

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OR OREGON**

3 AR 594

4 In the Matter of Rulemaking)
to Implement)
5 2015 Senate Bill 611: Qualified Project) STAFF COMMENTS
6 Determination)

7 The Public Utility Commission of Oregon Staff (Staff) submits these comments after
8 further consideration of the proposed rules that are the subject of this rulemaking. Staff
9 continues to support adoption of the proposed rules, and supports adoption of the revisions to the
10 proposed rules discussed below.

11 **Background:**

12 Senate Bill 611 took effect following the 2015 legislative session.¹ This bill enacted a
13 number of amendments to the State’s property tax exemptions, including a property tax
14 exemption for a company subject to central assessment for property tax purposes, if the company
15 invests in providing a certain form of symmetrical gigabit broadband service through a “qualified
16 project”. As a first step towards the property tax exemption, a company must seek a qualified
17 project determination from the Commission.²

18 Effective November 6, 2015, the Commission adopted temporary rules governing the
19 application process for a qualified project determination.³ The temporary rules will expire
20 May 3, 2016. On January 15, 2016, in this rulemaking docket, AR 594, a Notice of Proposed
21 Rulemaking Hearing was issued to initiate rulemaking for permanent rules governing the
22 application process. A rulemaking hearing was held on February 23, 2016. On behalf of Staff at
23 the hearing, Shelley E. Jones indicated that Staff may submit written comments following the
24 Commission’s consideration of three applications submitted for qualified project determinations

25 ¹ Senate Bill 611, as amended by House Bill 2485, has now been codified at ORS 308.677 and ORS
26 308.681.

² ORS 308.677(2), (3).

³ Docket No. AR 592, Order No 15-363.

1 under the temporary rules.⁴

2 Staff's comments are organized as follows:

- 3 I. Staff's proposals to revise the proposed rule language.
- 4 A. Clarifying Amendment to Proposed OAR 860-200-0100(3).
5 B. Notification of Affected Cities and Counties.
6 C. Revisions Related to Timing of Project Operations.
7 D. Additional Clarification of Project Description Requirements.
8 E. Update references to Senate Bill 611 as to ORS 308.677.
- 9 II. Conclusion.

10 **I. Staff's Proposals to Revise Proposed Rule Language.**

11 Upon further consideration of the proposed rules, Staff believes the proposed rules
12 would be improved with some revisions. Staff supports adoption of the rules as proposed with
13 the revisions discussed below. These revisions are marked in a copy of the proposed rules and
14 attached as Attachment A.

15 **A. Clarifying Amendment to Proposed OAR 860-200-0100(3).**

16 Staff proposes to modify *proposed* OAR 860-200-0100(3) to read:

17 (3) The application, any subsequent amendments, and any other submissions
18 related to the application, **excluding Staff information requests and responses**
19 **to Staff information requests,** must be filed in the same manner as provided in
20 OAR 860-001-0170.

21 *Proposed* OAR 860-200-0100(3) directs that an application, subsequent amendments and any
22 other submissions related to the application be filed in the same manner as provided in OAR
23 860-001-0170. In the recent qualified project application dockets, UM 1760, UM 1761 and UM
24 1762, Staff issued informal information requests to the applicants regarding the applications that
25 were filed in those dockets.⁵ It is not Staff's intent that such informal requests, when necessary,
26 or the applicant's responses to the requests be filed in an application docket. The proposed
27 revision would clarify this issue.

28 ⁴ On March 1, 2016, the Commission approved three applications for qualifying projects in Dockets UM 1760, UM
29 1761, and UM 1762.

30 ⁵ See, e.g. Order No. 16-086, Docket No. UM 1761, Appendix A at 4.

1 **B. Notification of Affected Cities and Counties.**

2 Several commenters in the recent qualified project application dockets, UM 1760, UM
3 1761 and UM 1762, expressed concern over the amount of information available to cities and
4 counties and stated that it limited the ability of affected cities and counties to provide meaningful
5 feedback on the applications given the time available for review of applications.⁶ Staff agrees
6 that the affected cities and counties should have as much time available as possible to comment
7 on an application. Much of the project information submitted by applicants was provided as a
8 confidential submission. A city or county looking to the application in those instances as its
9 source of information about a project received little substantive information from the application
10 itself.

