

AR 594

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

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ARCHIVES DIVISION
SECRETARY OF STATE

Public Utility Commission of Oregon

Agency and Division

860

Administrative Rules Chapter Number

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RULE CAPTION

In the Matter of Rulemaking to Implement 2015 Senate Bill 611: Qualified Project Determination.

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

Hearing Date	Time	Location	Hearings Officer
2-23-16	1:00 p.m.	Hearing Room Public Utility Commission, 201 High Street SE, Salem, OR	Ruth Harper

RULEMAKING ACTION

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

ADOPT:

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

AMEND:

REPEAL:

860-200-0005 (T), 860-200-0050 (T), 860-200-0100 (T), 860-200-0150 (T)

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

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 756.040; Or Laws 2015, ch 23, sect 5

Other Authority:

Statutes Implemented:

Or Laws 2015, ch 23, sect 5; Or Laws 2015, ch 31 sect 7

RULE SUMMARY

These permanent rules will implement 2015 Senate Bill 611 and 2015 House Bill 2485 (codified in Oregon Laws 2015, chapters 23 and 31) by providing guidance for information to be included in the applications for qualified project determination per the legislation. These rules establish an application process for a qualified project determination by facilitating the gathering and review of necessary materials regarding an applicant's project. The temporary rules in place to provide this guidance expire May 3, 2016.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 594 on comments and file them as a Word or PDF attachment to an e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us.

Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=19933>. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_001.html.

Participants wishing to monitor the hearing by telephone must contact Diane Davis at diane.davis@state.or.us or (503) 378-4372 by close of business February 19, 2016, to request a dial-in number. The Commission strongly encourages those planning to present oral comment at the hearing to attend in person.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

03-10-2016 5:00 p.m.	Diane Davis	diane.davis@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

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Public Utility Commission of Oregon

860

Agency and Division

Administrative Rules Chapter Number

In the Matter of Rulemaking to Implement 2015 Senate Bill 611: 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:

Rulemaking to Implement 2015 Senate Bill 611: Qualified Project Determination.

Statutory Authority:

ORS 756.040; Or Laws 2015, ch 23, sect 5

Other Authority:

Statutes Implemented:

Or Laws 2015, ch 23, sect 5; Or Laws 2015, ch 31 sect 7

Need for the Rule(s):

The purpose of the rules is to implement Senate Bill 611 (2015) which requires the Public Utility Commission of Oregon (PUC) to determine whether or not a company providing communication services that files an application for a qualified project determination has a project that meets the requirements for a qualified project. These rules would establish an application process for a qualified project determination by facilitating the gathering and review of necessary materials regarding the applicant's project.

Documents Relied Upon, and where they are available:

2015 Senate Bill 611 codified as Oregon Laws 2015, chapter 23, found online at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2015orLaw0023.pdf

2015 House Bill 2485 codified as Oregon Laws 2015, chapter 31, found online at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2015orLaw0031.pdf

Temporary Oregon Administrative Rules, Chapter 860, Division 200 found online at http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_200.html

Fiscal and Economic Impact:

Under Senate Bill 611 a company seeking the tax exemption established under Section 5 of the bill must file an application with the PUC, with a copy to the Department of Revenue and submit a \$50,000 application fee. The PUC will then issue a determination as to whether or not the applicant's project is a qualified project. These rules establish the application process for a qualified project determination. Application is voluntary. If the PUC determines that a project is a qualified project, subject to the other provisions of SB 611, the property of the company shall be granted a property tax exemption as described in subsections 5(5) (6) and (7) of SB 611. If the PUC determines that a project is not a qualified project, the property of the company is not eligible for this tax exemption.

The fiscal and economic impact of the proposed rules is mixed. Under SB 611, a qualified project must require capital investment in newly constructed or installed real or tangible personal property constituting infrastructure that enables the company to offer communication services, including the 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. The proposed rules address the application process. The proposed rules provide a means for the submission and evaluation of qualified project determination applications. If a company submits a qualified project determination application under these rules that is approved and subsequently receives the property tax exemption under SB 611, local governments may see a reduction in property tax assessments. Construction and operation of a qualified project may result in increased economic activity in the state.

