

**BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON**

In the Matter of the Application for an)	FINAL FINDINGS OF FACT
Off-Premises Sales License by:)	CONCLUSIONS OF LAW
)	AND ORDER
RAMAN, INC.)	OLCC-10-L-011
Bahadur Singh, President, Director)	
and Stockholder)	
)	
dba CENTER MARKET #18)	
466 NW Hwy 101)	
Depoe Bay, OR 97341)	

HISTORY OF THE CASE

On September 15, 2010, the Oregon Liquor Control Commission (OLCC or Commission) issued a Notice of Proposed License Refusal to Raman, Inc., and Bahadur Singh, President, Director and Stockholder (collectively Licensee), dba Center Market No. 18, located at 466 NW Hwy 101, Depoe Bay, Oregon. The notice proposed to refuse to grant Licensee an Off-Premises Sales license pursuant to ORS 471.313(4)(d) and OAR 845-005-0325, based on Corporate Principal Singh's felony conviction and pursuant to ORS 471.313(4)(g), alleging that Corporate Principal Singh did not have a good record of compliance with the alcoholic liquor laws of this state. Licensee timely requested a hearing.

On September 30, 2010, the Commission referred Licensee's hearing request to the Office of Administrative Hearings. The matter was assigned to Senior Administrative Law Judge Alison Greene Webster.

A contested case hearing was held in this matter in Salem, Oregon, on December 1, 2010, before Administrative Law Judge Webster. Licensee was represented by Michael Mills, Attorney at Law. Kelly Routt presented the case for the OLCC.

OLCC Inspector and Investigator David Green testified at hearing on behalf of OLCC. Corporate Principal Bahadur Singh testified on Licensee's behalf. The record remained open for written closing briefs.

On January 7, 2011, along with Staff's Rebuttal Brief, the Commission issued an Amended Notice of Proposed License Refusal. By electronic mail on January 18, 2011, Licensee declined the opportunity to reopen the hearing record to address any new allegations in the Amended Notice. The record was closed as of January 18, 2011.

The Administrative Law Judge considered the record of the hearing and the applicable law and issued a Proposed Order mailed February 1, 2011. Staff filed Comments on the Proposed Order on February 16, 2011.

On April 21, 2011, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Administrative Law Judge, Staff's Comments on the Proposed Order and the Administrative Law Judge's Response to Staff's Comments. Based on this review and the preponderance of the evidence, the Commission enters the following¹:

EVIDENTIARY RULINGS

OLCC Exhibits A1 through A11 and Licensee's Exhibit R1 were admitted into the record without objection.

ISSUES

1. Whether the Commission has grounds to refuse to grant Licensee an Off-Premises Sales license pursuant to ORS 471.313(4)(d) and OAR 845-005-0325(5) based on Mr. Singh's felony convictions and, if so, whether there is sufficient good cause to overcome the refusal basis.

2. Whether the Commission has grounds to refuse to grant Licensee's license under ORS 471.313(4)(g), based on Mr. Singh's poor record of compliance with the liquor laws and rules of this state while previously licensed and, if so, whether there is sufficient good cause to overcome the refusal basis.

FINDINGS OF FACT

1. Raman, Inc., is a corporation wholly owned by Bahadur Singh. On or about July 1, 2010, Raman, Inc., doing business as Center Market No. 18, applied to the Commission for an Off-Premises Sales license for a convenience store located at 466 NW Highway 101, Depoe Bay, Oregon. The convenience store had been previously operating under different ownership with the trade name Depoe Bay North Market. (Ex. A1; test. of Singh.)

2. Raman, Inc. and corporate principal Mr. Singh hold two other Off-Premises Sales licenses, one doing business as Center Market No. 5, located at 180 NE Main Street, Willamina, Oregon (since February 2002) and another doing business as Center Market No. 6, located at 901 Ferry Street, Dayton, Oregon (since August 2003). (Test. of Singh; Ex. A3.)

3. Mr. Singh also owns two other corporations, Amrit, Inc. and Center Market, Inc., both of which have Off-Premises Sales licenses in connection with convenience store operations. Center Market, Inc. currently operates two convenience store locations: Center Market No. 2, located at 216 SW Washington St., Dallas, Oregon (since March 2001) and Center Market No. 9, located at 3401 Third Street, Tillamook, Oregon (since August 2004). (Test. of Singh; Ex. A4.)

