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I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on Upon filing, by the
Public Utility Commission of Oregon

Agency and Division

Administrative Rules Chapter Number

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To become effective 11/06/2015 through 05/03/2016.

RULE CAPTION

Temporary Rules Implementing 2015 Senate Bill 611 & House Bill 2485 - Qualified Project Determination

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

860-200-0005, 860-200-0050, 860-200-0100, 860-200-0150

AMEND:

SUSPEND:

Statutory Authority:

ORS 756.040, Ch. 23, OL 2015

Other Authority:

Statutes Implemented:

ORS 756.040, Ch. 23, Sect. 5 OL 2015, Ch. 31, Sect. 7 OL 2015

RULE SUMMARY

These temporary rules establish the application process to be used by a company seeking a qualified project determination under 2015 Senate Bill 611 and House Bill 2485 and the requisite information the PUC needs to make such determination.

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STATEMENT OF NEED AND JUSTIFICATION
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860

Agency and Division

Administrative Rules Chapter Number

Temporary Rules Implementing 2015 Senate Bill 611 & House Bill 2485 - Qualified Project Determination

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Temporary Rules Implementing 2015 Senate Bill 611 & House Bill 2485 - Qualified Project Determination

Statutory Authority:

ORS 756.040, Ch. 23, OL 2015

Other Authority:

Statutes Implemented:

ORS 756.040, Ch. 23, Sect. 5 OL 2015, Ch. 31, Sect. 7 OL 2015

Need for the Temporary Rule(s):

These rules are needed to establish the application process and the requisite information required for the PUC to make the qualified project determination as set out in Chapter 23, Oregon Laws 2015 and as amended in Chapter 31, Oregon Laws 2015. Because there is potential for an application to be filed on or before January 15, 2016, it is necessary to proceed with temporary rules so that companies have the information needed for the application process.

Documents Relied Upon, and where they are available:

2015 SB 611 Enrolled found at <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB611/Enrolled>
2015 HB 2485 Enrolled found at <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2485/Enrolled>
Chapter 23, Oregon Laws 2015 found at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2015orLaw0023.pdf
Chapter 31, Oregon Laws 2015 found at
https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2015orLaw0031.pdf

Justification of Temporary Rule(s):

These temporary rules are needed to enable a company seeking a qualified project determination (necessary for the Ch. 23, OL 2015 tax exemption) to provide, in a timely manner, the information needed by the PUC to make that determination. SB 611 and HB 2485 took effect October 5, 2015.

Initial applications for qualified project determinations are due no later than January 15, 2016. Absent these temporary rules, a company seeking the determination would not know how to apply or what specific information to provide. Permanent rulemaking would not allow for the adoption of rules following the effective date of these laws in time to inform a company applying for a determination of the application requirements. The rules also establish uniform guidelines, and thereby create a level playing field for all companies that may seek a determination. Moreover, under SB 611, the PUC must generally make a determination as to whether a project is a qualifying project by March 1. Any confusion during the application process may adversely affect the PUC's ability to make a timely determination. Failure to adopt rules setting forth the information that must be provided by applicants will therefore result in serious prejudice to the interests of potential applicants.

If the PUC does not make a determination that a project is qualified, the company cannot receive the benefit of the associated tax exemption. Failure to take this immediate rulemaking action could result in applications that were incomplete and cause projects to be determined to be not qualified. The temporary rules provide the guidance needed for applicants to submit complete applications.

In addition, SB 611 and HB 2485 were intended to provide a tax incentive that will benefit the public. A qualifying project will enable a company to offer communication services, including a capacity to provide at least approximately one gigabit per second symmetrical service, to a majority of the residential customers of the company's broadband services. Failure to develop rules necessary to the application process may delay the development of such projects in Oregon and seriously prejudice the public interest. The potential consequences range from a project not being pursued, which may result in lost jobs and lost wages, to Oregonians not receiving access to the qualifying service.

