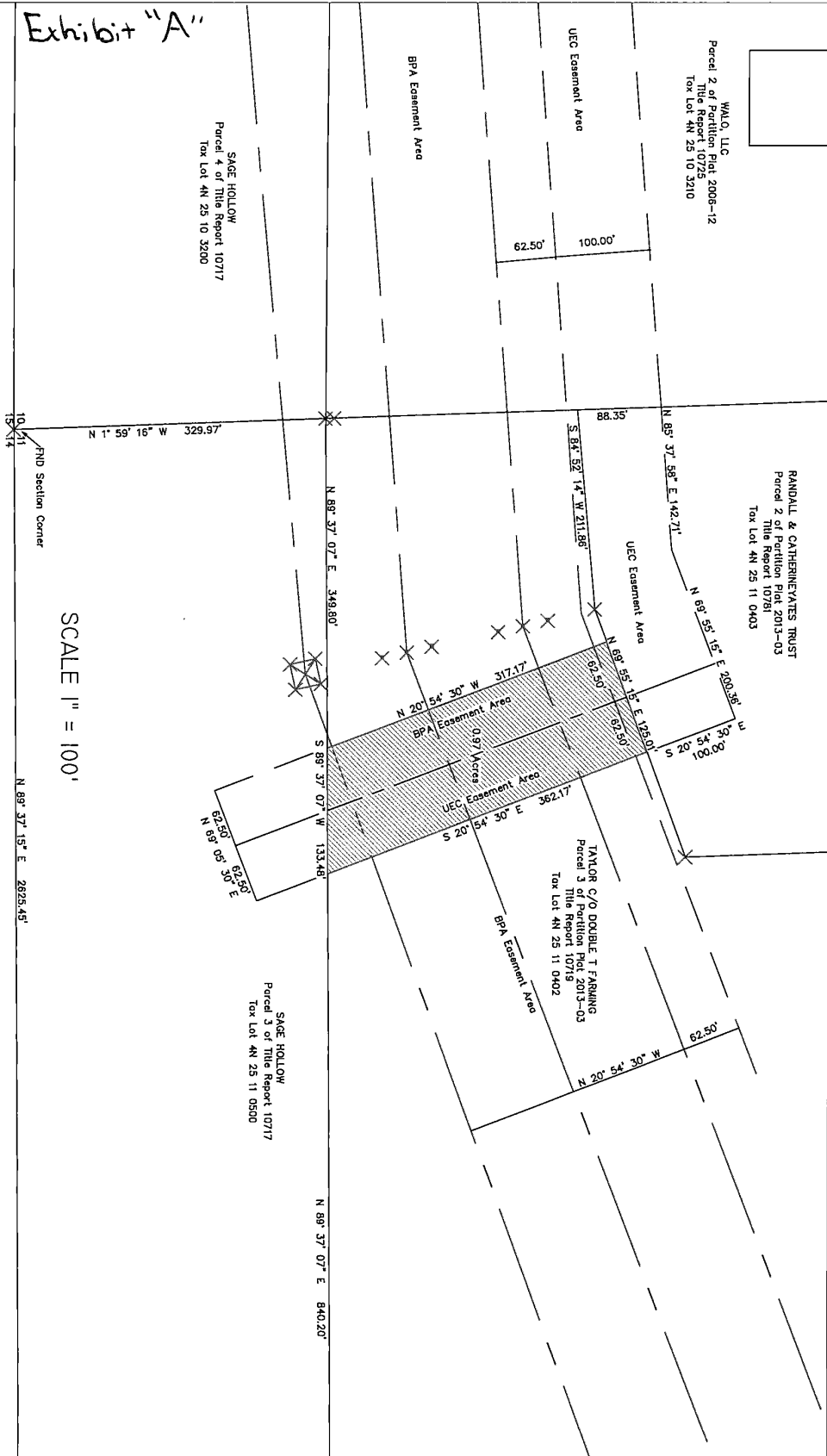



Exhibit "B"

AFTER RECORDING RETURN TO:

Umatilla Electric Cooperative
P.O. Box 1148
Hermiston, OR 97838

GRANTEE REFERENCE: Tax Lot 402

MORROW COUNTY, OREGON	2020-47456
E-ME	10/28/2020 01:31:02 PM
Cnt=1 Stn=23 TC	
\$35.00 \$11.00 \$10.00 \$60.00	\$116.00
I, Bobbi Childers, County Clerk for Morrow County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.	
Bobbi Childers - County Clerk	



MEMORANDUM OF EASEMENT OPTION AGREEMENT

BETWEEN: Double T Farming ("Grantor")
77458 Threemile Rd.
Boardman, OR 97818

AND: Umatilla Electric Cooperative ("Grantee")
P.O. Box 1148
Hermiston, OR 97838

Pursuant to a Utility Line Option and Easement Agreement dated August, 2019, ("Option Agreement"), Grantor granted to Grantee an option to purchase an easement for utility purposes on that certain property in Morrow County, Oregon ("Property"), more particularly described in Exhibit A.

