SB 230-1
(LC 2627)
3/22/13 (BLS/ps)

PROPOSED AMENDMENTS TO SENATE BILL 230

On page 1 of the printed bill, line 2, after the semicolon delete the rest of the line and insert "creating new provisions; and amending ORS 756.610 and 758.015.".

Delete lines 4 through 31 and delete page 2 and insert:

"SECTION 1. ORS 758.015 is amended to read:

"758.015. (1) When any person, as defined in ORS 758.400, providing electric utility service, as defined in ORS 758.400, or any transmission company, proposes to construct an overhead transmission line which will necessitate a condemnation of land or an interest therein, it shall petition the Public Utility Commission for a certificate of public convenience and necessity 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.

"(2) The commission shall give notice and hold a public hearing on such petition. The commission, in addition to considering facts presented at such hearing, shall make the commission's own investigation to determine the necessity, safety, practicability and justification in the public interest for the proposed transmission line and shall enter an order accordingly. **Except for petitions for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same**

transmission line, the order shall be subject to review as in other cases. **Orders on petitions for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission line are subject to judicial review in the same manner as an order in a contested case as set forth in section 3 of this 2013 Act.** In any proceeding for condemnation, a certified copy of such order shall be conclusive evidence that the transmission line for which the land is required is a public use and necessary for public convenience.

"(3) This section shall not apply to construction of transmission lines in connection with a project for which a permit or license is otherwise obtained pursuant to state or federal law.

"(4) As used in this section and ORS 758.020, 'transmission company' means a person or entity that owns or operates high voltage transmission lines and is subject to the jurisdiction of the Federal Energy Regulatory Commission. 'Transmission company' does not include a cooperative organized under ORS chapter 62.

"SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS chapter 758.

"SECTION 3. (1) Any party to a contested case hearing related to the application for a certificate of public convenience and necessity under ORS 758.015 for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission line may appeal the Public Utility Commission's grant or denial of the application. Issues on appeal shall be limited to those raised by the parties to the contested case hearing before the commission.

"(2) Jurisdiction for judicial review of the commission's approval or rejection of an application for a certificate of public convenience and necessity under subsection (1) of this section is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a

petition in the Supreme Court. The petition shall be filed within 60 days after the date of service of the commission's final order. Date of service shall be the date on which the commission delivered or mailed the final order in accordance with ORS 183.470.

"(3) The filing of a petition for judicial review may not stay the order, except that a party to the contested case hearing may apply to the Supreme Court for a stay upon a showing that there is a colorable claim of error and that the petitioner will suffer irreparable injury.

"(4) If the Supreme Court grants a stay pursuant to subsection (3) of this section, the court:

"(a) Shall require the petitioner requesting the stay to give an undertaking in the amount of $5,000.

"(b) May grant the stay in whole or in part.

"(c) May impose other reasonable conditions on the stay.

"(5) The review by the Supreme Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Supreme Court shall give priority on its docket to a petition for review under this section and render a decision within six months of the filing of the petition for review.

"(6) The following periods of delay shall be excluded from the six-month period within which the court must render a decision under subsection (5) of this section:

"(a) Any period of delay resulting from a motion properly before the court; or

"(b) Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months.

"(7) No period of delay resulting from a continuance granted by the Supreme Court under subsection (6)(b) of this section shall be excluded from the six-month period unless the court sets forth, in the record, either orally or in writing, the court's reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months. The factors the court shall consider in determining whether to grant a continuance under subsection (6)(b) of this section are:

"(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

"(b) Whether the case is so unusual or so complex, because of the number of parties involved or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the six-month period.

"(8) No continuance under subsection (6)(b) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

"**SECTION 4.** ORS 756.610 is amended to read:

"756.610. (1) Except as provided in [*subsection (2)*] **subsections (2) and (3)** of this section, final orders of the Public Utility Commission are subject to judicial review as orders in contested cases under the provisions of ORS 183.480 to 183.497.

"(2) ORS 183.482 (3) does not apply to judicial review of an order of the Public Utility Commission. At any time after filing a petition for judicial review of a final order of the commission, the petitioner may apply to the Court of Appeals for a stay of the order until the final disposition of the appeal. The court may grant a stay for cause shown. As a condition of granting a stay, the court may require a bond or other security, or impose such other conditions as the court deems appropriate. A stay may be granted only after notice to the commission and opportunity for hearing. Any bond required by the court must be executed in favor of the commission for the benefit of interested persons, and may be enforced by the commission or by any interested person.

"**(3) An order of the Public Utility Commission related to the petition for a certificate of public convenience and necessity under ORS 758.015, where the petitioner also seeks approval from the Energy Facility Siting Council for the proposed transmission line, is subject to judicial review as provided in section 3 of this 2013 Act.**

"**SECTION 5. Section 3 of this 2013 Act and the amendments to ORS 756.610 and 758.015 by sections 1 and 4 of this 2013 Act apply to petitions filed with the Public Utility Commission under ORS 758.015 on or after the effective date of this 2013 Act.**".