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860-200-0005

Applicability and Waiver

- (1) These rules apply to a company that is seeking a qualified project determination as set forth in Section 5 of Chapter 23, Oregon Laws 2015.
- (2) Upon request or its own motion, the Commission may waive any of the Division 200 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

Stat. Auth.: ORS 756.040, Ch. 23, OL 2015

Stats. Implemented: Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015

860-200-0050

Definitions

For the purposes of this division of rules:

- (1) “Broadband services” means the provision of data transmission technology that provides two-way data transmission to and from the Internet through other than a dial-up connection.
- (2) “Company” has the same meaning as that term is defined in ORS 308.505.
- (3) “Communication” has the same meaning as that term is defined in ORS 308.505.
- (4) “Communication services” is the offering of communication to the public, including the provisioning of voice, video, text or other electronic form of information using any means of transmission.
- (5) “Qualified service” is the offering of communication services, including a capacity to provide, at least, approximately one gigabit per second symmetrical service, to a majority of the residential customers of a company’s broadband services.

Stat. Auth.: ORS 756.040, Ch. 23, OL 2015

Stats. Implemented: Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015

860-200-0100

Application for Qualified Project Determination

- (1) A company seeking a qualified project determination under Oregon Laws 2015, Chapter 23 must submit an application to the Commission.
- (2) Each applicant must:
 - (a) Complete and file an application. As part of the application, the applicant must file an Application Cover Sheet on a form approved by the Commission.
 - (b) Submit the \$50,000 application fee made payable to the Public Utility Commission of Oregon.
 - (c) Confirm a copy of the application was sent to the Oregon Department of Revenue at: Valuation Section, Property Tax Division, Oregon Department of Revenue; PO Box 14600, Salem, OR 97309-5075.
- (3) The application, any subsequent amendments, and any other submissions related to the application must be filed in the same manner as provided in OAR 860-001-0170.
- (4) An applicant must file a complete application.

- (a) If an application, in any material respect, lacks required information, if the filing fee is not paid in full, or the Department of Revenue is not provided a copy of the application, the application is incomplete. The Commission will not make a determination regarding an incomplete application. Pending application filings that are incomplete as of March 15 of each year will be closed. Once an application file is closed, the applicant must submit a new application for consideration by the Commission.
- (b) An applicant may submit a written request to Commission staff for confirmation regarding the completeness of its application or amended application. Commission staff shall respond to such a written request within five business days from the date the written request is received.
- (c) The Commission will not consider amendments to an application filed after February 15, unless the applicant requests an extension of two weeks for the determination.
- (5) The Commission will issue a determination on an application in writing.
- (6) Upon determination by the Commission that a company has a qualified project, the Commission shall forward the approval determination to the Company, the Oregon Department of Revenue and the assessor of each county in which the project is located. The Commission's determination under subsection 5(4) of Chapter 23, Oregon Laws 2015 shall only determine whether a project is or is not a qualified project.

Stat. Auth.: ORS 756.040, Ch. 23, OL 2015

Stats. Implemented: Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015

860-200-0150

Application Requirements

The application must contain all of the following:

- (1) The name and mailing address of the applicant and the name, mailing address, telephone number, and electronic mail address of the following: the applicant's representative; an individual authorized to answer technical questions regarding the application, if different from the applicant's representative; and, if applicable, the applicant's legal counsel.
- (2) A certification executed by an authorized representative(s) of the company that the applicant's project meets the requirements for a qualified project set forth in Oregon Laws 2015, chapter 23, section 5, subsection (2) as amended by Oregon Laws 2015, chapter 31, section 7. The representative's certification must be a sworn statement under ORS 162.055 attesting to the truth of the certification.
- (3) A written commitment by the applicant that when its network depends in part or wholly on a third party to provide the qualified service, the applicant will use commercially reasonable practices to ensure that the use of any third party will not impede the performance of the project's infrastructure in providing the applicant's qualified service.
- (4) A paper map and an electronic version with GIS-compatible map layers of the area served or to be served by the project's infrastructure depicting:
 - (a) County labels and boundaries; and
 - (b) City labels and boundaries.
- (5) A list of Oregon municipalities and counties where the applicant's project is or will be located, including the name and contact information for the representative of each such

municipality and county that the applicant understands is most knowledgeable with respect to applicant's project.

(6) For an applicant that is operating the project described in its application at the time of the application, a list, in an Excel-readable spreadsheet format, of the census blocks served by the project, and for each census block:

- (a) The number of occupied households (using the most current available U.S. Census statistics);
- (b) The number of those occupied households with access to the applicant's communication services which will be enabled by the project, as described in the application; and
- (c) The associated county.

(7) For an applicant that is not operating the project described in its application at the time of the application, a list, in an Excel-readable spreadsheet format, of the census blocks planned to be served by the project, and for each census block;

- (a) The number of occupied households (using the most current available U.S. Census statistics);
- (b) The number of those occupied households with planned access to the communication services which will be enabled by the project, as described in the application; and
- (c) The associated county.

