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Tillamook People's Utility District
P.O. Box 433
1115 Pacific Ave.
Tillamook, OR 97141

Via email:

Ray Sieler, rsieler@tpud.org
Barbara Johnson, bjohnson@tpud.org

Re: Oregon Coast Alliance's legal and practical concerns, and opposition to,
Tillamook People's Utility District Proposed Oceanside Transmission Line (OTL)

Dear Mr. Sieler,

On behalf of Oregon Coast Alliance, I am writing this letter to apprise the Tillamook People's Utility District (TPUD) of significant concerns that ORCA, the public and many affected landowners have with the proposal to site a 115-kilovolt transmission line between the Bonneville Power Administration's Tillamook Substation in the City of Tillamook to a proposed substation near the community of Oceanside. The Oceanside Transmission Line's potential to adversely affect both landowners and forest and farm zoned property in Tillamook County is of great concern to ORCA. Simply put, TPUD faces an uphill climb in siting OTL, without even considering the significant public opposition to the proposal.

First, TPUD must satisfy all relevant administrative rules for the placement of the transmission lines through properties zoned for farm and forest uses. Second, TPUD will have to utilize eminent domain, justify the proposal as a public use and pay just compensation. Third, the applicant must convince the public that, at time where the demand for electricity is declining in favor of significantly cheaper options, such a proposal is warranted. These concerns are not exclusive, and ORCA anticipates that other legal and practical hurdles will also prevent the proposed line from being constructed.

OAR 660-033-0130(16) sets forth the requirements that must be satisfied when placing a utility facility or transmission lines across land zoned for Exclusive Farm Use (EFU). For a utility facility to be sited on EFU land, an applicant must show that it is *necessary*. That is, the applicant must show that all other possible routes that would not impinge upon the EFU zone are infeasible. For transmission lines, the applicant must satisfy one of four requirements: (1) that the transmission line is not located on “arable land”; (2) that the transmission line is co-located with an existing transmission line; (3) that the transmission line parallels an existing transmission corridor with the minimum separation necessary for safety; or (4) the transmission line is located within an existing right of way for a linear facility, such as a transmission line, road, or railroad, that is located above the surface of the ground. *See* OAR 660-033-0130(16)(b). It does not appear that TPUD can satisfy any of these criteria.

Within forest zones, new electric transmission lines are conditionally allowed if the lines are within a right of way that does not exceed 100 feet. In prior submissions before the City of Tillamook, TPUD indicated that the OTL as proposed would establish a corridor “with a minimum width of 100 feet.” This is not sufficient because the *maximum* must be 100 feet. TPUD would also be required to satisfy the standards at OAR 660-006-0025(5) by demonstrating that the transmission line would not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agricultural or forest lands, or significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel. It is unlikely TPUD can satisfy these criteria, either.

TPUD most likely would be forced to use eminent domain if it tried to build the OTL, as there is strong opposition from many affected landowners. Eminent domain is a “a right of sovereignty, and can be exercised only by legislative authority, and for a public use or benefit.” *Bridal Veil Lumbering Co. v. Johnson*, 30 Or 205, 208, 46 P 790 (1896). TPUD has the requisite legislative authority, per ORS 261.305(6), but such authority must be exercised with great prudence and restraint. In light of significant opposition to an unnecessary project, TPUD would be wise to defer to the will of the public. If eminent domain is used, despite significant opposition, TPUD would be required to justify its allegation of “public use,” one that affects the public at large. *See Gearin v. Marion County*, 110 Or 390, 4011, 223 P 929 (1924). Whether a particular use is for the public is a legal determination.

TPUD has not identified a sufficient “public use” for the OTL, given that some of TPUD’s larger customers are reducing their reliance on electricity in favor of cheaper alternatives. It is unlikely that TPUD could satisfy the public use component, because the demand for electricity is going down. Providing superfluous electricity is not a sufficient public use. For partial takings, just compensation is the fair market value of the property taken, *plus* the depreciation in fair market value caused by the taking of the portion not taken. Corridors that are 100 feet wide or wider through forest and farm lands would create significant depreciation, requiring significant compensation.

One proposed route would traverse the Southern Flow Corridor Project, a newly-launched, 525-acre wetland restoration project at the southern end of Tillamook Bay hammered out over a decade’s work by many stakeholders, public and private. This is unacceptable. ORCA does not favor OTL going through Southern Flow any more than through private farm and

forestland. Any transmission line crossing Southern Flow would compromise the intent and purpose of the restoration.

Perhaps most importantly, to retain the trust of people of Tillamook County, TPUD must demonstrate that the transmission line is *necessary*. This would appear to be difficult given that some of TPUD's largest customers are currently finding alternative methods. For example, the Tillamook County Creamery Association recently changed one of its main broilers to natural gas from electricity. This significantly undercuts TPUD's justification for the proposal, as well as any allegation that the transmission line is for a "public use." Furthermore, actual sales from TPUD were down 5% in 2015, and loading at the Wilson River II substation is falling from 2011 levels.

This all indicates that there is no need for the Oceanside Transmission Line; but even assuming the transmission line was necessary, it is not necessary to cross farm or forestlands. TPUD has an existing line that brings electricity to Oceanside. If additional capacity is needed, TPUD could easily upgrade the existing line rather than build a new one over farm and forestlands completely outside the existing transmission line right-of-way.

ORCA opposes the Oceanside Transmission Line for all the above reasons, and looks forward to an explanation as to how TPUD proposes to address these multiple concerns. ORCA urges TPUD to work with the community to identify non-intrusive means of addressing infrastructure replacement, repair or upgrade needs and capacity challenges rather than seek to construct the unnecessary Oceanside Transmission Line.

Thank you,



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