

**DIVISION 11**

**GENERAL**

<b>860-011-0000</b>	Applicability, Construction, and Waiver of Rules
<b>860-011-0001</b>	Notice to Interested Persons
<b>860-011-0010</b>	Filing Information: Physical Address and Electronic Mail
<b>860-011-0011</b>	Format and Content Requirements
<b>860-011-0012</b>	Electronic File Format Requirements
<b>860-011-0015</b>	Fees and Charges for Filings
<b>860-011-0035</b>	Definitions
<b>860-011-0036</b>	Personal Services Contracts
<b>860-011-0080</b>	Confidential Information
<b>860-011-0090</b>	Public Records and Request for Documents
<b>860-011-0100</b>	Commission Publications
<b>860-011-0110</b>	Late Fees and Penalties

**DIVISION 12**

**PRACTICE BEFORE THE COMMISSION**

<b>860-012-0001</b>	Petitions to Intervene
<b>860-012-0005</b>	Representation and Ethical Conduct
<b>860-012-0007</b>	Representation by Authorized Representative or Agency Officer or Employee
<b>860-012-0010</b>	Former Employees
<b>860-012-0015</b>	Ex Parte Communications
<b>860-012-0020</b>	Joint Hearings with Federal Regulatory Agencies
<b>860-012-0025</b>	Joint Hearings with Another State
<b>860-012-0035</b>	Administrative Law Judges
<b>860-012-0040</b>	Public Meetings
<b>860-012-0100</b>	Grant Eligibility
<b>860-012-0190</b>	Termination of Eligibility — Decertification

**DIVISION 13**

**PLEADINGS AND TARIFF FILINGS**

<b>860-013-0005</b>	Pleadings Enumerated
<b>860-013-0010</b>	Applications
<b>860-013-0015</b>	Complaints
<b>860-013-0020</b>	Petitions
<b>860-013-0025</b>	Answers
<b>860-013-0030</b>	Protests
<b>860-013-0031</b>	Motions
<b>860-013-0035</b>	Replies
<b>860-013-0036</b>	Acceptable Filings of Pleadings and Other Documents
<b>860-013-0037</b>	Filing Dates for Pleadings or Other Documents
<b>860-013-0050</b>	Time for Answer, Reply, or Motion
<b>860-013-0055</b>	Default Upon Failure to Plead
<b>860-013-0060</b>	Copies of Filings Required
<b>860-013-0065</b>	Signature Required
<b>860-013-0070</b>	Service by Parties
<b>860-013-0071</b>	Service of Complaints, Orders and Rulings by the Commission
<b>860-013-0075</b>	General Rate Revisions

**DIVISION 14**

**HEARINGS AND PROCEEDINGS**

<b>860-014-0005</b>	Notice
<b>860-014-0010</b>	Postponements and Continuances of Hearings
<b>860-014-0020</b>	Conferences
<b>860-014-0023</b>	Major Proceeding
<b>860-014-0025</b>	Consolidation of Proceedings
<b>860-014-0030</b>	Appearances
<b>860-014-0032</b>	Failure to Appear
<b>860-014-0035</b>	Order of Procedure
<b>860-014-0040</b>	Subpoenas
<b>860-014-0045</b>	Evidence
<b>860-014-0050</b>	Official Notice
<b>860-014-0055</b>	Resolutions

<b>860-014-0060</b>	Testimony and Exhibits
<b>860-014-0065</b>	Depositions
<b>860-014-0070</b>	Data Requests
<b>860-014-0080</b>	Records in Other Proceedings
<b>860-014-0085</b>	Voluntary Settlements; Stipulation to Facts
<b>860-014-0090</b>	Briefs and Oral Arguments
<b>860-014-0091</b>	Appeals to the Commission from Rulings of Administrative Law Judges
<b>860-014-0092</b>	Proposed Order
<b>860-014-0093</b>	Extension of Date to Comply with Rules and Orders
<b>860-014-0094</b>	Notice of Acceptance of Terms of Orders
<b>860-014-0095</b>	Rehearing or Reconsideration

