

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1908, UM 2206

In the Matters of

LUMEN TECHNOLOGIES,¹

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).

RULING AND MEMORANDUM

**DISPOSITION: CONTESTED CASE STATUS DECLARED, DOCKETS UM 1908
AND UM 2206 CONSOLIDATED**

On September 23, 2022, the Commission entered Order No. 22-340 in docket UM 1908. This order, memorializing the Commission's decision at the September 20, 2022 Regular Public Meeting, adopted and amended Staff's recommendation of September 14, 2022 to:

1. Modify Lumen's Price Plan to extend the original term of four years to be no longer than four years and nine months;
2. Open an investigation [into] Lumen's Price Plan to determine whether the Price Plan is in the public interest according to the criteria set forth in ORS 759.255(2); and if not, what modification may enable a finding that such a modified plan is in the public interest; and
3. Direct Lumen to set up, staff, and report on a 24/7 Dedicated Line for the duration of the investigation.

The Commission's amendments included a requirement that the company make the 24/7 dedicated line focused on customers in the Jacksonville, Applegate, and surrounding areas in southern Oregon; a requirement that this line allow customers to report issues at more than one address; a requirement that service issues be addressed to the customers satisfaction 48 hours after a service issue is reported, and various data tracking and reporting requirements. The order also noted that the Commission intends to level

¹ Formerly known as Qwest Corporation, United Telephone Company of the Northwest, CenturyTel of Oregon, and CenturyTel of Eastern Oregon.

penalties for violation of the order and describes how the Commission intends to apply penalties.

On September 27, 2022, Lumen filed a request for hearing pursuant to ORS 756.515(5). This request argues that under ORS 756.515(6), Order No. 22-340 is automatically suspended. ORS 756.515(6) states that an order issued under ORS 756.515(4) is automatically suspended where an aggrieved person requests a hearing, where no hearing has been provided, unless the Commission finds that the order is necessary for the public health and safety or to prevent the dissipation of assets. Lumen argues that the record in this docket contains insufficient evidence to support the findings in the order or the finding required by ORS 756.515(6).

I determine that consistent with OAR 860-001-0390 that Lumen’s request for a hearing is a substantive motion, in that it “address[es] the rights or duties of a party* * *.” OAR 860-001-0420 allows responses to be filed to a substantive motion 15 days of filing of the motion, and the moving party may file a response 7 days following the response. I amend the timeline specified in the rule for response and reply, as permitted by OAR 860-001-0090(1)(h). Responses to Lumen’s motion are due no later than October 5, 2022, and Lumen’s reply no later than October 11, 2022.

Furthermore, to facilitate the hearing requested by Lumen within the timeline specific by ORS 756.515(5) which is 60 days from September 27, 2022, I designate this proceeding as a contested case, and append information on contested case rights to this ruling. 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. Docket UM 1908 will be the leading docket.

Given the accelerated nature of this case, I describe a preliminary schedule for this proceeding. Parties and interested persons, which include Lumen and Staff as formal parties, and interested persons as Lumen customers or their representatives, may supply comment on the schedule below prior to the prehearing conference. Shortly following the prehearing conference, I will finalize the schedule in a memo filed in this docket. Parties are encouraged to confer and discuss any suggested changes to the schedule and should file a joint proposed schedule or individual proposed schedules, to the extent they wish me to adopt an alternative, no later than two business days before the prehearing conference.

Consistent with ORS 756.515 (5), the scope of this proceeding will be the Commission’s September 20, 2022 decision reflected in Order No. 22-340 as to whether the order should remain in effect, be withdrawn, or be altered.