11 To provide cities and counties likely to be affected by a qualified project with
12 information about an application filed under these proposed rules in a timely manner, Staff finds
13 that revisions to the application requirements are an appropriate accommodation. The permanent
14 rules, as proposed, require an applicant to provide a list of Oregon cities and counties where the
15 applicant's project is or will be located, along with contact information for a representative.⁷
16 Staff proposes that the rules be modified to add a section that requires an applicant to notify the
17 representatives identified on the applicant's list of certain information, as reflected below:

18 **(6) The applicant shall notify the representatives of the cities and counties**
19 **identified on the applicant's list under (5) above of its application for a**
20 **qualified project determination within two business days of the submission of**
21 **the application. The notification must include notice of the filing of the**
22 **application with the Public Utility Commission of Oregon, a brief description**
23 **of the project, and how it may affect the city or county.**

24 **C. Revisions Related to Timing of Project Operations.**

25 *Proposed* OAR 860-200-0150 requires an applicant to “provide information regarding the
26 project sufficient to allow the Commission to make a determination as to whether the project is

27 ⁶ See, e.g. Comments of the League of Oregon Cities, February 22, 2016 at 4, Docket UM 1762;
28 Comments of the Association of Oregon Counties, March 1, 2016 at 1, Docket UM 1761; Comments of
29 the City of Eugene, February 22, 2016 at 7, Docket UM 1760.

30 ⁷ *Proposed* OAR 860-200-0150(5).

1 capable of providing the qualified service.”⁸ The rule then lists four non-exclusive examples of
2 acceptable information that may be provided to Staff. In providing examples, the proposed rule
3 distinguishes between projects that are operating and those that are not. Staff had sought to
4 differentiate between projects in this way to ensure applicants submitted the best available
5 documentation supporting the capabilities of the project’s infrastructure. In practice, Staff has
6 found such distinction unnecessary. Moreover, comments filed in the recent application dockets
7 indicate these references to projects that are operating created some confusion as to whether Staff
8 was evaluating additional substantive criteria beyond what is specified for a qualified project
9 under ORS 308.677(2).

10 Therefore, Staff proposes the following revisions in *proposed* OAR 860-200-0150 to
11 eliminate references to the operation of projects in the rule for application requirements:

12
13 *[(6)](7) [For an applicant that is operating the project described in its application*
14 *at the time of the application, a] **A** list, in an Excel-readable spreadsheet format,*
15 *of the census blocks served **or planned to be served** by the project, and for each*
16 *census block:*

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

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

- 26 (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.]

27
28 (10)
29 (a) [For a project that the applicant is operating at the time of application:] A
30 description of the project’s infrastructure that enables the applicant to offer the
31 qualified service, a provision for physical observation of key network elements by
32 Commission staff and speed test data of a statistically significant number of
33 customers who receive service that provides, at least, approximately one gigabit
34 per second symmetrical service. The speed test methodology must conform to

⁸ Proposed OAR 860-200-0150(10).

1 industry standards. The project's infrastructure description must specifically
2 identify:

3 ...

4 (b) [For a project that the applicant is not operating at the time of application, a]
5 **A** description of the project's planned infrastructure that will enable the applicant
6 to offer the qualified service. The description must specifically identify:

7 **D. Additional Clarification of Project Description Requirements.**

8 *Proposed OAR 860-200-0150(10) contains the following language:*

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

15 (Emphasis added).

