

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1908, UM 2206**

In the Matter of

LUMEN TECHNOLOGIES,

Proposed Commission Action Pursuant to ORS
756.515 to Suspend and Investigate Price Plan
(UM 1908), and

QWEST CORPORATION,

Investigation Regarding the Provision of Service
in Jacksonville, Oregon and Surrounding Areas
(UM 2206).

OREGON CITIZENS' UTILITY BOARD'S
RESPONSE TO LUMEN TECHNOLOGIES,
INC.'S MOTION FOR RECONSIDERATION
AND CLARIFICATION AND, IN THE
ALTERNATIVE, TO CERTIFY THE
RULING TO THE COMMISSION.

I. INTRODUCTION

Pursuant to OAR 860-001-0720(4), the Oregon Citizens' Utility Board (CUB) responds in opposition to Lumen Technologies, Inc.'s (Lumen or the Company) Motion for Reconsideration and Clarification and its alternative Request to Certify the Ruling (Motion) to the Public Utility Commission of Oregon's (Commission). The Motion seeks reconsideration or clarification of the September 29, 2022, Ruling and Memorandum (Ruling) in the above-captioned proceeding. The Motion cites two issues the Company believes warrant reconsideration or clarification. First, Lumen contests the Commission's decision to incorporate the records of UM 2206 and UM 1908 into this consolidated

proceeding.¹ Second, Lumen objects to the Commission's decision to allow non-intervening parties to provide comments in this docket.²

CUB respectfully requests that the Commission deny the Company's Motion. The Company did not demonstrate that reconsideration or clarification is necessary as the Commission's decision is lawful. The Commission did not commit an error of law or fact in the Ruling, nor is there good cause for further examination of an issue essential to the decision. As such, reconsideration is not warranted nor is clarification necessary. Further, the Commission should decline to approve Lumen's request for certification,³ because the Commission has not yet issued a ruling on the Motion. Therefore, Lumen's request for certification is procedurally improper.

II. STANDARD OF REVIEW

After the Commission has made an order in any proceeding, any party thereto may apply for rehearing or reconsideration of the order.⁴ The Commission may only grant the request if sufficient reason for reconsideration is shown.⁵ Per OAR 860-001-0720(3), the applicant must show one or more of the following specific grounds for reconsideration to be warranted:

- (a) new evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;
- (b) a change in the law or policy since the date the order was issued relating to an issue essential to the decision;
- (c) an error of law or fact in the order that is essential to the decision; or
- (d) good cause for further examination of an issue essential to the decision.⁶

Proceedings may be consolidated for hearing at the discretion of the Commission or ALJ.⁷

¹ See *United/Quest/CenturyLink Joint Petition for Price Plan and Partial Waiver*, OPUC Docket No. 1908, Lumen Technologies, Inc.'s Request to Clarify or Reconsider Ruling at 1 (Oct. 14, 2022).

² *Id.*

³ OAR 860-001-0110.

⁴ ORS 756.561(1).

⁵ *Id.*

⁶ OAR 860-001-0720(2).

The Commission must certify a ruling by delegated to an Administrative Law Judge (ALJ) if the ALJ finds that:

- (a) The ruling may result in substantial detriment to the public interest or undue prejudice to a party;
- (b) The ruling denies or terminates a person’s participation; or
- (c) Good cause exists for certification.⁸

III. BACKGROUND

In December 2021, the Commission issued an order directing Staff to open an investigation into the historical and ongoing safety and reliability issues Lumen telecommunication customers were experiencing in and around Jacksonville, Oregon area.⁹ In February 2022, a Staff report to the Commission detailed steps Lumen had taken to resolve issues and steps that it still needed to take. Staff also reported that other customers in the area had been experiencing “serious safety and reliability issues.”¹⁰ The Commission issued another order directing Staff to update the Commission on these service quality issues and present options to solve ongoing service quality problems at a Special Public meeting on August 30, 2022.¹¹ Lumen did not challenge either order.

On August 30, 2022, the Commission held a Special Public Meeting to hear the results of Staff’s eight-month investigation into the historical and ongoing safety and reliability issues Lumen customers were experiencing in and around Jacksonville, Oregon. Staff found that “current service quality issues experienced by customers present routine danger with being able to call for emergency services, as

⁷ OAR 860-001-0600.

⁸ OAR 860-001-0110.