**DIVISION 16**

**MEDIATION AND ARBITRATION UNDER THE  
1996 TELECOMMUNICATIONS ACT**

<b>860-016-0000</b>	Definitions
<b>860-016-0010</b>	Commission Policy
<b>860-016-0015</b>	Confidentiality and Inadmissibility of Mediation Communications
<b>860-016-0020</b>	Agreements Arrived at through Negotiation
<b>860-016-0021</b>	Wholesale Promotions
<b>860-016-0025</b>	Adoption of Previously Approved Agreement or Statement of Generally Available Terms
<b>860-016-0030</b>	Arbitration of Disputes
<b>860-016-0040</b>	Statement of Generally Available Terms
<b>860-016-0050</b>	Petitions for Enforcement of Interconnection Agreements

**DIVISION 21**

**UTILITY REGULATION**

**General**

<b>860-021-0000</b>	Applicability of Division 021
<b>860-021-0005</b>	Scope of the Rules
<b>860-021-0008</b>	Definitions for Regulation of Utility Services
<b>860-021-0009</b>	Applications for Utility Service from an Energy or Large Telecommunications Utility
<b>860-021-0010</b>	Information for Utility Customers and Applicants
<b>860-021-0011</b>	Multilingual Notices
<b>860-021-0015</b>	Dispute Resolution
<b>860-021-0017</b>	Designation of Third Party to Receive Notices
<b>860-021-0019</b>	Restrictions on Entering a Customer Residence
<b>860-021-0021</b>	Interruption of Utility Service
<b>860-021-0033</b>	Annual Fees Payable to the Commission by an Electric Utility
<b>860-021-0034</b>	Annual Fees Payable to the Commission by Gas Utility or Steam Heat Utility
<b>860-021-0036</b>	Annual Fees Payable to the Commission by a Large Telecommunications Utility
<b>860-021-0037</b>	Estimated Annual Fees Payable to the Commission

**Installation of Service**

<b>860-021-0045</b>	Installation of Electric Service
<b>860-021-0050</b>	Installation of Gas Service
<b>860-021-0051</b>	Main Extensions for Gas Service
<b>860-021-0055</b>	Temporary Utility Service
<b>860-021-0057</b>	Connection of Residential Energy Utility Service

**Measuring and Billing Service**

<b>860-021-0120</b>	Meter Readings and Bill Forms
<b>860-021-0125</b>	Due and Payable Period
<b>860-021-0126</b>	Late-Payment Charge
<b>860-021-0130</b>	Meter Test
<b>860-021-0135</b>	Adjustment of Utility Bills

**Credit Establishment**

<b>860-021-0200</b>	Establishing Credit for Residential Utility Service
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## Chapter 860 Public Utility Commission

<b>860-021-0205</b>	Deposit Payment Arrangements for Residential Energy Utility Service
<b>860-021-0206</b>	Payment Arrangements for Deposit and Installation Charges for Residential Telecommunications Utility Service
<b>860-021-0210</b>	Interest on Deposits for Residential and Nonresidential Utility Service
<b>860-021-0215</b>	Refund of Deposits for Residential and Nonresidential Utility Service

### Disconnection Rules — All Utility Service

<b>860-021-0305</b>	Grounds for Disconnecting Utility Service
<b>860-021-0310</b>	Voluntary Disconnection of Utility Service
<b>860-021-0315</b>	Emergency Disconnection of Utility Service
<b>860-021-0320</b>	Disconnection of Service on Weekends and Holidays
<b>860-021-0325</b>	Accounts Not Related to Residential Utility Service
<b>860-021-0326</b>	Disconnection of Gas or Electric Service to Tenants
<b>860-021-0328</b>	Reconnection of Residential Energy Utility Service
<b>860-021-0330</b>	Reconnection Fee for Utility Service
<b>860-021-0334</b>	Transfer Billings
<b>860-021-0335</b>	Refusal of Utility Service