The Property is subject to the terms and conditions of the Option Agreement, for a term commencing Aug. 19, 2019 and terminating Aug. 19, 2022, subject to Grantee's right to extend the term for two additional one-year periods as set forth in the Option, after which it will be of no further force or effect.

A complete copy of the Option Agreement may be obtained from Grantor or Grantee.

This Memorandum is being executed and recorded in the Official Records of Morrow County, Oregon, to give notice of the provisions of the Option Agreement and will not be deemed or construed to define, limit, or modify the Option Agreement in any manner.

This Memorandum of Easement Option may be executed in one or more identical counterparts, and if so executed, each counterpart shall be deemed an original for all purposes, and all such counterparts shall collectively constitute one agreement. For convenience, the signature pages of each counterpart may be removed from that counterpart and attached to a single agreement.

SIGNATURE PAGES TO FOLLOW

Made and dated this 19th day of August, 2019 (the "Effective Date").

DOUBLE T FARMING, GRANTOR

Joseph V. Taylor
Signature

Joseph V. Taylor
Printed Name

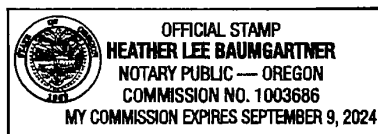
Partner
Title

ACKNOWLEDGEMENT

State of Oregon

County of Morrow ^{SS}

This certifies that on this 28th day of September, 2020, before me the undersigned personally appeared the above named **Joseph V. Taylor**, on behalf of **Double T Farming**, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.



Heather Lee Baumgartner

My Commission Expires 09-09-2024

DOUBLE T FARMING, GRANTOR

Cheryl L. Taylor
Signature

Cheryl L. Taylor

Printed Name

Title

ACKNOWLEDGEMENT

State of Oregon

County of Morrow §§

This certifies that on this 25th day of September, 2020, before me the undersigned personally appeared the above named **Cheryl L. Taylor**, on behalf of **Double T Farming**, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that she executed the same.

Michelle L. Gerber



My Commission Expires 11-18-2023

DOUBLE T FARMING, GRANTOR

Roderick H Taylor
Signature

Roderick H. Taylor

Printed Name

Partner
Title

ACKNOWLEDGEMENT

State of Oregon

County of Morrow §§

This certifies that on this 25th day of September, 2020, before me the undersigned personally appeared the above named **Roderick H. Taylor**, on behalf of **Double T Farming**, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Michelle L Gerber



My Commission Expires 11-18-2020

UMATILLA ELECTRIC COOPERATIVE, GRANTEE

[Signature]

Signature

Robert Echenrode

Printed Name

GM + CEO

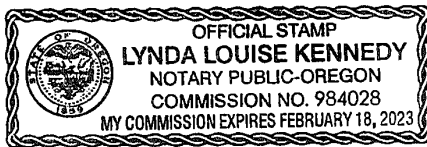
Title

ACKNOWLEDGEMENT

State of Oregon

County of Umatilla §§

This certifies that on this 28 day of October, 2020, before me the undersigned personally appeared the above named Robert Echenrode, on behalf of **UMATILLA ELECTRIC COOPERATIVE**, in his/her capacity as GM + CEO, known to me to be the person who executed the foregoing instrument.



[Signature]

My Commission Expires February 18, 2023



May 20, 2021

Double T Farming
77458 Threemile Rd
Boardman OR 97818

Notice of Exercise of Option

Pursuant to the Utility Line Option and Easement Agreement dated August 19, 2019, ("Option Agreement") and referenced in the recorded Memorandum of Easement Option Agreement recorded on 10/28/2020 in Morrow County OR, Public Records as instrument number 2020-47456, Umatilla Electric Cooperative ("UEC") hereby provides notice that it is electing to acquire the Easement as defined in the Easement Agreement. UEC intends that this notice serves as the Option Notice as defined by the Easement Agreement.

The date on which the Easement shall commence is May 20, 2021.

With this notice, UEC is tendering the Easement Payment required by the Letter Agreement as set forth in the Easement Agreement.