4. Amrit, Inc., operates Center Market No. 12, located at 604 Main Street, Tillamook Oregon (since June 2006). (Ex. A5.)

¹ The Commissioners modified the analysis of the Administrative Law Judge on the issue of poor record of compliance and modified the outcome to grant the license with a restriction.

5. Center Market, Inc. and Corporate Principal Bahadur Singh also previously held Off-Premises Sales licenses at Center Market No. 1, located at 1765 Center Street NE, Salem, Oregon (March 2001 to February 8, 2010) and Center Market No. 10, located at 9320 Fifth Street, Bay City, Oregon (April 2005 to April 2006). (Test. of Singh; Ex. A4.)

6. In January 2007, a Marion County Grand Jury issued a Secret Indictment charging Mr. Singh with two crimes, Unlawful Distribution of Tobacco Products, a class C felony, in violation of ORS 323.632(2)(b) (Count 1) and Engaging in Business as a Tobacco Products Distributor without a License, a Class C felony, in violation of ORS 323.630(2) (Count 2). The indictment was based on conduct that occurred in January, February and March 2004. (Ex. R1; Ex. A6.)

7. On January 31, 2008, following a bench trial in Marion County Circuit Court, Mr. Singh was convicted of both counts set forth in the indictment. The court sentenced Mr. Singh to 24 months probation for Count 1 and 18 months probation for Count 2. The court also sentenced Singh to 30 days in jail and awarded a money judgment in favor of the Department of Revenue in the amount of \$60,000. (Ex. R1; Ex. A6.)

8. Based on Mr. Singh's felony convictions and pursuant to ORS 471.315(1)(a)(I), the Commission sought to cancel and/or refuse to renew the liquor licenses held by his three corporate entities: Center Market, Inc., Amrit, Inc. and Raman, Inc.. Following a contested case hearing held in April 2009 and consideration at an October 2009 Commission meeting, the Commission issued a Final Order that, among other things, sanctioned licensees short of cancellation and removed them from the Responsible Vendor Program. (Ex. R1.)

9. By January 12, 2010, Mr. Singh had successfully completed all his probation requirements and paid off all money owed in connection with his felony tobacco convictions. (Ex. A1 at 5.)

10. Mr. Singh has been a corporate principal in corporations licensed with the Commission since March 2001. As found above, during that time, his corporations have held Off-Premises Sales licenses at seven convenience store locations. Mr. Singh, as the corporate principal, has the following compliance history at his various locations:

(a) Center Market No. 5 Willamina (owned by Raman, Inc.) has a record of three OLCC violations:

- (1) October 19, 2002 – Employee failing to verify the age of a minor, or alternatively, sale to a minor (Category III violation);
- (2) September 2, 2004 – Failing to verify the age of a minor (Category III violation); and
- (3) January 31, 2008 – Corporate Principal Singh convicted of a felony (one count of Unlawful Distribution of Tobacco Products, ORS 323.632(2)(b) and one count of Engaging in Business as a Tobacco Distributor without a License, ORS 323.630(2) (Category I violation). (Exs. A3 and A9; Ex. R1.)

(b) Center Market No. 6, Dallas (owned by Raman, Inc.) has a record of one violation based on Singh's January 2008 felony convictions for conduct occurring January 2004 through March 2004 (Category I violation). (Ex. A3; Ex. R1.)

(c) Center Market No. 12, Tillamook (owned by Amrit, Inc.) has a record of three violations:

- (1) Singh's January 2008 felony convictions for conduct occurring January 2004 to March 2004 (Category I violation);
- (2) April 7, 2009 – Employee failing to verify the age of a minor (Category III violation); and
- (3) April 7, 2009 – Employee failing to comply with a restriction requiring the use of age verification equipment (Category I violation). (Exs. A5 and A11.)