### Disconnection Rules — Residential Electric or Gas Service

<b>860-021-0405</b>	Notice of Pending Disconnection of Residential Electric or Gas Utility Service
<b>860-021-0410</b>	Emergency Medical Certificate for Residential Electric and Gas Service
<b>860-021-0414</b>	Equal-Payment Plans for Residential Electric and Gas Service
<b>860-021-0415</b>	Time-Payment Agreements for Residential Electric and Gas Service (Nonmedical Certificate Customers)
<b>860-021-0420</b>	Field Visit Charge

### Disconnection Rules — Utility Service Other than Residential Electric and Gas Service

<b>860-021-0505</b>	Disconnection Procedures for All Commercial Electric and Gas Utility Customers and All Customers of Large Telecommunications Utilities
<b>860-021-0510</b>	Emergency Medical Certificate for Residential Telecommunications Utility Service
<b>860-021-0550</b>	Termination of Local Exchange Residential Service for Telecommunications Customers at Significant Risk
<b>860-021-0575</b>	Time Payment Agreements for Large Telecommunications Utilities

### Telephone Solicitation

<b>860-021-0610</b>	Telephone Solicitation Notices by Large Telecommunications Utilities
<b>860-021-0620</b>	Customer Notification and Information Delivery Services for Large Telecommunications Utilities

## DIVISION 22

### RATES

<b>860-022-0000</b>	Applicability of Division 022
<b>860-022-0001</b>	Definitions for Utility Rates
<b>860-022-0003</b>	Through Service
<b>860-022-0005</b>	Tariff Specifications for Energy Utilities and Large Telecommunications Utilities
<b>860-022-0010</b>	Tariff Contents for Energy Utilities and Large Telecommunications Utilities
<b>860-022-0015</b>	Tariff Changes by Energy Utilities and Large Telecommunications Utilities Require 30 Days' Notice to the Commission
<b>860-022-0017</b>	Announcement of Utility Tariff Changes
<b>860-022-0020</b>	Applications to Make Tariffs or Rate Schedules Effective on Less Than Statutory Notice

<b>860-022-0025</b>	Requirements for Filing Tariffs or Schedules Changing Rates
<b>860-022-0026</b>	Requests to Abandon, Exempt from Regulation, or Price-List Regulated Telecommunications Services
<b>860-022-0030</b>	Requirements for Filing Tariffs or Schedules Naming Increased Rates
<b>860-022-0032</b>	Tariff Changes Effective With Service Rendered by an Energy or Large Telecommunications Utility
<b>860-022-0035</b>	Special Contracts
<b>860-022-0038</b>	Notice to Interested Persons of Tariffs Filed Under ORS 757.205 or 759.175
<b>860-022-0040</b>	Relating to City Fees, Taxes, and Other Assessments Imposed Upon Electric Companies, Gas Utilities, and Steam Heat Utilities
<b>860-022-0041</b>	Annual Tax Reports and Automatic Adjustment Clauses Relating to Utility Taxes
<b>860-022-0042</b>	Relating to City Privilege Taxes, Fees, and Other Assessments Imposed Upon a Large Telecommunications Utility
<b>860-022-0045</b>	Relating to Local Government Fees, Taxes, and Other Assessments Imposed Upon an Energy or Large Telecommunications Utility
<b>860-022-0046</b>	Forced Conversion of Electric and Communication Facilities
<b>860-022-0065</b>	Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities
<b>860-022-0070</b>	Procedures and Standards for Reviewing Gas Utility Rates in the Context of the Purchased Gas Adjustment Mechanism
<b>860-022-0075</b>	Ownership of Non-Energy Attributes of Generation from Renewable Energy Facilities

## DIVISION 23

### SERVICE STANDARDS

<b>860-023-0000</b>	Applicability of Division 023
<b>860-023-0001</b>	Definitions for Service Standards
<b>860-023-0005</b>	Maintenance of Plant and Equipment by Energy Utilities, Large Telecommunications Utilities, and Intrastate Toll Service Providers
<b>860-023-0010</b>	Use of Gas and Electric Meters
<b>860-023-0015</b>	Testing Gas and Electric Meters

### Electric Service Standards

<b>860-023-0020</b>	Quality of Electric Service
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### Gas Service Standards