16 The last sentence in the section quoted above requires clarification. Section (10) provides
17 a list of non-exclusive examples of information that may be submitted. The last sentence was
18 intended to clarify that an applicant need not submit supporting information using multiple
19 methods. As drafted, it may be read to imply that an applicant must submit information using
20 one of the examples provided. In fact, the alternative methods may be sufficient. To clarify the
21 intent, Staff proposes the following revisions to the proposed rule:

22 (10) A description of the project. The applicant must provide information
23 regarding the project sufficient to allow the Commission to make a determination
24 as to whether the project is capable of providing the qualified service. Subsections
25 (a) through (d) of this section are non-exclusive examples of acceptable
26 information that may be provided. The applicant may make a showing [*under
only one method*] **using one of the example methods listed below or an
alternate method.**

E. Update references to Senate Bill 611 as to ORS 308.677.

The 2015 edition of the Oregon Revised Statutes was published following the issuance of
the Notice of Proposed Rulemaking Hearing in this docket. Now that Senate Bill 611 has been
codified at ORS 308.611 and ORS 308.681, Staff proposes conforming amendments to reflect
this change.

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] **ORS 308.677**.

(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] **ORS 308.677**

Stats. Implemented: [Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015] **ORS 308.677**

Hist.: PUC 8-2015 (Temp.), f. & cert. ef. 11-6-15 thru 5-3-16 (Order No. 15-363)

860-200-0050

Definitions

For the purposes of this division of rules:

(1) "Broadband service" 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) "City" has the same meaning as that term is defined in ORS 174.100.

(3) "Company" has the same meaning as that term is defined in ORS 308.505.

(4) "Communication" has the same meaning as that term is defined in ORS 308.505.

(5) "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.

(6) "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] **ORS 308.677**

Stats. Implemented: [Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015] **ORS 308.677**

Hist.: PUC 8-2015 (Temp.), f. & cert. ef. 11-6-15 thru 5-3-16 (Order No. 15-363)

860-200-0100

Application for Qualified Project Determination

(1) A company seeking a qualified project determination under **ORS 308.677** [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, **excluding Staff information requests and responses to Staff information requests**, 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 **ORS 308.677(4)**[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]**ORS 308.677**

Stats. Implemented: [Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015]**ORS 308.677**

Hist.: PUC 8-2015 (Temp.), f. & cert. ef. 11-6-15 thru 5-3-16 (Order No. 15-363)

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 **ORS 308.677(2)**[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 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 cities and counties where the applicant's project is or will be located, including the name and contact information for the representative of each such city and county that the applicant understands is most knowledgeable with respect to applicant's project. The applicant must highlight the contacts on this list that represent cities with which the applicant has entered into a franchise fee agreement to provide services to which the application relates.

(6) The applicant shall notify the representatives of the cities and counties identified on the applicant's list under (5) above of its application for a qualified project determination within two business days of the submission of the application. The notification must include notice of the filing of the application with the Public Utility Commission of Oregon, a brief description of the project, and how it may affect the city or county.

*[(6)](7)[For an applicant that is operating the project described in its application at the time of the application, a] **A** list, in an Excel-readable spreadsheet format, of the census blocks served **or 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 access **or planned 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, 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 applicant's Federal Communications Commission's (FCC) Form 477, most recently filed, if any, with the FCC by the applicant, listing only Oregon-specific broadband subscription data exactly as compiled and submitted for filing, including all filer number and name identifiers including but not limited to FRN, Provider Name, and DBA Name. Information identified as confidential in the applicant's filing with the FCC 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] using one of the example methods listed below or an alternate 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 that includes an indication where the network's key infrastructure in paragraph (C) of this subsection is utilized;
 - (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, coaxial cable, copper wire, and 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 including an indication in the description of paragraph (C) of this subsection which network key infrastructure is used at the 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]* 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 that includes an indication where the network's key infrastructure in paragraph (C) of this subsection is planned;
 - (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, coaxial cable, copper wire, and 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 including an indication in the description of paragraph (C) of this subsection of which network key infrastructure is planned at the 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 **ORS 308.677(2)**[*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, **ORS 308.677**[*Ch. 23, OL 2015*]

Stats. Implemented: **ORS 308.677**[*Ch. 23 Sect. 5 OL 2015, Ch.31 Sect. 7 OL 2015*]

Hist.: PUC 8-2015 (Temp.), f. & cert. ef. 11-6-15 thru 5-3-16 (Order No. 15-363)