(8) For an applicant that is providing broadband service to residential customers in Oregon at the time of the application, the number of the applicant's existing residential broadband customers in Oregon and the number of those residential broadband customers with access to the applicant's qualified service and the number of those residential broadband customers with planned access to the qualified service.

(9) An electronic version, in Excel-readable spreadsheet format, of the FCC Form 477 Part 1A and Part 6, most recently filed, if any, with the Federal Communications Commission by the applicant, listing only Oregon-specific data. Information identified as confidential in the applicant's filing with the Federal Communications Commission must be identified as confidential consistent with OAR 860-001-0070.

(10) A description of the project. The applicant must provide information regarding the project sufficient to allow the Commission to make a determination as to whether the project is capable of providing the qualified service. Subsections (a) through (d) of this section are non-exclusive examples of acceptable information that may be provided. The applicant may make a showing under only one method.

(a) For a project that the applicant is operating at the time of application: A description of the project's infrastructure that enables the applicant to offer the qualified service, a provision for physical observation of key network elements by Commission staff and speed test data of a statistically significant number of customers who receive service that provides, at least, approximately one gigabit per second symmetrical service. The speed test methodology must conform to industry standards. The project's infrastructure description must specifically identify:

- (A) The transport medium and basic technology or technologies utilized;
- (B) A drawing of the infrastructure topology;
- (C) The technical specifications of the network's key infrastructure and equipment directly affecting network capacity including, but not limited to, routers, switches, hubs, and other integral active or passive electronics and transport medium including, but not limited to, fiber;
- (D) The capacity provided at the applicant's internet traffic aggregation points; e.g., the engineered throughput ratio of switch or router equipment used at aggregation points;

- (E) The tier designation of the applicant's internet backbone provider; and
- (F) A copy of a customer service agreement for Oregon customers who receive service that provides, at least, approximately one gigabit per second symmetrical service.
- (b) For a project that the applicant is not operating at the time of application, a description of the project's planned infrastructure that will enable the applicant to offer the qualified service. The description must specifically identify:
 - (A) The transport medium and basic technology or technologies utilized;
 - (B) A drawing of the infrastructure topology;
 - (C) The technical specifications of the network's key infrastructure and equipment directly affecting the network capacity including, but not limited to, routers, switches, hubs, and other integral active or passive electronics and transport medium including, but not limited to, fiber;
 - (D) The capacity provided at the applicant's internet traffic aggregation points; e.g., the engineered throughput ratio of switch or router equipment used at aggregation points;
 - (E) The tier designation of the applicant's internet backbone provider; and
 - (F) One of the following:
 - (i) Documentation that the applicant operates a network in another jurisdiction confirming that the applicant's communication services operating in that jurisdiction are capable of providing, at least, approximately one gigabit per second symmetrical service along with, for comparison purposes, any technical data and network information provided to the referenced jurisdiction by the applicant. Documentation may be provided by the applicant or the referenced jurisdiction. Applicant will also provide a copy of a customer service agreement for customers in the referenced jurisdiction who receive service that provides, at least, approximately one gigabit per second symmetrical service. The applicant must provide contact information for individuals in the referenced jurisdiction for technical questions. Documentation need not be provided if the applicant is not providing service of, at least, approximately one gigabit per second symmetrical service in another jurisdiction; or
 - (ii) A copy of all franchise agreements in effect where the applicant intends to provide the qualified service if such agreements require the applicant to provide and operate a project for the qualified service as described in Oregon Laws 2015 chapter 23, Section 5(2) and Oregon Laws 2015 chapter 31, Section 7.
- (c) An applicant may provide a third-party engineering certification from an Oregon licensed professional engineer, in good standing, with a report detailing the reviewing engineer's qualifications as an independent evaluator and a description of the methodology used in the third-party's examination of the applicant's infrastructure sufficient to allow the engineer to certify that the applicant's project is capable of providing the qualified service.
- (d) An applicant may provide documentation that the applicant participates in a qualified gigabit network certification program from a national organization recognized by the Commission as competent to certify a gigabit network and that the applicant has received a certification that the project identified in the application is capable of providing the qualified service.

Stat. Auth.: ORS 756.040, Ch. 23, OL 2015

Stats. Implemented: Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015