<b>860-023-0025</b>	Purity of Gas
<b>860-023-0030</b>	Change in Character of Service
<b>860-023-0035</b>	Pressure Testing and Maintenance
<b>860-023-0040</b>	Testing Equipment and Facilities
<b>860-023-0045</b>	Heating Value
<b>860-023-0050</b>	Heating Value Tests — Records and Reports

### Telecommunications Service Standards

<b>860-023-0054</b>	Retail Intrastate Toll Service Provider Service Standards
<b>860-023-0055</b>	Retail Telecommunications Service Standards for Large Telecommunications Utilities

### Electric Service Reliability

<b>860-023-0080</b>	Definitions for Electric Service Reliability
<b>860-023-0090</b>	Electric Service Continuity
<b>860-023-0100</b>	Electric Interruption Records
<b>860-023-0110</b>	Electric Reliability Calculations
<b>860-023-0120</b>	Electric Threshold Levels
<b>860-023-0130</b>	Customer Inquiries About Electric Reliability
<b>860-023-0140</b>	Public Inquiries About Electric Reliability
<b>860-023-0150</b>	Annual Report on Electric Reliability

## Chapter 860 Public Utility Commission

**860-023-0160** Major Event Filing by Electric Utilities

### **DIVISION 24**

#### **SAFETY STANDARDS**

##### **General**

**860-024-0000** Applicability of Division 024  
**860-024-0001** Definitions for Safety Standards  
**860-024-0005** Maps and Records  
**860-024-0007** Location of Underground Facilities  
**860-024-0010** Construction, Operation, and Maintenance of Electrical Supply and Communication Lines  
**860-024-0011** Inspections of Electric Supply and Communication Facilities  
**860-024-0012** Prioritization of Repairs by Operators of Electric Supply Facilities and Operators of Communication Facilities  
**860-024-0015** Ground Return  
**860-024-0016** Minimum Vegetation Clearance Requirements  
**860-024-0017** Vegetation Pruning Standards

##### **Gas**

**860-024-0020** Gas Pipeline Safety  
**860-024-0021** Liquefied Natural Gas Safety

##### **Steam and Hot Water**

**860-024-0025** Steam Heat — Construction, Operation, and Maintenance of Steam and Hot Water Transmission and Distribution Systems  
**860-024-0050** Incident Reports

### **DIVISION 25**

#### **REGULATIONS TO PREVENT DUPLICATION OF FACILITIES**

**860-025-0000** Applicability of Division 025  
**860-025-0001** Definitions for Territory Allocated to Electric Utilities, Gas Utilities, and Large Telecommunications Utilities  
**860-025-0005** Applicability and Formal Requirements  
**860-025-0010** Applications for Approval of Contracts to Avoid or Eliminate Duplicate Utility Service for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities  
**860-025-0015** Applications for Approval of Amendments to Contracts to Avoid or Eliminate Duplicate Utility Service  
**860-025-0020** Applications for Allocation of Exclusively Served Territory for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities  
**860-025-0025** Applications for Allocation of Exclusively Served Territory and Adjacent Unserved Territory for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities  
**860-025-0027** Application to Transfer Rights to Allocated Territory for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities  
**860-025-0030** Petitions for Certificate of Public Convenience and Necessity for Construction of Overhead Transmission Lines  
**860-025-0050** Application by an Unserved Person for Service from a Large Telecommunications Utility

### **DIVISION 26**

#### **SALES PROMOTION**

**860-026-0000** Applicability of Division 026  
**860-026-0005** Definitions for Utility Sales Promotion  
**860-026-0010** “Promotional Activity” Defined  
**860-026-0015** “Promotional Concession” Defined

