

November 4, 2015

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Public Utility Commission of Oregon
201 S. High Street
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Re: Docket No. AR 592; Special Public Meeting, November 5, 2015

Dear Commissioners Ackerman, Bloom and Savage:

I am writing on behalf of Google Fiber Oregon, LLC (“Google”) to express concern regarding certain language proposed by the League of Oregon Cities (“League”) to be added to section 860-200-0100(6) of the rules that are the subject of this proceeding. Specifically, the League’s proposal would modify the first sentence of that subsection of the rule, and add this new second sentence: “The Commission will not determine the property tax exemption including eligibility and amount, if any, for the application year nor make the annual determinations thereafter.” This morning, Staff proposed some revisions to this language which we discuss below, but they do not fully address Google’s concerns.

At the public meeting on November 3, 2015, the Chair acknowledged that the proposed language is not necessary, but the Commissioners indicated an intention to include this language to provide clarification in the rules and some “comfort.” Google saw this new language for the first time at the November 3 meeting, which did not allow for a meaningful opportunity to comment at the meeting. Upon review, Google agrees that that this language is unnecessary; however, rather than clarify anything, this new language appears to conflict with the language of the statute and therefore injects confusion into the temporary rules.

There are two primary ways in which the proposed language conflicts with the statute. First, the law provides: “If the Commission determines that the project is a qualified project: ... (C) ... the property of the company **shall be granted the exemption** under subsection (5) of this section beginning with the first property tax year that begins after the date of the determination.” SB 611, Section 5(4)(d). In contrast, the language proposed by the League states: “The Commission **will not determine the property tax exemption including eligibility** and amount, if any, for the application year....” That language contradicts the requirements of the law, because the Commission’s positive determination results in a company being granted the exemption and thus determines eligibility.

Second, the proposed language states the Commission will not “make the annual determinations thereafter.” However, SB 611 does not refer to any agency making “annual determinations” after the Commission makes its determination under Section 5. Indeed, the only “determination”

referred to in SB 611 is the determination made by the Commission under Section 5. The Department of Revenue has the responsibility to appraise the value of property and to calculate the amount of the exemption for each property tax year, as stated in Section 2(2) of SB 611 and provided elsewhere in the law; however, this is not an annual *determination* as that term is used in the law. The temporary rules should not in any way diminish the significance of a Commission determination under SB 611 from that set forth in the law, nor inject any confusion about the possibility of “annual determinations thereafter” which are nowhere mentioned in the law.

Staff has proposed to revise the League’s language, so the sentence would read: “Following a determination that a project is a qualified project, the Commission will not administer the property tax exemption including eligibility and amount, if any, for the application year nor make annual determinations thereafter.” This revision still includes the problematic references to “eligibility” and “annual determinations” discussed above.

The temporary rules the Commission is poised to issue are intended to set forth the requirements for an application for a determination under SB 611, nothing more. For example, they do not address the Commission’s annual reporting requirements under SB 611 because the timing of the first report does not require that issue to be addressed in these temporary rules. By the same token, the temporary rules do not need to address what the Commission will *not* do after it makes a determination.

The League states in its October 30 letter (at 6) that this new language is required because “OPUC staff has passed much of the execution of SB 611 on to ODOR.” This is simply not the case. SB 611 establishes the separate roles of the Commission and the Department of Revenue. Neither PUC Staff nor the Commission has the legal authority to delegate the Commission’s responsibilities to another state agency.

The proposed rules are the product of careful drafting and considerable discussion. This new proposal, however, has not been discussed at any of the previous meetings and strays considerably from the language of the law. The League states that its proposal “would clear up the vagueness in the rules.” Google disagrees that the proposed rules are vague. Rather than clarifying anything, this proposal creates the potential for confusion in future implementation of the law. SB 611 is clear with respect to the respective roles of the Commission and the Department of Revenue in implementing the law, and the proposal to state what the Commission will *not* do is both unnecessary and confusing. Google requests that the Commission not include the revisions proposed by the League in section 860-200-0100(6).

Public Utility Commission of Oregon
November 4, 2015
Page 3

We would be happy to answer any questions at the special public meeting on November 5, 2015.

Sincerely yours,

A handwritten signature in black ink, appearing to read "LH Reichman", with a long horizontal flourish extending to the right.

Lawrence H. Reichman
Counsel for Google Fiber Oregon, LLC

LHR:dma