



BEFORE THE BUSINESS AND TRANSPORTATION COMMITTEE
Senate Bill 83

Testimony of Michael Grant

Oregon Public Utility Commission

February 8, 2017

Senate Bill 83 bill is designed to address an inconsistency in statute related to the judicial review of PUC orders.

During the 2005 Legislative Session, the legislature approved our request to move the appeal of our contested case orders from the Marion County Circuit Court to the Court of Appeals. The intent of the legislation was to make the judicial review of our orders consistent with that of other agencies under the Administrative Procedures Act (APA).

Recently, we discovered that the 2005 bill included language that erroneously made all PUC orders “contested case” orders for purposes of appeal. As a result, every PUC orders is subject to judicial review standards governing contested case orders.

This error is problematic, because not all of the PUC’s orders follow a contested case process. In fact, the PUC decides many routine matters at its bi-monthly Public Meetings. These Public Meeting orders, which are classified as “orders in other than contested cases” under the APA, are not based on an evidentiary record because the PUC has held no evidentiary hearing. See ORS 183.484. Yet, because these orders are currently treated as “contested case” orders, the Court of Appeals would be required on appeal to review the PUC’s decision based on an "evidentiary record" that does not exist.



To eliminate this impossibility, SB 83 amends laws governing judicial review to appropriately recognize the two different types of PUC orders. By removing the phrase “as orders in contested cases” in ORS 756.610 and other statutes, SB 83 ensures that proper processes are used to govern the judicial review of contested case orders, as well as orders in other than contested cases. The amendments also fulfill the original intent of the 2005 legislation to make the judicial review of our orders consistent with that of other agencies under the APA.

Finally, I note that earlier this week we submitted a minor amendment to SB 83 to address a concern raised by the Citizens’ Utility Board. Under ORS 774.180, CUB has statutory authority to seek judicial review of “any agency action.” CUB raised the concern that proposed language in ORS 183.315(6) might unintentionally limit that right, because it provides that only parties to a contested case may seek judicial review of a PUC order. To avoid any potential ambiguity and to affirm CUB’s standing to appeal all PUC orders, we recommend that ORS 183.315(6) as set forth in SB 83 be amended as follows:

“Except as provided in ORS 774.180, judicial review of an order issued by the PUC in a contested case may be sought only by a party to the contested case.”

There is no known opposition to this bill.