**860-026-0020** Standards Governing Promotional Activities and Concessions

**860-026-0022** Presumptions of Reasonableness of Advertising Expenses in Utility Rate Cases

**860-026-0025** Filing of Proposed Promotional Concessions

**860-026-0030** Notice and Effective Date of Promotional Concessions for Energy Utilities

**860-026-0035** Reports of Promotional Activities and Concessions for Energy Utilities

**860-026-0040** Investigations of Promotional Activities and Concessions

**860-026-0045** Promotional Concessions Offered or Granted on the Effective Date of These Rules

### **DIVISION 27**

#### **BUDGETS, FINANCE, ACCOUNTING AND ANNUAL REPORTS**

##### **Budget Filings**

**860-027-0000** Applicability of Division 027  
**860-027-0001** Definitions for Utility Budgets, Finance, Accounting, and Annual Reports  
**860-027-0005** Utilities Required to File Reports  
**860-027-0015** New Construction Budget  
**860-027-0016** Accounting for Director’s Fees

##### **Finance**

#### **Formal Applications for Authority to Sell, Lease, Merge, Assign, and Mortgage Public Utility Property; Issue Securities, Guarantee Indebtedness, Purchase Securities and Property of Utilities and Enter into Transactions with Affiliated Interests**

**860-027-0020** Form and Filing of Applications  
**860-027-0025** Applications for Authority to Sell, Lease, Assign, Mortgage, Merge, Consolidate or Otherwise Dispose of or Encumber its Property, or to Acquire Stock, Bonds, or Property of Another Utility  
**860-027-0030** Application by an Energy or Large Telecommunications Utility for Authority to Issue Stocks, Bonds, Notes, or Other Securities  
**860-027-0031** When the Commission May Reregulate Financings of Exempt Telecommunications Utilities  
**860-027-0032** Information Required Concerning Financings of Exempt Large Telecommunications Utilities  
**860-027-0035** Applications by a Utility for Authority to Guarantee Indebtedness  
**860-027-0040** Applications for Approval of Transactions Between Affiliated Interests  
**860-027-0041** Information Required for Utility Goods or Services Provided to Affiliated Interests  
**860-027-0042** Timeliness of Application Made Under OAR 860-027-0040 and Filings Made Under OAR 860-027-0041  
**860-027-0043** Application for Waiver of Requirements Under OARs 860-027-0040 and 860-027-0041  
**860-027-0044** Application for Waiver Requirements by Large Telecommunications Utilities Under OARs 860-027-0040 and 860-027-0041

##### **Uniform System of Accounts**

**860-027-0045** Uniform System of Accounts for Electric Utilities — Major and Nonmajor  
**860-027-0048** Allocation of Costs by an Energy Utility  
**860-027-0050** Uniform System of Accounts for Large Telecommunications Utilities  
**860-027-0052** Allocation of Costs by a Large Telecommunications Utility  
**860-027-0055** Uniform System of Accounts for Gas Utilities — Major and Nonmajor

## Chapter 860 Public Utility Commission

**860-027-0065** Uniform System of Accounts for Steam Heat Utilities — Class A, B, and C

### Annual Reports

**860-027-0070** Annual Report Requirements for Electric, Large Telecommunications, Gas, and Steam Heat Utilities  
**860-027-0100** Reporting of Affiliated Transactions  
**860-027-0120** Preservation and Destruction of Records  
**860-027-0200** Energy Utility Acquisition  
**860-027-0300** Use of Deferred Accounting by Energy and Large Telecommunications Utilities  
**860-027-0310** Cost-Effective Conservation Resources

### DIVISION 28

#### POLE AND CONDUIT ATTACHMENTS

**860-028-0000** Applicability  
**860-028-0020** Definitions for Pole and Conduit Attachment Rules  
**860-028-0050** General  
**860-028-0060** Attachment Contracts  
**860-028-0070** Resolution of Disputes for Proposed New or Amended Contractual Provisions  
**860-028-0080** Costs of Hearing in Attachment Contract Disputes  
**860-028-0100** Application Process for New or Modified Attachments