(d) Center Market No. 2, Dallas (owned by Center Market, Inc.) has a record of six violations in nine years:

- (1) September 2001 – Employee failing to verify the age of a minor (Category III);
- (2) February 2003 - Employee failing to verify the age of a minor (Category III violation);
- (3) January 2005 - Employee failing to verify the age of a minor (Category III violation);
- (4) August 2007 - Employee failing to verify the age of a minor (Category III violation);
- (5) August 2007 – Allowing a person under the age of 18 to sell alcohol (Category IV violation); and
- (6) January 2008 – Singh's felony convictions for conduct occurring January 2004 through March 2004 (Category I violation). (Exs. A4 and A8.)

(e) Center Market No. 9, Tillamook (owned by Center Market, Inc.) has a record of four violations:

- (1) November 18, 2005 - Employee failing to verify the age of a minor (Category III violation);
- (2) August 23, 2007 - Employee failing to verify the age of a minor (Category III violation);
- (3) April 10, 2008 - Employee failing to verify the age of a minor (Category III violation); and
- (4) January 2008 – Singh's felony convictions for conduct occurring January 2004 through March 2004 (Category I violation.). (Exs. A4 and A10.)

(f) Center Market No. 1, Salem (owned by Center Market, Inc., closed in February 2010) has a record of one violation based on Singh's January 2008 felony convictions for conduct occurring January 2004 through March 2004 (Category I violation). (Exs. A4 and A7).

(g) Center Market No. 10, Tillamook (owned by Center Market, Inc., closed in April 2006) has no record of OLCC violations. (Ex. R1.)

11. Raman, Inc., Amrit, Inc. and Center Market, Inc. and Mr. Singh have paid civil penalties to the Commission and/or served license suspensions for all of the above-listed violations. (Exs. A4, A5, A7, A8, A9, A10 and A11.)

12. In the past few years, Mr. Singh has taken additional steps to avoid liquor law violations at his licensed locations. Mr. Singh has well-trained managers at all stores. He has a quarterly training program for all employees. He has installed age verification equipment at all stores for employees to use in verifying the age of patrons desiring to purchase alcoholic beverages. He encourages “in house stings,” in which employees who refuse to sell to minors are rewarded and employees who fail to verify age are terminated or otherwise disciplined. (Test. of Singh.)

13. Notwithstanding the compliance records of Raman, Inc., Amrit, Inc., Center Market, Inc. and Mr. Singh, the Commission has annually renewed the Licensees’ licenses.² (Test. of Singh; Ex. R1.)

CONCLUSIONS

1. The Commission has grounds to refuse to grant Licensee an Off-Premises Sales license pursuant to ORS 471.313(4)(d) and OAR 845-005-0325(5) based on Mr. Singh’s felony convictions, but there is sufficient good cause to overcome the refusal basis.

2. The Commission has grounds to refuse to grant Licensee an Off-Premises Sales License pursuant to ORS 471.313(4)(g) based on Mr. Singh’s compliance record, but there is sufficient good cause to overcome this refusal basis.

OPINION

1. Refusal Based on Felony Conviction

The Commission first proposes to deny Licensee’s application pursuant to ORS 471.313(4)(d) and OAR 845-005-0325(5). The statute authorizes the Commission to refuse to license any applicant if the applicant:

² In *Center Market #1, #2, #5, #6, #9 and #12* (OLCC Final Order, 08-V-104, -105 and -106, October 2009), the Commission held that notwithstanding Singh’s felony convictions and the Licensees’ compliance history at the various locations, Licensees’ licenses should be renewed. Final Order at 11-12. In discussing Mr. Singh’s record of compliance, the Commission noted that with the exception of the tobacco felonies, all of the liquor law violations were committed by employees rather than Mr. Singh personally. The Commission concluded as follows: “Licensee’s record of compliance since March 2004, while not ideal, is not so poor as to constitute a negative intervening circumstance suggesting that he is a poor risk for future compliance.” Final Order at 9.

(d) Has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony.

The administrative rule directs the Commission to deny a license unless the applicant shows good cause to overcome the denial criterion as follows:

(5) The applicant has been convicted of a felony when there is a relationship between the facts that support the conviction and applicant's fitness to exercise the license privileges. When there is a relationship between the applicant's fitness and the felony, the Commission considers any intervening circumstances since the commission of the crime in determining whether the applicant is an acceptable future compliance risk.

OAR 845-006-0325(5).