⁹ *In the Matter of QWEST CORPORATION, Investigation Regarding the Provision of Service in Jacksonville, Oregon and Surrounding Areas*, OPUC Docket No.UM 2206, Order No. 21-470 (Dec. 20, 2021).

¹⁰ *Id.*

¹¹ UM 1908 – Order No. 22-340, Appx. A at 6.

many of these customers rely solely on their landline service to contact such services.”¹² On September 23, 2022, the Commission adopted Staff’s recommendations including opening an investigation to determine whether given the ongoing safety issues, the Price Plan is in the public interest according to the criteria set forth in ORS 759.255(2); and if not, what modifications may enable a finding that such a modified plan is in the public interest.¹³ Lumen filed a timely request for hearing stating “the record in this docket contains insufficient evidence to support the findings in the Order” and the Commission acted outside its authority.¹⁴ The Commission issued a Ruling consolidating docket UM 2206 into UM 1908.¹⁵

IV. ARGUMENT

A. The Commission Should Deny Lumen’s Motion for Reconsideration.

The Commission should deny the Motion because Lumen has failed to meet its burden to show that reconsideration is warranted due to an error of law or fact or other good cause.¹⁶ Lumen incorrectly asserts that the Motion is justified, arguing the Ruling appears to indicate that the consolidated materials from UM 1908 and UM 2206 will be unlawfully made part of the evidentiary record.¹⁷ Lumen also states that by allowing non-intervening parties, including customers, to participate in the contested case, the Commission Ruling is granting greater rights to non-parties than allowed.¹⁸ Lumen asserts, without citation, that “[n]othing may be made part of the record in a contested case that is not admitted at evidence in a hearing.”¹⁹

Lumen is wrong. The Commission may consolidate proceedings, pursuant to its authority under OAR 860-001-0600. The Commission has routinely consolidated proceedings concerning similar issues

¹² UM 1908 – Staff Report for the September 20, 2022 Public Meeting at 5.

¹³ UM 1908 – Order No. 22-340 at 1 and Appx. A at 9.

¹⁴ UM 1908 – Lumen Request for Hearing Pursuant to ORS 765.515(6) at 1–3 (Sept. 27, 2022).

¹⁵ UM 1908 & UM 2206 – Ruling and Memorandum at 2 (Sept. 29, 2022).

¹⁶ OAR 860-001-0720(3).

¹⁷ UE 1908 – Motion at 3.

¹⁸ UE 1908 – Motion at 5.

¹⁹ UM 1908 – Motion at 3.

of law or fact, including incorporating the record from various proceedings, when doing so furthers the public interest or promotes judicial efficiency.²⁰ The Commission has long maintained its preference for developing a robust record in order to render decisions that further the public interest.²¹ Here, consolidation is warranted because issues raised in UM 2206—including all comments raised by affected individuals—are relevant to a determination whether Lumen is providing adequate service in the Jacksonville area. Incorporating the records of the dockets consolidating into the leading docket is pivotal to facilitating the judicial efficiency resulting from consolidation.

Lumen argues that material from the dockets cannot be part of “the record” because to do so would be in violation of evidentiary rules. The Ruling states:

Additionally, to ensure that the Commission can review the relevant record necessary to decide this matter, I consolidate docket UM 2206 into this proceeding and fully incorporate the record of UM 2206 and UM 1908, including General Protective Order No. 22-352...²²

However, when the Commission approved Lumen’s most recent Price Plan, the Order explicitly stated the Commission may open an investigation at any time, including to determine if adjustments or termination is required by the public interest pursuant to ORS 759.255(2).²³ It goes without saying that the Commission intended to incorporate the findings in UM 2206, into UM 1908, which necessarily includes the filings from both dockets. The Legislature has vested the Commission with broad regulatory authority to protect customers, which including the authority “to do all things necessary and convenient in the exercise of such power and jurisdiction.”²⁴ It is well within the Commission’s

²⁰ *In the Matter of PACIFICORP, dba PACIFIC POWER, Request for a General Rate Revision*, OPUC Docket No. UE 399, Ruling at 4 (April 11, 2022).

²¹ *In re Public Utility Commission of Oregon Investigation to Determine the Resource Value of Solar*, OPUC Docket No. UM 1716, Order No. 16-404 at 2 (Oct. 19, 2016) (“[c]ommitted to obtaining a deep understanding of these issues...do not believe it to be in the public interest to make findings unless the record is sufficiently robust to inform sound decisions and to provide meaningful guidance and direction.”).