#### Pole Attachments

**860-028-0110** Rental Rates and Charges for Attachments by Licensees to Poles Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities  
**860-028-0115** Duties of Structure Owners  
**860-028-0120** Duties of Pole Occupants  
**860-028-0130** Sanctions for Having No Contract  
**860-028-0140** Sanctions for Having No Permit  
**860-028-0150** Sanctions for Violation of Other Duties  
**860-028-0160** Choice of Sanctions  
**860-028-0170** Plans of Correction  
**860-028-0180** Removal of Occupant Pole Attachments  
**860-028-0190** Notice of Violation  
**860-028-0195** Time Frame for Final Action by Commission  
**860-028-0200** Joint-Use Association  
**860-028-0210** Resolution of Disputes over Plans of Correction  
**860-028-0220** Resolution of Factual Disputes  
**860-028-0230** Pole Attachment Rental Reductions

#### Conduit Attachments

**860-028-0310** Rental Rates and Charges for Attachments by Licensees to Conduits Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

### DIVISION 29

#### ELECTRIC UTILITIES INTERCONNECTION WITH ELECTRIC COGENERATION AND SMALL POWER PRODUCTION FACILITIES

**860-029-0001** Purpose  
**860-029-0005** Applicability of Rules  
**860-029-0010** Definitions for Electric Interconnection  
**860-029-0020** Obligations of Qualifying Facilities to the Electric Utility  
**860-029-0030** Obligations of the Public Utility to Qualifying Facilities  
**860-029-0040** Rates for Purchases  
**860-029-0050** Rates for Sales  
**860-029-0060** Interconnection Costs  
**860-029-0070** System Emergencies  
**860-029-0080** Electric Utility System Cost Data

**860-029-0090** Qualifying Cogeneration and Small Power Production Facilities

### DIVISION 30

#### RESIDENTIAL AND COMMERCIAL ENERGY CONSERVATION

**860-030-0000** Exemptions  
**860-030-0005** Energy Information and Audit Services  
**860-030-0007** Gas Utility Avoided Costs  
**860-030-0010** Cost-Effectiveness  
**860-030-0015** Residential Energy Conservation Financing  
**860-030-0018** Rental Unit Additional Financing  
**860-030-0020** Certain Energy Conservation Measures Excluded from Financing  
**860-030-0025** Assurance of Work Quality  
**860-030-0035** Accounting Rules  
**860-030-0040** Commercial Energy Conservation  
**860-030-0045** Definitions for Energy Conservation  
**860-030-0050** Commercial Energy Audit Programs  
**860-030-0055** Coordination of Utilities  
**860-030-0060** Fees  
**860-030-0070** Reporting Requirements  
**860-030-0075** Accounting

### DIVISION 31

#### INSPECTION OF GAS PIPELINE OPERATORS AND WAIVER OF SAFETY STANDARDS

**860-031-0001** Applicability  
**860-031-0005** Inspection of Gas Pipeline Operator Facilities  
**860-031-0010** Verbal Notice of Probable Violation to a Gas Pipeline Operator  
**860-031-0015** Written Notice of Probable Violation to a Gas Pipeline Operator  
**860-031-0020** Responses Open to the Gas Pipeline Operator  
**860-031-0025** Informal Conference for a Probable Violation by a Gas Pipeline Operator  
**860-031-0030** Referral to the Commission of a Probable Violation by a Gas Pipeline Operator  
**860-031-0035** Civil Penalties for Gas Pipeline Operator Violations  
**860-031-0040** Waivers of Gas Pipeline Safety Standards

### DIVISION 32

#### TELECOMMUNICATIONS

**860-032-0001** Definitions for Telecommunications  
**860-032-0002** Notice and Procedures for a Proceeding Initiated Under Division 032  
**860-032-0005** Application for New or Amended Certificate of Authority, or to Transfer Authority  
**860-032-0008** Failure to File Information or Pay the Annual Fee  
**860-032-0010** Classification of Applicants as Telecommunications Providers  
**860-032-0011** Advertisements by Competitive Providers  
**860-032-0012** Retail Telecommunications Service Standards for Competitive Telecommunications Providers  
**860-032-0013** Uncertified Telecommunications Providers  
**860-032-0015** Cancellation or Suspension of a Telecommunications Provider's Certificate  
**860-032-0020** Abandonment of Service  
**860-032-0023** Price List Petitions  
**860-032-0025** Petition to Exempt Services from Regulation  
**860-032-0035** Petition to Price List Telecommunications Utility Services  
**860-032-0040** Subsidies for Telecommunications Service  
**860-032-0045** Petitions for Alternative Access by Customers of Shared Telecommunications Service Providers  
**860-032-0050** Petition for a Declaratory Ruling that a Service Is Not Subject to Regulation  
**860-032-0055** Regulation of Interexchange Telecommunications Utilities