Pursuant to OAR 845-006-0301 and 845-006-0475(1)(d), principal officers "are included as licensees under the license." Because Mr. Singh is the principal (and only) officer of Raman, Inc., it is appropriate for the Commission to consider his criminal history in determining whether to grant the license.

As discussed above, Mr. Singh was convicted of two felonies (unlawful distribution of tobacco products and engaging in business as a tobacco distributor without a license) in January 2008, based on conduct that occurred in the first quarter of 2004. Because Mr. Singh has been convicted of a felony, the Commission has grounds to refuse the license under 471.313(4)(d). Given the nature of the crime, there is a nexus between the facts supporting the conviction and Singh's fitness to hold a liquor license. *Center Market #1, #2, #5, #6, #9 and #12* (OLCC Final Order, 08-V-104, -105 and -106, October 2009). But, pursuant to OAR 845-006-0325(5), the Commission must also assess the intervening circumstances since the commission of the crime. *Id.*

In *Center Market #1, #2, #5, #6, #9 and #12*, the Commission considered the intervening circumstances since Mr. Singh's commission of the crimes. The Commission noted that since March of 2004, Mr. Singh, through his corporations, had acquired two more stores and had incurred six violations at three of his six locations. Five of the violations involved employees failing to verify the age of a minor and one involved allowing an employee under the age of 18 to sell alcohol. The Commission concluded that, given the number of stores involved (six at that time) and the length of time since Mr. Singh's crimes (five years at that time), Mr. Singh's record of compliance, "while not ideal," was not "so poor as to constitute a negative intervening circumstance that he is a poor risk for future compliance." Final Order at 8-9. The Commission opted not to cancel Mr. Singh's licenses, instead finding sufficient good cause to renew the licenses and impose sanctions and/or civil penalties for the violation of ORS 471.315(1)(a)(I) (felony conviction). Final Order at 9-12.

In April 2009, while *Center Market #1, #2, #5, #6, #9 and #12* was pending before the Commission, Licensee Amrit, Inc. (dba Center Market No.12), incurred two more violations arising out of the same transaction, a Category III violation for an employee failing to verify the

age of a minor and a Category I violation, for the employee's failure to comply with the license restriction requiring the use of age verification equipment. In lieu of cancellation, Amrit, Inc. and Mr. Singh paid a fine and served a 30 day suspension for these violations.

Since the Commission issued the *Center Market #1, #2, #5, #6, #9 and #12* Final Order in October 2009, there have been no violations at the five other licensed Center Market locations. Also, as of January 2010, Mr. Singh successfully completed all his probation requirements and paid off all money owed in connection with his felony tobacco convictions.

Considering these circumstances, specifically, the passage time since the crimes (nearly seven years) the passage of time since the convictions (three years), Mr. Singh's successful completion of all probation requirements and the Commission's renewal of all of Mr. Singh's other licenses (for Licensees Raman, Inc., Amrit, Inc. and Center Market, Inc.) at the five other convenience store locations, Mr. Singh and Licensee/Applicant Raman Inc. have shown that they are an acceptable future compliance risk.³

Despite these circumstances, Commission Staff argues that violations that occurred at stores operated by Amrit, Inc. and Center Market, Inc. since Mr. Singh's criminal conduct in 2004 should count against Mr. Singh and Licensee as intervening circumstances that weigh against good cause. While violations at these other convenience stores are part of Mr. Singh's compliance record (because a licensee is responsible for an employee's violation and Mr. Singh is included as a licensee under those licenses), it is worth noting that Mr. Singh did not personally commit any of these violations. For this reason, this case is distinguishable from *City Center Food Mart* (OLCC Final Order, 08-V-070, September 2009). In that case, subsequent to the corporate principal's criminal conduct, the corporate principal made a false statement on the licensee's license renewal application by failing to disclose his felony arrest for selling tobacco products without a license. The Commission found that this intervening circumstance, specifically the corporate principal's intentional violation of ORS 471.425(1), weighed against a finding of good cause.

In this case, however, the intervening violations resulted from employees' failing to verify age and from one employee under the age of 18 who sold alcohol. Because these violations did not result in the cancellation or non-renewal of the licenses at the premises where the violations occurred, they should not weigh so heavily in this analysis so as to overcome the other factors discussed above indicating that Mr. Singh and Raman, Inc. are an acceptable compliance risk.

