

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 42

In the Matter of)	
)	
TILLAMOOK PEOPLE'S UTILITY)	RULING
DISTRICT)	
)	
Petition for Declaratory Ruling.)	

DISPOSITION: MOTION TO STRIKE DENIED; MOTIONS TO ADMIT COUNSEL *PRO HAC VICE* HELD PENDING COMMISSION DISPOSITION

Motion to Strike

On December 23, 2009, the Tillamook People’s Utility District (TPUD) filed a Petition for Declaratory Ruling with the Public Utility Commission of Oregon (Commission) seeking a declaration regarding the allocation to Charter Communications, Inc. (“Charter”) of costs incurred by TPUD to correct safety violations. On January 21, 2009, Charter submitted Comments in Opposition to Tillamook’s Petition for Declaratory Ruling. The Comments were submitted directly to Chairman Beyer and Commissioners Savage and Baum, and were not filed with the Commission. On January 26, 2009, TPUD filed a Motion to Strike Charter’s Comments in Opposition.

The Oregon Administrative Rules regarding proceedings before the Commission in this circumstance are unclear, because they do not distinguish between proceedings prior to and after the Commission has decided to refer a matter to the Administrative Hearings Division.¹ In practice, declaratory ruling proceedings before the Commission follow a two-step process.

First, the Commission determines whether it will entertain the petitioner’s request. Under ORS 756.450, the Commission has the discretion whether to issue a declaratory ruling. The Commission makes this preliminary decision at a public meeting, and allows other persons to comment on whether a proceeding should be initiated.

¹ The Rules are currently under review, and future versions will make this distinction explicit so as to avoid confusion on this issue.

During this time period, the Commission's rules governing procedure do not attach because the Commission has not yet decided to initiate a formal proceeding.

Second, if the Commission decides to entertain the request for a declaratory ruling, it refers the matter to the Administrative Hearings Division to initiate proceedings. Only after that referral does the matter become an active docket, requiring timely filings by the petitioner and any respondents.

In this case, TPUD's Petition for Declaratory Ruling is still under consideration by the Commission, and no public hearings have been held to allow comment on whether formal proceedings should be initiated. As a result, both TPUD's and Charter's submissions to the Commission are not required to comply with the Oregon Administrative Rules. TPUD's Motion to Strike is therefore denied.

Motions to Admit Counsel Pro Hac Vice

On January 9, 2009, Richard Lorenz filed Motions to Allow Thomas B. Magee and Wesley K. Wright to Appear *Pro Hac Vice* on behalf of Tillamook People's Utility District in this proceeding. Each Motion is supported by a Certificate of Good Standing from the State Bar of the District of Columbia, a Certificate of Compliance for *Pro Hac Vice* Admission and a Confirmation of Insurance. On January 13, 2009, Mr. Lorenz submitted updated Confirmations of Insurance to replace the ones previously filed. The Motions satisfy the requirements of Oregon Uniform Trial Court Rule 3.170. The period for any party to oppose the Motions has not elapsed, because formal proceedings have not yet been initiated. If the Commission refers this matter to the Administrative Hearings Division, the Motions will be considered at that time.

Dated at Salem, Oregon, this 27th day of January, 2009.

Michael Grant
Chief Administrative Law Judge