

**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).

Hearing Relating to Order Nos. 22-340
and 22-422

ORDER

DISPOSITION: RULING AFFIRMED

In this order, we deny Lumen Technologies' (Lumen) request to clarify or reconsider the ruling dated September 29, 2022, and affirm the ruling. We determine that the ruling properly consolidated dockets UM 1908 and UM 2206 and the associated records for the purpose of our review of Lumen's challenge to Order No. 22-340.

I. BACKGROUND AND INTRODUCTION

On September 23, 2022, the Commission issued Order No. 22-340 in docket UM 1908, Lumen's Price Plan investigation. In part, this order required Lumen to take action, subject to penalty for non-compliance, to ensure telephone service for customers in the Jacksonville, Oregon and surrounding area. On September 27, 2022, Lumen filed a request for hearing associated with this order 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

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

provided, unless the Commission finds that the order is necessary for the public health and safety or to prevent the dissipation of assets.

Subsequently, the Administrative Law Judge (ALJ) assigned to this proceeding issued a ruling on September 29, 2022, that consolidated docket UM 1908 and docket UM 2206. Additionally, that ruling established these proceedings going forward as a contested case and incorporated the records in UM 1908 and UM 2206 into these proceedings. This ruling also noted that, given the interest of customers in the case, the Administrative Hearings Division would work to accommodate customer participation, including customers not represented by attorneys. On October 14, 2022, Lumen filed a request to clarify or reconsider ruling dated September 29, 2022, and in the alternative, to certify the ruling to the Commission. The Oregon Citizens' Utility Board (CUB) filed a reply to this request on October 31, 2022. On November 23, 2022, the ALJ assigned to this case certified the ruling for our consideration.

A. Lumen's Request

Lumen presents two arguments that the September 29, 2022, ruling violates Oregon law and our rules. Lumen's arguments focus on two specific sections of the ruling: (1) the consolidation of dockets UM 2206 and UM 1908; and (2) the accommodation for participation by interested customers not represented by an attorney.

First, Lumen argues that the record in a contested case may consist only of evidence admitted to the record during the hearing. Lumen asserts it must have the ability to object to evidence a party seeks to enter into the evidentiary record. Lumen argues that Commission findings must be supported by substantial evidence in record, and that the purpose of a contested case is to create a record of evidence upon which the Commission will base its decision. Lumen argues that an ALJ has the authority to administer oaths, make evidentiary rulings, and determine the order evidence is presented but that OAR 860-001-0490 requires a party offering into evidence part of a record from another proceeding to give a copy of the record to the ALJ and parties upon request. Lumen argues that by implication such a record must only be made part of a contested case record when offered into evidence by a party, must be expressly identified, and cannot be entered into the contested case record by an ALJ in a prehearing ruling. Lumen asserts that it should have the opportunity to cross-examine adverse witnesses. Second, Lumen argues that only parties, not interested persons, may participate fully in contested cases.

B. CUB's Reply

CUB asserts that Lumen's motion for reconsideration should be denied because Lumen hasn't shown that the decision warrants reconsideration and because the Commission's decision was lawful. CUB states that OAR 860-001-0600 allows the Commission to consolidate proceedings, and that it has consolidated similar proceedings in the past. CUB notes that the issues involved in dockets UM 1908 and UM 2206 are similar and review of the information offered in both dockets is necessary during this current proceeding, and therefore that consolidation is appropriate. CUB states that the

Commission is committed to developing a robust record and will do so in the course of this docket. CUB asserts the ruling's permission for non-party intervention is within the Commission's broad authority and is consistent with the specific rule that non-parties cannot make legal arguments. Finally, CUB asserts that the Commission should deny Lumen's request for certification as procedurally improper due to the Commission not yet having ruled on Lumen's motion for reconsideration.

II. DISCUSSION

A party may request certification of an ALJ's written or oral ruling for the Commission's consideration. If a party requests certification, then the ALJ must certify the ruling to the Commission if: (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.² In this case, the ALJ certified Lumen's request for good cause.

