

March 9, 2016

VIA E-MAIL

Public Utility Commission of Oregon
201 High St SE, Suite 100
Salem, Oregon 97301-1088

Re: Comments of OCTA regarding OPUC Docket AR 594, *In the Matter of Rulemaking to Implement 2015 Senate Bill 611: Qualified Project Determination*

Dear Commissioners:

On behalf of the Oregon Cable Telecommunications Association (“OCTA”), I am writing in response to the Staff Comments filed in this docket on March 3, 2016, and to urge the Commission to adopt, with one exception, the Staff’s recommended modifications to the proposed rules.

The Staff’s proposed amendments to the rules are based upon the Commission’s recent experience processing the first three applications for qualified project determinations under SB 611 (codified at ORS 308.677). In part, the Staff’s comments address practical concerns, including the proper treatment of Staff information requests and responses to such requests and notification of cities and counties following filing of an application. OCTA generally supports these pragmatic modifications as they will assist in the orderly review and consideration of any future applications for qualified project determinations. However, OCTA opposes inclusion of the requirement in Staff’s proposed new subsection OAR 860-200-100(6) that an applicant’s notice to cities and counties include a description of “how [the project] may affect the city or county.” While we agree cities and counties should have adequate time to evaluate projects filed with the Commission, the proposed requirement to provide an impact statement in the new B(6) is not only ambiguous, vague and overly broad, it also goes far beyond the requirements set forth in the statute. The Commission, by rule, cannot augment the substantive requirements of the statute. Accordingly, OCTA opposes inclusion of the phrase "and how it may affect the city or county."

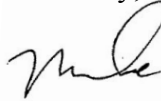
More importantly, Staff recommends changes to proposed rule OAR 860-200-0150 that are designed to remove any suggestion that the Commission subjects qualified project applications of projects that are already in operation to a more stringent set of requirements than those set forth in ORS 308.677(2). OCTA agrees with the Staff that it is important for the

Commission's rule to be very clear in this regard. As stated on page 4 of the Staff Comments: "Moreover, comments filed in the recent application dockets [UM 1760, 1761 and 1762] indicate these references to projects that are operating created some confusion as to whether Staff was evaluating additional substantive criteria beyond what is specified for a qualified project under ORS 308.677(2)." Under Oregon law, the Commission's rules cannot create substantive requirements that go beyond those contained in the statute, and any suggestion that the Commission rules could be interpreted in such a way should be eliminated. The Commission should, therefore, adopt the modifications proposed in the Staff's Comments in order to put an end to any arguments to the contrary.

The statute is clear. The Commission is tasked solely with determining whether an applicant's project is qualified as that term is defined in ORS 308.677(2). No additional substantive requirements can be added to the statutory test due to the fact that the qualified project is in operation. Under Sections ORS 308.677(3), the Commission must review the application *exclusively* under the test in ORS 308.677(2). Once the Commission determines that such a project is qualified, ORS 308.677(4) requires the Commission to grant the application, notify the Department of Revenue and the relevant county assessors, and then the tax exemption "shall be granted . . . beginning with the first property tax year that begins after the date of the determination." ORS 308.677(4)(C). The Commission's rules must adhere to this procedure. Staff Comments make clear that this was the intent of the Commission's temporary rules and the Staff's recommended amendments to the proposed permanent rules serve to eliminate any doubt.

OCTA supports the Staff Comments and respectfully recommends that the Commission adopt Staff's recommended revisions to the proposed rules.

Sincerely,



Mike Dewey

