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January 26, 2009

VIA ELECTRONIC FILING & U.S. MAIL

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street, N.E., #215
P.O. Box 2148
Salem, Oregon 97308-2148

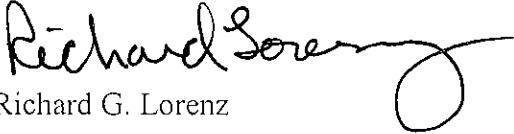
Re: In the Matter of Tillamook People's Utility District –
Petition for Declaratory Ruling -- **Docket No. DR 42**

Dear Filing Center:

Enclosed please find an original and (1) copy of Tillamook People's Utility District's Motion to Strike in the above-referenced proceeding.

Should you have any questions regarding this matter, please call. Thank you.

Very truly yours,


Richard G. Lorenz

RGL:tb

Enclosure(s)

cc: Terry Blanc (via email)
Tom Magee (via email)

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR – 42

In the Matter of

**TILLAMOOK PEOPLE’S UTILITY
DISTRICT**

**TILLAMOOK PEOPLE’S UTILITY
DISTRICT’S MOTION TO STRIKE**

Pursuant to Oregon Administrative Rule (“OAR”) 860-013-0031, the Tillamook People’s Utility District (“TPUD”) moves to strike the “Comments in Opposition” (“Opposition”) filed on or about January 21, 2009, by Charter Communications (“Charter”) in the above-captioned proceeding. As explained below, Charter’s “Opposition” to TPUD’s Petition for Declaratory Ruling (“Petition”) is at least nine days late. Rather than seek permission for its late filing, Charter instead acts as if the deadlines do not exist, pretending that this proceeding has not even been docketed. Moreover, the Opposition was improperly filed with the Commissioners themselves by an attorney who is not permitted to practice before the Commission. Charter’s Opposition at best reflects indifference to the Commission’s procedural rules and appears instead to be a deliberate effort to evade them. TPUD therefore respectfully requests that the Commission strike Charter’s Opposition from the record in this proceeding.

I. Charter’s Disregard of Filing Deadlines Should not be Condoned

TPUD filed the Petition on December 23, 2008. On the same day, TPUD mailed copies of the Petition to several Charter employees and representatives, including its legal counsel. The Petition requests that the Commission declare that it is just, fair and reasonable for TPUD to allocate to Charter the costs incurred by TPUD in enabling Charter to correct its own safety violations on utility poles owned by TPUD. TPUD’s Petition seeks to resolve, in an

administratively simple and fair manner, an impasse between the parties that has threatened the timely correction of Charter's violations on TPUD's system.

In accordance with Commission rules, service of TPUD's Petition is deemed to have been completed on December 23, 2008, the date on which TPUD filed its Petition and mailed service copies to Charter's representatives and employees.¹ The rules require that any Answers to a Petition, or any Motions in Opposition, be filed within 20 days after service of the Petition.² The Commission's rules therefore required Charter to Answer the Petition within 20 days after December 23, 2008, or by January 12, 2009. That deadline passed without any filing at all by Charter, including any request by Charter for leave to submit a late filing.

Charter's "Comments in Opposition," filed on or about January 21, 2009, constitute both a *de facto* "Answer" to the Petition, as well as a *de facto* "Motion to Dismiss." The Opposition offers Charter's response to every legal and technical argument that TPUD raises in its Petition, as would an Answer. The Opposition also argues that the Commission should "decline to consider the Petition," as would a Motion to Dismiss.³ The problem is that Charter's *de facto* "Answer" and "Motion to Dismiss," were filed at least nine days late.

Given the tardiness of its response, Charter pretends that its responsive pleading is something else, which it styles as "Comments in Opposition." This pretense is accompanied by another fiction, in which Charter pretends that this Declaratory Ruling proceeding has not even been docketed.⁴ But this fiction is clearly false, and Charter knows it, because Charter itself cites Docket Number "DR 42" in two places on the first page of its Opposition.⁵

¹ OAR 860-013-0070(2).

² OAR 860-013-0050(1)(a) and (3)(a).

³ Opposition at 3. The Commission's rules define a motion as "a request to the Commission or Administrative Law Judge for a ruling or other action which affects the rights of a party to the proceeding." OAR 860-013-0031.

⁴ Charter exclaims in its Opposition that "[t]he Commission should reject TPUD's clear abuse of the Commission's declaratory ruling process and pole attachment rules and decline to open a docket." Opposition at 2. This claim that TPUD is "abusing" the process is groundless, as TPUD will explain in due course when it submits a timely reply

Charter's fiction that the Commission has not yet opened a docket and the pretense that its "Opposition" is not really an Answer or Motion to Dismiss are both contrivances designed to avoid the filing deadlines applicable to docketed proceedings. Having missed the filing deadline, Charter apparently believes that it can answer and move to dismiss TPUD's Petition at its convenience without having to comply with the deadlines applicable to everyone else.