²² UM 1908 and UM 2206 – Ruling and Memorandum at 2.

²³ Order No. 18-359 at 2.

²⁴ ORS 456.040(1–2).

authority to consolidate these dockets and should come as no surprise to Lumen who did not object to that provision of its Price Plan.

Lumen also argues that the Commission rules cannot order that customers who do not intervene as parties can participate in the hearing.²⁵ The Ruling states:

I recognize that although this matter will be managed as a contested case, there is significant customer interest in this proceeding. Accordingly, the Administrative Hearings Division will work to accommodate customer participation, including participation of those customers not represented by attorneys. Customers not represented by an attorney may participate in all events in the above schedule, provide comment, and may present written material including briefs. That noted, any person not represented by an attorney may not make legal argument in this case. Customers not represented by an attorney but planning to participate heavily in this proceeding are encouraged to formally intervene.²⁶

While Lumen cites to Commission rules for how parties may intervene or become “interested persons”, those rules do not prohibit the Commission from exercising its broad authority to do all things necessary and convenient to protect customers.²⁷ This investigation into Lumen started with a customer complaint, which led to an investigation that identified more customer complaints. Notably, the Ruling states that while participants who do not intervene can provide comments or briefs, they are not permitted to make a legal argument.

The Commission has an existing process through which public comments received can be made part of the evidentiary record. The Commission's Consumer Services Division compiles written comments received and prepares a summary that will be made part of Staff's written testimony, and the comments themselves will be included as exhibits to that testimony. The Commission also has ordered that providing comment in a contested case proceeding does not subject the person to cross examination. They also provide that any party may respond to Staff's summary of the public comments or the

²⁵ UM 1908 – Motion at 4–5.

²⁶ UM 1908 and UM 2206 – Ruling and Memorandum at 3.

²⁷ ORS 756.040(1–2).

comments themselves in evidentiary testimony.²⁸ The ALJ has acknowledged that these issues affect individuals and do so in differing ways and acknowledges customer rights to say how Lumen's service quality issues are impacting them, all pursuant to the Commission's broad regulatory authority and in the interest of a robust record.

The Commission's decision to consolidate the record of investigation of Lumen's service quality in the Jacksonville area (UM 2206) into the Lumen's Jacksonville area Price Plan docket is a lawful exercise of its authority. The Commission rightfully acknowledged that these two dockets consist of the same or similar facts and issues of law when it consolidated the dockets and their materials into UM 1908. This decision is lawful under the Commission's broad regulatory authority and its investigatory powers under Oregon law. Further, good cause exists for the Commission to consider the filings in both UM 1908 and UM 2206 because they are relevant to resolution of the ongoing service and safety issues that both customers and Commission Staff have indicated have not been resolved over the past year.

B. Clarification is not necessary.

The Commission's Ruling is lawful under its broad regulatory authority and case precedent, CUB believes clarification is not necessary. The Ruling and subsequent ALJ filings make no indication that evidentiary processes or hearing rights have been suspended. Attached to the Ruling is the Commission's Notice of Contested Case Rights and Procedures which lay out the process for hearing rights, as well as admitting and objecting to evidence.²⁹ The Ruling itself includes a draft procedural schedule with potential dates for filing testimony, briefing, cross examination statements, and then the contested case hearing.³⁰ Lumen will not be deprived of any procedural rights because they will have an opportunity to respond in testimony and at hearing.

²⁸ *In the Matter of Public Utility Commission of Oregon, Amending Internal Operating Guidelines*. OPUC Docket UM 2055, Order No. 20-386 at 16 (Oct. 27, 2020).

²⁹ UM 1908 – Ruling at 8–9.

³⁰ UM 1908 and UM 2206 – Ruling and Memorandum at 3.

V. CONCLUSION

The Commission acted within its authority and did not make an error of law or fact in its decision. Parties retain their right to object to any evidence offered for the hearing record for consideration in the Commission's final order. Lumen has not made a showing that good cause for further examination is essential to the Commission's decision. For the foregoing reasons, CUB respectfully requests that the Commission deny Lumen's Motion for Reconsideration and Clarification of the Commission's Ruling consolidating dockets UM 2206 and UM 1908.

Dated this 31st day of October, 2022.

Respectfully submitted,

/s/Jennifer Hill-Hart

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