

February 22, 2025

House Committee on Climate, Energy, and Environment
Via Written Testimony Submission Form HB 2985

Greetings Chair Lively, Vice-chairs Gamba and Levy and committee members,

I write in support of the intent of HB 2985 to carve out some directive to the PUC to better respond to stakeholder participation in its proceedings, although I am neutral on the current version of the bill. I do not support the application of provisions of the Oregon Administrative Procedures act that would require a exhaustion of a reconsideration request or otherwise change the review process applicable to the PUC.

I am a public interest attorney who has had the privilege of representing environmental justice organizations in cases before the Public Utility Commission (PUC), including 3 rate cases over the last 2 years. My experience at the PUC is recent and short - a caveat to these comments. These comments are also my own and should not be attributed to any of those organizations. I do not propose an amendment to the bill but hope that these points might help inform your consideration of one.

To start, I want you to know that the PUC takes great effort to make its proceedings accessible and to encourage stakeholder participation. As a attorney practicing in Oregon for over 30 years, including in land use and Federal Energy Regulatory Commission (FERC) certificate siting proceedings, I can say that the PUC processes and practices are very different.

Foremost, is the broad discretion the PUC has because of the numerous statutory delegations authorizing it to essentially complete legislation through its rulemaking power, and its general failure to do so yet, at least as it relates to recent legislative directives. Secondly, even the most adjudicative of the PUC contested case proceedings - rate cases - are unlike quasi-judicial land use cases because land use decision-makers have very little discretion. And, while FERC maintains broad discretion (at least in its siting jurisdiction), it also has extensive resources to thoroughly respond to party positions; FERC prepares its orders in anticipation of inevitable review in the Circuit Courts of Appeals.

The practice before the PUC is different from many also because it is extremely collegial, respectful and professional. That culture should be maintained despite that there are very abundant weighty issues the Commission must decide over the coming years and a need to move quickly. But there is another thing about Oregon land use practice that is different, that is its seminal intent to be responsive and accessible to pro se litigants. That is accomplished, in part, through LUBA's meticulous parsing and responding to all arguments and in anticipation of review. Pro se participation seems somewhat new and review far from inevitable at the PUC and that is changing because of the issues and need for action.

The PUC attempts to respond but sometimes the effort fails. The Commission identifies the parties' arguments (albeit sometimes not all of them or not fully) but often lumps them together with other party positions; this can cause the nuance of a party's argument to be lost in the order's summary of it. When it comes to rate cases, like PGE's last case with 65 issues, most with separate positions of the parties, part of the struggle to be heard, may also be attributed to the control the utilities have to manage the issues. If the utility fails to respond on the merits, it is possible the issue will be deemed insignificant and get shorted in the final decision making. It may be that a beefed-up non-mandatory reconsideration process or built in period for all cases might be used to signal the importance of the issue to the Commission, with the hope that it would further respond.

Perhaps more frustrating for parties, however, is the failure to persuade the Commission (and sometimes the negotiating parties through settlement practice or otherwise) to cabin the PUC discretion one way or the other, but explicitly and on the merits so that arguments are not repeated over and over and interpretive rules are established. I do think that the Commission's work could speed up if it would better exercise its legislative authority by more thoroughly responding to arguments and more often engaging in the work of completing the legislative delegation. The reluctance is understandable when preserving the discretion seems paramount to the decision makers. So, there is a need to expect specific merits responses in the application of those delegative legislative directives and I hope the bill can address that problem.

I look forward to further learning how this bill may be designed to encourage the PUC to more thoroughly resolve its discretion, especially in response to the more recent paradigm shifting legislative directives.

Best Wishes,

Tonia Moro
Attorney at Law