



Central Services

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March 10, 2016

Oregon Public Utility Commission
Telecommunications and Water Division
201 High St SE, Suite 100
Salem, Oregon 97301

Commission's Filing Center: PUC.FilingCenter@state.or.us.

RE: City of Eugene Comments - AR 594 - The Matter of Rulemaking to Implement 2015 SB 611
Qualified Project Determination

Dear Commissioners:

The City of Eugene appreciates the opportunity to provide comments to OPUC on matters related to the implementation of SB 611. We are extremely disappointed that Eugene's concerns expressed on the temporary rules and individual applications were not heard by Commissioners or staff. Our primary concern was and continues to be the insufficiency of information, transparency and communication by OPUC staff throughout the temporary rulemaking process and application review. Compressed timelines, limited communications with stakeholders, insufficient explanation for decisions, and attempts to provide feedback on heavily redacted information depict our experiences under the temporary rules. We hope the permanent rules can avert similar experiences in the future for the sake of Oregon's residents, schools, cities and other local jurisdictions.

Throughout the process, due to the redactions that OPUC staff allowed Comcast – which essentially removed all substantive information about Comcast's project, the City of Eugene was effectively deprived of any meaningful descriptions of the project and its impacts on the Eugene community. The City was asked to provide an opinion largely related to information that was redacted because Comcast deemed it confidential and OPUC staff apparently agreed. The City continues to have serious doubts that all of the information redacted is in fact confidential¹ and that it needs to be

¹ For example, staff stated in its comments that "much of the project information submitted by applicants was provided as a confidential submission." See AR 594 Staff Comments, page 3, lines 7-8. We are uncertain whether staff is referring to the Oregon Public Records Law exemption for a confidential submission, but if that is the case, we assert these qualified project determination applications do not constitute a confidential submission pursuant to ORS 192.502(4). Exempt confidential submissions are ones that are submitted in confidence and "not otherwise required by law to be submitted." Here, the information is required by law, specifically OPUC administrative rules, to be submitted as part of the application. Additionally, Comcast asserted the information it redacted from its application was exempt under Oregon

withheld from the public in general (as we believe local governments and the public have a right to have sufficient information about a project that is deemed qualified and potentially eligible for significant tax breaks). However, we believe, at the very least, more information should be given to the local governments that would be affected by the proposed project and from whom the Commission or staff requests comments or information (as staff did with the Comcast application when it posed several additional questions to the City after we submitted initial comments).

The proposed permanent rules and staff recommendations for changes to the permanent rules as mentioned in item I B (which relates to OAR 860-200-0150) do nothing to correct this problem. We remain highly concerned that OPUC's recommended solution to increase transparency is solely to include a requirement that the applicant provide, "a brief description of the project, and how it may affect the city or county." We fear that by leaving it up to the applicant to provide a "brief description" without specifying the required information, local governments will again and again be provided with little to no substantive project information. This is a grossly inadequate recommendation by staff that in no way addresses the shortcomings of the process under the temporary rules.

Furthermore, this provides cities with little indication that our concerns have been heard throughout this entire process. An undefined, subjective phrase such as "brief description" has no place in a permanent rule designed to fulfill a key provision of SB 611, which requires the commission to "consult with any city with which the [applicant] has entered into a franchise fee agreement to provide services to which the application relates." This recommended change does not rectify issues of transparency, communication or information-access described by the staff summary or those experienced by Eugene and other cities under the temporary rules.

The City of Eugene suggests that any project description required by the permanent rules, 'brief' or not, deliver the intention of SB 611: that the city or county be provided enough information to provide meaningful feedback to the OPUC on how a project may affect the city or county. Anything short of this places OPUC in the position of relying solely on the materials provided by the applicant, with no way to contextualize information within a local jurisdiction or know its validity. This leaves Commissioners with no recourse to meaningfully object to an applicant's claims.

We believe that project descriptions should include at least a description of the newly constructed or installed infrastructure used or contemplated to be used; when it was constructed or installed; the specific areas within the cities where the service is or will be provided; and the percentage of the applicant's residential broadband customers who have or will have access to the service.

Conclusion

In conclusion, the City of Eugene asserts that greater transparency regarding the project description is needed in order for OPUC to meet the consultation requirement referenced in SB 611 and to help OPUC evaluate the applications. We urge OPUC to amend its processes to facilitate rigorous examination of applications to ensure only those projects that meet SB 611 requirements are

Public Records Law exemptions ORS 192.501((2)) (trade secrets) and 192.502(8) (information that is prohibited by federal law from being disclosed). The City noted in our February 1, 2016 comments to OPUC staff that public records exemptions may be used by *public entities*, if they so choose, in response to public records requests and this process of submitting qualified project determination applications is not a public records request.

approved. Providing cities and other interested parties with adequate information and time to produce meaningful comments to OPUC staff are just some of the ways the process can be improved under the permanent rules.

Sincerely

A handwritten signature in cursive script, appearing to read "Pam Berrian".

Pam Berrian

Telecommunications and Cable Program Manager

Cc: Hwa Go, Eugene Assistant City Attorney

Cc: Mike Streepey, City of Eugene Senior Financial Policy Analyst