## Chapter 860 Public Utility Commission

860-032-0060	Reporting Requirements for Telecommunications Providers
860-032-0070	Confidential Information Submitted by Local Exchange Telecommunications Utilities and Cooperatives
860-032-0080	Definition of Gross Retail Intrastate Revenue for Purposes of Annual Fees Payable to the Commission by a Telecommunications Provider
860-032-0090	Allocation of Revenues by a Telecommunications Provider
860-032-0095	Annual Fees Payable to the Commission by a Competitive Provider
860-032-0097	Estimated Annual Fees Payable to the Commission
860-032-0100	Collective Consideration of Oregon Intrastate Rate, Tariff, or Service Proposals
860-032-0190	Definition of Basic Telephone Service
860-032-0200	Essential Services
860-032-0220	Application for Service by Unserved Person
860-032-0230	Pay Telephones

### Safety and Attachment Standards for Telecommunications Providers

860-032-0410	Location of Underground Facilities
860-032-0420	Construction, Safety, and Reporting Standards for Telecommunications Providers
860-032-0430	Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities

### Customer Proprietary Network Information

860-032-0510	Customer Proprietary Network Information
860-032-0520	Customer Service Records (CSRs)
860-032-0610	General Provisions
860-032-0620	Quarterly OUS Report: Filing and Payment
860-032-0630	Estimated Report
860-032-0640	Commission Audit and Proposed Assessment
860-032-0650	Notice and Hearing on Proposed Orders and Assessments
860-032-0660	OUS Record-keeping Requirements
860-032-0670	Refund of Oregon Universal Service Surcharge

## DIVISION 33

### OREGON TELEPHONE ASSISTANCE PLAN (OTAP)

860-033-0001	Applicability
860-033-0005	Residential Service Protection Fund Definitions
860-033-0006	Monthly and Quarterly RSPF Surcharge Remittance Reports and Fees
860-033-0007	Estimated Report
860-033-0008	Commission Audit and Proposed Assessment
860-033-0009	Notice and Hearing on Proposed Orders
860-033-0010	OTAP Applicability
860-033-0030	OTAP Eligibility
860-033-0035	OTAP Benefits
860-033-0040	OTAP Alternatives
860-033-0045	OTAP Compensable Expenses
860-033-0046	OTAP Auditing and Accounting

### Link-Up America

860-033-0050	Link-Up America Eligibility
860-033-0100	Toll Limitation Service

### Telecommunication Devices Access Program

860-033-0505	TDAP Definitions
860-033-0506	Telecommunication Devices Access Program Advisory Committee (TDAPAC)
860-033-0510	TDAP Applicability
860-033-0530	TDAP Eligibility

860-033-0535	Ownership and Identification of Assistive Telecommunication Devices or Adaptive Equipment
860-033-0536	TDAP Recipients' Liability
860-033-0537	Billing Recipients for Assistive Telecommunication Devices or Adaptive Equipment
860-033-0540	Distribution Procedures for Assistive Telecommunication Devices or Adaptive Equipment
860-033-0545	TDAP Compensable Expense
860-033-0560	Oregon Telecommunications Relay Service (OTRS)