EVENT	DATE
Prehearing Conference	October 5, 2022, 9:00 a.m.
Interventions Requested	October 11, 2022
Lumen files Direct Testimony	October 14, 2022

Staff, Intervenors, and Interested Party Testimony	October 27, 2022
All Parties File Pre-Hearing Briefs	November 10, 2022
Cross Examination Statements Due	November 16, 2022
Hearing	November 21, 2022, 9:30 a.m.
Hearing (Day 2, if needed)	November 22, 2022, 9:30 a.m.
All Parties File Post Hearing Briefs	December 2, 2022
Commission Decision (Tentative)	December 20, 2022

Given the accelerated nature of this proceeding, I encourage parties to work to conduct any necessary discovery collaboratively and expeditiously. Any discovery disputes should be elevated to me in a timely way, so that I may resolve them in a manner that will allow relevant information subject to discover to be considered in this proceeding.


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. Instructions for intervention are included with this ruling, and available on the Commission’s website. Questions may be directed to puc.hearings@puc.oregon.gov.

Dated this 29th day of September, 2022, at Salem, Oregon.



Nolan Moser
Chief Administrative Law Judge

Attachments: Formal Proceedings Instructions
Notice of Contested Case Rights and Procedures

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Formal Proceedings

Who Participates in Formal Proceedings

Participants in formal proceedings include Oregon Public Utility Commission (PUC) Staff and designated stakeholders such as the Oregon Citizens' Utility Board (representing residential customers), the Alliance of Western Energy Consumers (representing industrial customers), and various organizations representing the interests of environmental groups, cities, counties, municipalities, and other businesses. Most participants are represented by legal counsel.

If you are a utility customer or member of the public, learn more about how you can participate (/puc/news-events/Pages/Get-Involved.aspx) in PUC dockets and meetings.

Parties to a Docket




"Parties," defined as formal participants in a docketed case, have the rights to present testimony, cross-examine, file briefs, and request judicial review of Commission orders. The PUC also establishes parties in other docketed cases in which a nondisclosure agreement governs the use and disclosure of protected information. Out-of-state counsel must file pro hac vice (/puc/filing-center/Pages/Pro-Hac-Vice.aspx) motions.

Additionally, parties may be asked to participate in Regular Public Meetings to provide information on a select topic or docket. In this instance, parties may participate in-person or by phone if needed.

Participate in a Docket

To participate as a party in a contested case or an investigation where protected information is considered, file a petition to intervene. If approved, you can make filings and pleadings and participate in events listed in the docket's schedule.

It is uncommon for an individual residential utility customer to be granted a petition to intervene because the Oregon Citizens' Utility Board is designated by law to represent you in PUC proceedings. (See ORS 774.020-774.030 (<https://www.oregonlaws.org/ors/774.020>), and 774.180 (<https://www.oregonlaws.org/ors/774.180>)).

 An official view of the Administrative Rules (Division 1) (<https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=172>) to better understand how to participate in dockets.  

If you are an out-of-state attorney, you may register to appear pro hac vice (</puc/filing-center/Pages/Pro-Hac-Vice.aspx>) in order to make legal arguments or sign legal documents in PUC proceedings.

Monitor PUC Dockets

To stay informed on the various PUC dockets, search the eDocket (<https://apps.puc.state.or.us/edocketsSearch/eDocketsSearch>) system to view or download filings, rulings, orders and other documentation and schedules. You can also view trending dockets, which are typically higher-profile cases of interest due to the subject matter.

Receive Docket Update Notifications

1. Ask to be added to an industry notification list for all new dockets to stay informed. Please specify which industry list(s) you wish to be added to: electric, natural gas, telecommunications, and/or water.
2. Ask to be added to a service list for a specific docket. You will then receive emails when new documents have been added to that docket or there is a change to the schedule.

Submit your request to: puc.hearings@puc.oregon.gov. (<mailto:puc.hearings@puc.oregon.gov>)



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Public Comments:


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Address & Hours

Oregon Public Utility Commission
201 High Street SE, Suite 100
Salem, OR 97301-3398

PO Box 1088
Salem, OR 97308-1088

Hours: Mon-Fri, 8am - 5pm

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NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at <https://www.oregon.gov/puc/Pages/default.aspx>. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

Notice to Active Duty Servicemembers: Active Duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

Administrative Law Judge: The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Notice of Contested Case Rights and Procedures continued

Record: The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.