A. Consolidation and the Records of UM 1908 and UM 2206

An ALJ is delegated the authority under our rules to manage contested and, where assigned, non-contested case proceedings to facilitate efficient use of Commission resources, lead to the presentation of issues to the Commission with records that can support Commission consideration and decision, and must do so in a manner that is consistent with rule and law, including due process protections.³ We find that the ALJ had the authority to consolidate dockets UM 1908 and UM 2206 into this proceeding for the efficient review of Lumen's challenge to Order No. 22-340.⁴

Similarly, we find the ALJ's clarification that the records in UM 1908 and UM 2206 are part of the consolidated case is appropriate and consistent with Lumen's request for a hearing on Order No. 22-340 and does not impair Lumen's due process rights. In this proceeding, Lumen asks us to abandon the determinations we made in Order No. 22-340 as modified by Order No. 22-422. The decision we made in Order No. 22-340 was taken after consideration of Lumen's presentation at our public meeting, as well as the presentations of customers and Staff.⁵ Staff's presentation and report included extensive discussion of the Commission's investigation in docket UM 2206; Lumen's response explicitly referenced actions it had taken or chosen not to take associated with this investigation, such as the Commission's requirement for the Consumer-focused service

² OAR 860-001-0110.

³ See OAR 860-001-0090 and ORS 756.055. "Except as provided in subsection (2) of this section, the Public Utility Commission may designate by order or rule any commissioner or any named employee or category of employees who shall have authority to exercise any of the duties and powers imposed upon the commission by law. The official act of any commissioner or employee so exercising any such duties or powers is considered to be an official act of the commission."

⁴ See OAR 860-001-0600.

⁵ See Recording, Public Meeting, Docket No. 1908, Sep 20, 2022; Staff Report for the September 20, 2022 Public Meeting, Docket No. UM 1908 (Sep 15, 2022); Supplemental Written Comments of Pricilla Weaver, Docket No. 2206 (Sep 19, 2022).

complaint phone line.⁶ Our decision in order No. 22-340 was a decision made based on the record we were presented with, developed by Lumen, Staff, and customers, in UM 1908 and UM 2206. Accordingly, the ALJ's decision to consolidate UM 1908 and UM 2206 and bring those records into the consolidated proceeding for the purpose of reviewing Order No. 22-340, as modified by Order No. 22-422 was appropriate, and is permitted under our rules.⁷

Lumen's arguments that its due process rights are violated by consideration of these records must be rejected for two reasons. First, our proceedings thus far in dockets UM 1908 and UM 2206 have afforded Lumen every opportunity to exercise those rights. Second, the record in the proceeding to review Order No. 22-340 has not closed. Lumen continues to have opportunity to question and oppose the arguments and assertions of its customers who claim that Lumen's service is not and has not been adequate or consistent with its obligations. Should Lumen believe the Commission has considered any evidence not appropriately before the Commission, Lumen can object to it at the appropriate time.

Lumen was provided adequate notice of the UM 2206 and UM 1908 investigations, participated in them thoroughly, and provided extensive information to Commission Staff and the Commission.⁸ The record clearly demonstrates that Lumen had opportunity to counter the assertions of its customers, and argue or present evidence contrary to assertions that its service in the Jacksonville and surrounding areas has been adequate and will ensure the safety of residents there.⁹ Prior to the ALJ's ruling, these cases were handled as public meeting matters and this format also provided Lumen the opportunity to present evidence to the Commission that its customers were wrong about Lumen's service quality. Rather than do so, Lumen acknowledged service problems in Jacksonville and the surrounding area and has committed to this Commission, its Staff, and customers multiple times that it will address these issues in the short and long term.¹⁰

That noted, Lumen's argument also fails because the record in this consolidated proceeding to review our previous order is not complete.¹¹ Lumen may put forward any relevant evidence it chooses to demonstrate that its customers' assertions about service quality are incorrect, that their safety is not jeopardized by inadequate service, or that

⁶ See Recording, Special Public Meeting, Docket No. UM 2206, Aug 30, 2022.