Fiscal and economic impacts discussed below pertain to the proposed rules at the time of writing this Fiscal Impact Statement.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

1. Impact on State agencies.

There will be a minimal impact on state agencies.

The state agencies affected by these rules are the PUC and the Oregon Department of Revenue (DOR). Both PUC and DOR may need to allocate staff resources to the review and processing of applications submitted under SB 611 and the proposed rules. At this time, it is not possible to determine how many, if any, applications will be filed. PUC may need to update the application coversheet form and webpages associated with application instructions. DOR may have additional staffing needs associated with tax assessments and annual reports under SB 611 if the PUC determines that a project is a qualifying project. PUC may have additional staffing needs associated with annual reports to the legislature under SB 611 if the PUC determines that a project is a qualifying project. Each applicant must pay a fee of \$50,000 that, under SB 611, must be distributed evenly between PUC and DOR to reimburse the PUC for the costs of reviewing the application and DOR for the costs of appraising the property of the company submitting the application.

2. Impact on units of local government

The PUC must consult with any city that has entered into a franchise fee agreement with a company that submits an application under these proposed rules. The PUC may consult with other cities or counties affected by a project that is the subject of an application. Under SB 611, if a company obtains a tax exemption after a qualified project determination, the assessor for a county in which the property is located must submit an annual report to DOR. It is not possible to determine the number of qualified project determination applications that may be submitted to the PUC after these rules are adopted. Thus, the impact on local governments in terms of staff or resources cannot be determined. The PUC does not anticipate significant impacts on the resources of local governments if consultation or reporting is necessary. The impact, if any, will depend on the number of applications, the number of qualified project determinations and which individual counties and cities may be affected.

Approval of an application submitted under the proposed rules may lead to a tax exemption that reduces property tax revenue to local jurisdictions. Operation of a project approved as qualified may increase economic activity in local jurisdictions, which may also have access to the qualified service. It is not possible to determine the number of qualified project determinations that may be made by the PUC after these rules are adopted, nor to determine the amount of any resulting tax exemptions or economic impacts. The specific local jurisdictions in which potential qualified projects will be located is determined by the applicants. The specific impact on local governments in this regard cannot be determined, nor can it be determined whether there will be significant impacts on local county or city tax revenues as a subsequent result of submission of an application under these proposed rules and SB 611.

3. Impact on the public

The public will not be affected by the proposed rules.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

Submission of a qualified project determination application under the proposed rules is voluntary. The PUC does not anticipate any small businesses will submit an application under the proposed rules. The proposed rules do not require an application. Any small business that chooses to submit an application that is approved may benefit from a property tax exemption under the provisions of SB 611, Section 5.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

Submission of a qualified project determination application under the proposed rules is voluntary. The proposed rules do not require reporting, recordkeeping or administrative activities. A company that chooses to apply must prepare an application and submit the filing fee required under SB 611.

c. Equipment, supplies, labor and increased administration required for compliance:

Submission of a qualified project determination application under the proposed rules is voluntary. The proposed rules do not require equipment, supplies, labor or administration. A company that chooses to submit a qualified project determination must prepare an application required under SB 611.

How were small businesses involved in the development of this rule?

The PUC did not specifically involve small businesses in the development of this rule. The proposed rules implement SB 611. PUC and its Staff received informal input from businesses that offer communication services that may submit applications under the rule and from other stakeholders with knowledge of the potential impact on small businesses, such as cities and counties, during development of the temporary rules, which are now in effect. The proposed rules contain similar language to the temporary rules.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

Prior to this rulemaking, PUC Staff met several times with industry representatives and other stakeholders to develop the temporary rules now in effect. Informal comments received during that process were considered in the development of the proposed rules.

03-10-2016 5:00 p.m.	Diane Davis	diane.davis@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007

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

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

Stats. Implemented: 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)

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

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 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) 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, 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.

(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 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 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

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