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VIA EMAIL - puc.filingcenter@puc.oregon.gov

Public Utility Commission of Oregon

ATTN: Filing Center

201 High Street SE, Suite 100

P.O. Box 1088

Salem, OR 97308-1088

Re: NC 405 – In the Matter of Public Utility Commission of Oregon v. City of
Portland

Dear Filing Center:

Intervenors League of Oregon Cities and Oregon Association of Clean Water Agencies respectfully submit their combined Opening Brief in Case No. NC 405.

Very truly yours,

A handwritten signature in blue ink that reads 'Laura Maffei'.

Laura C. Maffei, R.G.

LCM:arh
Enclosure

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON
NC 405**

PUBLIC UTILITY COMMISSION OF
OREGON,

Complainant,

v.

THE CITY OF PORTLAND,

Defendant.

**INTERVENORS LEAGUE OF OREGON
CITIES AND OREGON ASSOCIATION
OF CLEAN WATER AGENCIES
OPENING BRIEF**

INTRODUCTION AND BACKGROUND

Intervenors League of Oregon Cities (“LOC”) and Oregon Association of Clean Water Agencies (“ACWA”) (collectively, “Intervenors”) jointly submit this Opening Brief. LOC and ACWA represent cities and municipal entities across Oregon who may be impacted by the outcome of this case.¹

Intervenors adopt and incorporate the facts and procedural background presented in Respondent City of Portland’s (“City”) Opening Brief. LOC and ACWA support the arguments included in the City’s Opening Brief and provide additional discussion as follows.

ARGUMENT

A. Cities in Oregon Should not be Required to Mark All Underground Utilities in a Public Right-of-Way

Taken at face value, the Public Utilities Commission’s (“PUC”) complaint against the City would require municipalities to mark *any and all* underground facilities within a public right-of-way (“ROW”).² This interpretation ignores the plain language of OAR 952-001-0070 that clearly applies to only *owned* underground facilities and has the potential to create a massive

¹ Response Testimony ACWA/100 at 1-2; Response Testimony LOC/100 at 1-2.

² See Complaint, ¶ 29; Staff Exhibit 100 at 11, *ll.* 13-15.

burden on both large and small cities in Oregon.³ First and foremost, public ROWs contain many types of underground utilities – gas lines, telecommunications, and power – of which only a fraction are owned by the city.⁴ Yet the PUC clearly states that cities must locate *all* underground facilities regardless of ownership. And while this case involves underground sewer facilities that may have a public component, nothing in the PUC’s language in its complaint or written testimony limits the mandate to sewers or public infrastructure.

The PUC may argue that the requirement to locate only applies to private utilities that connect to public ones, but even this is untenable. This interpretation is akin to saying that municipalities are responsible for private driveways because they connect to a public street. The PUC cannot confer operational control through a rule addressing an entirely different issue: that of marking underground utilities. The PUC’s proverbial square peg/round hole interpretation should therefore be rejected.

B. Cities in Oregon Should Not Be Forced to Become “Operators” of Non-conforming Facilities

On its face, the PUC’s interpretation of the locating rules would make cities and other municipal entities “operators” of the private laterals at issue in this case. This interpretation should be rejected. Cities should not be considered “operators” of facilities they did not construct and that are likely not consistent with their development codes. As noted by the City,⁵ the PUC’s position flips treatment of non-conforming private sewer connections on its head: the City is *allowing* the property owner to use the public right-of-way for the non-conforming sewer, which would otherwise be illegal; this permissive approach should not be interpreted as a city’s acceptance of the non-conforming, privately installed and operated, sewer as its own. Other

³ Response Testimony ACWA/100, at 1-2; Response Testimony LOC/100, at 1-2

⁴ Response Testimony ACWA/100, at 1-2. We also note that public ROWs are not generally “owned” by cities or other municipal entities and are held in trust for the public, as explained in greater detail in the City’s Opening Brief.

⁵ Defendant’s Opening Brief at ¶ 3.a.

Oregon cities (like Portland) state in their codes⁶ that such private infrastructure is not the city's responsibility and demonstrate that the city has no intention of operating such infrastructure: cities do not wish to use limited public funds on private infrastructure. The PUC should not be allowed to override city codes by conferring "operator" status for private utilities.

CONCLUSION

For the reasons stated above, the PUC's interpretation of location rules should be rejected and its complaint against the City dismissed.

Dated this 1st day of February, 2024.

Respectfully submitted,



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⁶ See, e.g., GRANTS PASS, OR MUNICIPAL CODE §§ 8.16.010, 8.16.030, available at <https://www.grantspassoregon.gov/316/Municipal-Code>; REDMOND, OR CODE §§ 4.045, 4.050, available at <https://www.redmondoregon.gov/government/redmond-city-code>; COOS BAY, OR MUNICIPAL CODE §13.15.170, available at <https://www.coosbayor.gov/government/city-codes/coos-bay-municipal-code>.