⁷ See OAR 860-001-0600. "Proceedings may be consolidated for hearing at the discretion of the Commission or ALJ."

⁸ See Docket UM 1908. Commission Public Meeting Notice for the September 20, 2022 Public Meeting https://oregonpuc.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=1016; Staff Report for the September 20, 2022 Public Meeting (Sep 15, 2022); and Recording, Public Meeting, Docket No. UM 1908, Sep 20, 2022. See Docket No. UM 2206. Staff Report for the December 14, 2021 Public Meeting (Dec 9, 2021); Staff Report for the February 22, 2022 Public Meetings (Feb 16, 2022); Consumer Comments; Recording, Public Meeting, Dec 14, 2021; Recording, Public Meeting Feb 22, 2022; Recording, Special Public Meeting, Aug 30, 2022; and Lumen Update re: Maintenance in Service Window (Sep 22, 2022).

⁹ For a summary of these complaints and Lumen's response, see Order No. 22-422 at 2-7.

¹⁰ See Order No. 22-340 at 6-7.

¹¹ See ALJ Ruling, Docket No. UM 1908 (Nov 4, 2022). The procedural schedule includes the opportunity for Lumen and parties to provide written testimony, prehearing briefs, to participate in an evidentiary hearing and issue post-hearing briefs.

rebutts any statements included in the records for dockets UM 1908 and UM 2206. Lumen may explain to the Commission why it should not consider or give lesser weight to any statements included in those records. Lumen may cross-examine all witnesses in this case, one of which is a customer, and may seek to discredit any information in the record. In short, Lumen's ability to present, impeach, and contextualize evidence continues.

Finally, we note that where Lumen requests we reverse course and reject the conclusions we have made in Order No. 22-340 as modified by Order No. 22-422, it is essential and reasonable that we consider as part of that decision the records that led to Order No. 22-340 as modified by Order No. 22-422.

B. Participation of Interested Persons

Lumen is correct that interested persons may not participate fully in contested cases, but the ALJ's ruling in question does not anywhere state that interested persons may fully participate in contested cases, and to the contrary encourages customers intending to participate heavily in this proceeding to formally intervene.¹² Consistent with our internal operating guidelines, comments may be submitted in this docket by interested persons or any member of the public.¹³ As stated in our rules, only intervenors may file pleadings, present evidence for the record, conduct cross-examination of witnesses, become a signatory to a protective order, or file briefs.¹⁴

¹² See ALJ Ruling at 3, Docket No. UM 1908 (Sep 29, 2022). We note as well that the ALJ clarified the extent to which persons not represented by an attorney or persons that are not parties during the October 6, 2022 prehearing conference. See ALJ Ruling at 2, Docket No. UM 1908 (Nov 4, 2022). "After addressing comments from Lumen in a filing to the Commission and during the conference, I explained the difference between intervenors and interested persons. To clarify, an interested person receives notifications of filings made and documents issued by the Commission or Administrative Law Judge in this proceeding. As I explained, an interested person is not a party to the proceeding, and is not entitled to file pleadings, conduct cross-examination of witnesses, become a signatory to a protective order, or file briefs."

¹³ See *In the Matter of Public Utility Commission of Oregon, Amending Internal Operating Guidelines*, Docket No. UM 2055, Order No. 20-386, Appendix A (Oct 27, 2020).

¹⁴ See OAR 860-001-0300 (7): "A person may ask to be listed as an 'interested person' in a particular proceeding. An interested person receives electronic mail notifications of filings made and documents issued by the Commission or ALJ in that particular proceeding. An interested person is not a party to the proceeding, and is not entitled to file pleadings, present evidence for the record, conduct cross-examination of witnesses, become a signatory to a protective order, or file briefs."

III. ORDER

IT IS ORDERED that the ALJ ruling of September 29, 2022, is affirmed.

Made, entered, and effective Nov 29 2022.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.