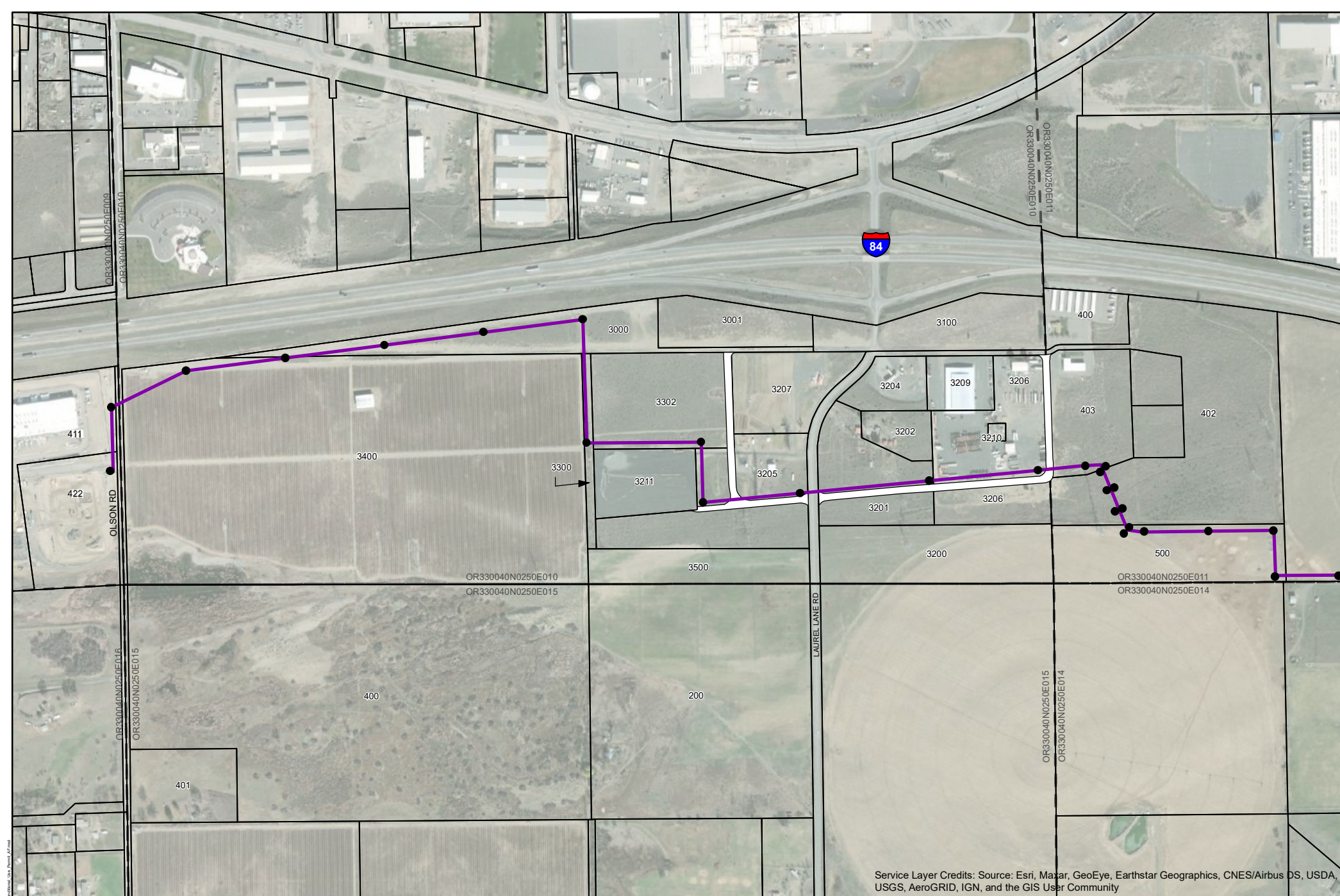
Following this notice, UEC intends to record the Easement Agreement.

If you have any questions regarding this notice, please contact me.

Thank you,

A handwritten signature in black ink, appearing to read "Robert Echenrode".

Robert Echenrode
General Manager and CEO
Umatilla Electric Cooperative



Service Layer Credits: Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

- Planned Pole Locations
- Olson Rd to 730 SY Alignment
- ▭ Proposed Loop Road Area
- ▭ 2021 Parcels
- ▭ Sections

DISCLAIMER: This map is for informational purposes, and should only be used as such.



TOTH & ASSOCIATES
 1550 E. REPUBLIC RD
 SPRINGFIELD, MO 65804
 Ph. 417-888-0645 Fax: 417-888-0657
www.tothassociates.com

MAP BY: dhatley DATE: 5/19/2021

Olson Road to 730 Switchyard

Map Title: Boardman Zoning Permit Area	Map Number: DH-012
Client: UMATILLA ELECTRIC COOPERATIVE HERMISTON, OREGON OREGON 14, UMATILLA	
0 350 Feet	N E S W