The Commission should not allow Charter or any other entity appearing before it to evade filing deadlines established by rule for Answers and Motions simply by calling them something other than what they are, or by pretending that docketed proceedings have not yet been docketed. To do so would render the Commission's lawfully-established filing deadlines meaningless.

II. Charter Has Ignored Other Procedural Rules

The Commission requires all filings requiring formal Commission action to be submitted to the Commission's physical and electronic mail addresses available on the Commission's website.⁶ The Commission's website requires that filings be directed to the attention of the Commission's "Filing Center."⁷ Charter directed its self-styled "Opposition" to the Commissioners themselves, as if the Filing Center requirement did not exist. As with its failure to meet the filing deadlines, Charter offers no explanation for circumventing the procedures that must be followed by everyone else.

Charter's attorney is not even permitted to practice before the Commission in this matter. In order to make legal arguments or sign legal documents before the Commission, "an attorney

brief responding to the merits of Charter's arguments according to the procedural rules and deadlines set forth in the Commission's administrative rules. It should also be noted that the Declaratory Ruling process is far simpler than the full-blown, unnecessary complaint process that Charter envisions.

⁵ See the "Re" line and footnote 1.

⁶ See OAR 860-011-0010.

⁷ See <http://apps.puc.state.or.us/edockets/docs.htm> (last visited January 23, 2009).

must be in good standing with the Oregon State Bar or affiliate with such an attorney and appear *pro hac vice*.”⁸ Charter’s attorney does not appear to be a member of the Oregon bar,⁹ there is no indication that she has applied to appear *pro hac vice*, and she has not bothered to associated herself with an Oregon attorney, much less one participating meaningfully in this proceeding.

Once again Charter provides no excuse or explanation for its failure to respect even the most basic of the Commission’s procedural requirements.

III. Conclusion

Charter apparently believes that the Commission’s procedural rules do not apply to Charter’s participation in this proceeding. If Charter’s pleading is accepted, it will be established that filing deadlines can be avoided by calling an Answer and Motion to Dismiss by another name and by pretending that this proceeding has not yet been docketed; the Filing Center is unnecessary because Charter can solicit the Commissioners directly, and; *pro hac vice* bar admission rules are optional requirements that can be ignored at Charter’s convenience. Stated simply, Charter’s Opposition appears to have been carefully calculated by Charter to evade the Commission’s filing deadlines and other procedural rules.

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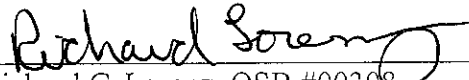
⁸ The Commission’s *pro hac vice* requirements are available at: http://www.puc.state.or.us/PUC/admin_hearings/prohacvice.shtml (last visited January 23, 2009). *See also*, Uniform Trial Court Rules §3.170 (requiring the applying attorney to associate with a member of the Oregon Bar who “must participate meaningfully in the matter.”)

⁹ The Oregon State Bar’s online membership directory does not list Charter’s attorney, Jill Valenstein. The directory is available at: <http://www.osbar.org/members/start.asp?e=3> (last visited January 23, 2009).

For all of these reasons, TPUD respectfully requests that the Commission strike Charter's Opposition from this proceeding.

Dated this 26th day of January, 2009.

Respectfully Submitted,



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ORDER

IT IS ORDERED that the Motion to Strike filed by Tillamook People's Utility District ("TPUD") is granted. Charter's Comments in Opposition to TPUD's Petition for Declaratory Ruling are hereby stricken from the record in this proceeding.

Made, entered, and effective _____, 2009.

Lee Beyer
Chairman

Ray Baum
Commissioner

John Savage
Commissioner

CERTIFICATE OF SERVICE


I hereby certify that I served the foregoing **TILLAMOOK PEOPLE'S
UTILITY DISTRICT'S MOTION TO STRIKE** via electronic mail and/or First Class

Mail on the Service List below:

JERRY MURRAY SR UTILITY ENGINEERING ANALYST PUBLIC UTILITY COMMISSION PO BOX 2148 SALEM OR 97308-2148 jerry.murray@state.or.us	TERRY BLANC TILLAMOOK PUD PO BOX 433 TILLAMOOK OR 97141 tblanc@tpud.org
MICHAEL T WEIRICH ASSISTANT ATTORNEY GENERAL DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 michael.weirich@doj.state.or.us	

DATED this 26th day of January, 2009.

CABLE HUSTON BENEDICT
& HAAGENSEN & LLOYD LLP


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Of Attorneys for Tillamook People's
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