Accordingly, based on the circumstances discussed above, Mr. Singh and Raman Inc. have established good cause to overcome the denial based on ORS 471.313(4)(d).

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³ In its Closing Argument, Licensee argues that the Final Order in *Center Market #1, #2, #5, #6, #9 and #12* should be given preclusive effect to prevent the Commission from denying the license application. Although the Commission's reasoning and determination in *Center Market #1, #2, #5, #6, #9 and #12* is relevant to this contested case, the issues here are not identical to the issues in the prior case and therefore the doctrines of collateral estoppel/issue preclusion are not applicable.

2. Refusal Based on Compliance History

The Commission also proposes to refuse the license based upon ORS 471.313(4)(g). This provision authorizes the Commission to refuse to license any applicant if the Commission has reason to believe that the applicant:

(g) Did not have a good record of compliance with the alcoholic liquor laws of the state and the rules of the Commission when previously licensed.

In the Amended Notice, the Commission cited to Mr. Singh's compliance record dating back to 2001, when he was first licensed. The Commission alleged that he has had two recent Category I violations (one which was assessed against all of his licenses in 2009), ten Category III or III(a) violations and one Category IV violation. Because this case involves an application for a new license, the Commission considers the compliance record of applicants Raman, Inc. and Corporate Principal Singh each in its entirety.⁴

In this case, as Commission Staff notes, Mr. Singh's felony convictions constitute a Category I violation attributable to the record of each location in which Mr. Singh is deemed a licensee. In addition to the 471.315(1)(a)(I) violation for each licensed location, Mr. Singh's compliance record at the locations where he has been licensed is as follows:

Center Market No. 5 (Raman, Inc.): two Category III violations (employee failing to verify the age of a minor), one in 2002 and one in 2004.

Center Market No. 12 (Amrit, Inc.): one Category I violation (employee failing to comply with license restriction) and one Category III violation (failing to verify age of a minor) arising out of the same transaction on April 7, 2009.

Center Market No. 2 (Center Market, Inc.): five violations (four Category III and one Category IV), between 2001 and 2007.

Center Market No. 9 (Center Market, Inc.): three Category III violations in 2005, 2007 and 2008.

Center Market No. 6 (Raman, Inc.), Center Market No. 1 (Center Market, Inc.) and Center Market No. 10 (Center Market, Inc.): no other violations.

⁴ This case differs from *Center Market #1, #2, #5, #6, #9 and #12, supra*. which involved license renewals rather than a new application. In that case the Commission considered whether there were grounds to refuse to renew the licenses held by the three corporations, Raman, Inc., Amrit, Inc. and Center Market, Inc., owned by Applicant Singh. Each corporate licensee's compliance record was considered separately from the others. In addition, only certain recent violations, as listed in the charging document, were considered for each licensee. The Commission found, based on the violations charged, that one of the three corporate licensees had a poor record of compliance. The Commission also found that there was sufficient good cause to renew all of the licenses.

Under the Commission's penalty schedule and rule, OAR 845-006-0500, a Category I violation is the most serious and carries a recommended penalty of license cancellation. A Category I violation is defined as one that makes a licensee ineligible for a license. OAR 845-006-0500(7). Mr. Singh is responsible for two Category I violations (the felony conviction and the restriction violation). He also has 11 other Category III or IV violations on his record. The Commission has held that a Category I violation together with other lesser or similar violations constitutes a poor record of compliance. See *City Center Food Mart*, (OLCC Final Order, OLCC-08-V-070, September 2009), *Cedars Restaurant & Lounge* (OLCC Final Order, OLCC-08-V-099, October 2009), *US Market #109* (OLCC Final Order, OLCC-08-V-112, January 2010). This is true even if the violations do not result in license cancellation due to mitigating circumstances or a finding of good cause. *Downtown Deli and Greek Cuisina*, (OLCC Final Order, OLCC-08-V-028, October 2009), *US Market #180* (OLCC Final Order, OLCC-08-V-043, October 2009).

Based on Applicant Singh's overall record of compliance as a licensee, the Commission finds that he has a poor record.

Even when a licensee has a poor record of compliance, the licensee can overcome the grounds for refusing the license with a showing of good cause. Factors to be considered in determining the existence of good cause in this context include the period of time without violations as a licensee, the nature and seriousness of the violations, whether the violations were mitigated or aggravated, and acceptance of responsibility for the violation. See, e.g., *Quincy Store* (OLCC Final Order, 02-V-008/L-001, December 2002.)

The good cause factors relevant in this case include the following:

Period of time without violations: There have been 13 incidents resulting in violations at premises owned by Mr. Singh over the past ten years. However, the felony crimes for which Mr. Singh was convicted occurred nearly seven years ago and the conviction was over three years ago. The restriction violation occurred in April 2009. Mr. Singh has had no violations in the past two years at any of his premises.

Whether the violations were aggravated or mitigated: Although the felony conviction violation was aggravated for two convictions, the violation was also mitigated due to passage of time since the conviction. The 2009 restriction violation was mitigated as part of a settlement in which licensee agreed to accept a reduced sanction.

Acceptance of responsibility: Mr. Singh and his corporations have accepted responsibility for past violations by paying a fine or serving a suspension. Except for the felony convictions, Mr. Singh did not personally commit any other violations.

Nature and seriousness of the violations: Mr. Singh's record consists of two Category I violations which are the most serious. He also has ten violations for sales to minors, which are violations that pose a risk to public health and safety. However, balanced against the seriousness of the violations is the fact that the violations occurred over a period of approximately ten years

during which time Mr. Singh operated seven different premises. None of the violations resulted in license cancellation or non-renewal at any of the licensed premises.⁵

Commission Staff has not alleged, and the record does not demonstrate, that Raman, Inc.'s and Mr. Singh's responsibility for other licensed premises would adversely impact their ability to successfully operate Center Market No. 18 in compliance with the liquor laws of the state. The record does show that, at his other licensed locations, Mr. Singh has recently increased his efforts to ensure employees' compliance with the liquor laws and avoid future violations.

On the basis of the factors discussed above, Licensee has shown a degree of good cause that weighs slightly in favor of issuing a license despite Mr. Singh's compliance record. Due to the large number of sale to minor violations at the premises where Mr. Singh has been licensed, it is a close call as to whether the good cause is sufficient to ensure that there is not a future compliance risk in granting this additional license. Therefore, the Commission finds that in order to ensure that there is not a future compliance risk, the license should be granted with the following restriction:⁶

Licensee will install age verification equipment, as defined in OAR 845-009-0140(1)(b), and will utilize the equipment to verify the age of every person who reasonably appears to be under 26 years of age and who attempts to purchase alcohol.

To summarize, while Mr. Singh's compliance record, when viewed in its entirety, constitutes a poor record, this record must be balanced against the number of locations and the time frame in which it was incurred as well as other good cause factors. On balance, the Commission finds that Mr. Singh and Raman, Inc. have established that they are not a risk for future noncompliance with the liquor laws if this license is granted with a restriction that the licensee install and use age verification equipment to prevent future sales to minors.

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⁵ Under the Commission's penalty schedule a license may be cancelled if a licensee has four or more Category III violations at a licensed premises within a two year period. None of the premises owned by Mr. Singh had four or more Category III violations in a two year period. As previously noted the Category I violations at each premises did not result in license cancellation due to mitigating factors.

⁶ OAR 845-005-0355 provides that the Commission may restrict a license in order to overcome a license refusal basis.

FINAL ORDER

The Commission orders that the license application for Raman, Inc., Bahadur Singh, President, Director and Stockholder, dba CENTER MARKET No. 18, located at 466 NW Highway 101, Depoe Bay, Oregon be GRANTED with the following restriction:

Licensee will install age verification equipment, as defined in OAR 845-009-0140(1)(b), and will utilize the equipment to verify the age of every person who reasonably appears to be under 26 years of age and who attempts to purchase alcohol.

It is further ordered that notice of this action, including the reasons for it, be given.

Dated this 28th day of April, 2011.

/s/ Stephen A. Pharo

Stephen A. Pharo

Executive Director

OREGON LIQUOR CONTROL COMMISSION

Mailed this 28th day of April, 2011.

THIS ORDER IS EFFECTIVE ON THE DATE MAILED.

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for judicial review within 60 days from the service of this Order. Judicial review is pursuant to the provisions of ORS Chapter 183.