## DIVISION 34

### SMALL TELE COMMUNICATIONS UTILITIES AND COOPERATIVES

860-034-0010	Scope of the Rules
860-034-0015	Through Service

### General

860-034-0020	Definitions for OAR 860-034-0030 through 860-034-0290
860-034-0030	Applications for Service from a Small Telecommunications Utility
860-034-0040	Information for Utility Customers and Applicants
860-034-0050	Multilingual Notices
860-034-0060	Dispute Resolution
860-034-0070	Designation of Third Party to Receive Notice
860-034-0080	Restrictions on Entering a Customer Residence
860-034-0090	Interruption of Utility Service
860-034-0095	Annual Fees Payable to the Commission by a Small Telecommunications Utility
860-034-0097	Estimated Annual Fees Payable to the Commission
860-034-0100	Temporary Utility Service
860-034-0110	Due and Payable Period
860-034-0120	Late-Payment Charge
860-034-0130	Adjustment of Utility Bills
860-034-0140	Establishing Credit for Residential Utility Service
860-034-0150	Payment Arrangements for Deposit and Installation Charges for Residential Telecommunications Service
860-034-0160	Interest on Deposits for Residential and Non-residential Service
860-034-0170	Refund of Utility Deposits for Residential and Nonresidential Service
860-034-0180	Grounds for Disconnecting Utility Service
860-034-0190	Voluntary Disconnection of Utility Service
860-034-0200	Emergency Disconnection of Utility Service
860-034-0210	Disconnection of Service on Weekends and Holidays
860-034-0220	Accounts Not Related to Residential Utility Service
860-034-0230	Reconnection Fee for Utility Service
860-034-0240	Transfer Billings
860-034-0250	Refusal of Utility Service
860-034-0260	Disconnection Procedures for Commercial and Residential Utility Customers
860-034-0270	Emergency Medical Certificate for Residential Utility Service
860-034-0275	Termination of Local Exchange Residential Service for Telecommunications Customers at Significant Risk
860-034-0276	Time Payment Agreements for Small Telecommunications Utilities
860-034-0280	Telephone Solicitation Notices by Small Telecommunications Utilities
860-034-0290	Customer Notification and Information Delivery Services for Small Telecommunications Utilities

### Utility Rates

860-034-0300	Tariffs of Small Telecommunications Utilities
860-034-0310	Announcement of Rate Increases by Small Telecommunications Utilities

## Chapter 860 Public Utility Commission

- 860-034-0320** Notice to Interested Persons of Tariffs Filed Under ORS 759.175 by Small Telecommunications Utilities
- 860-034-0325** Requests to Abandon, Exempt from Regulation, or Price-List Regulated Telecommunications Services
- 860-034-0330** Relating to City Privilege Taxes, Fees, and Other Assessments Imposed Upon a Small Telecommunications Utility or Type 2 Cooperative
- 860-034-0340** Relating to Local Government Fees, Taxes, and Other Assessments Imposed Upon a Small Telecommunications Utility or Type 2 Cooperative
- 860-034-0350** Forced Conversion of Communication Facilities for Small Telecommunications Utilities and Type 2 Cooperatives
- 860-034-0380** Maintenance of Plant and Equipment by Small Telecommunications Utilities

### Service Standards for Utilities

- 860-034-0390** Retail Telecommunications Service Standards for Small Telecommunications Utilities

### Finance, Accounting, and Annual Reports for Utilities

- 860-034-0392** Accounting for Directors' Fees by Small Telecommunications Utilities
- 860-034-0393** Uniform System of Accounts for Small Telecommunications Utilities
- 860-034-0394** Allocation of Costs by Small Telecommunications Utilities
- 860-034-0395** Annual Report Requirements for Small Telecommunications Utilities
- 860-034-0396** Reporting of Affiliated Transactions by Small Telecommunications Utilities
- 860-034-0397** Use of Deferred Accounting by Small Telecommunications Utilities

### Construction and Safety Standards for Utilities and Telecommunications Cooperatives, General

- 860-034-0400** Maps and Records of Small Telecommunications Utilities and Telecommunications Cooperatives
- 860-034-0420** Location of Underground Facilities
- 860-034-0430** Construction, Safety, and Reporting Standards for Small Telecommunications Utilities and Telecommunications Cooperatives

### Regulations to Prevent Duplication of Facilities for Utilities and Telecommunications Cooperatives

- 860-034-0440** Applicability and Formal Requirements for Small Telecommunications Utilities and Telecommunications Cooperatives
- 860-034-0450** Applications for Approval of Contracts to Avoid or Eliminate Duplicate Utility Service for Small Telecommunications Utilities and Telecommunications Cooperatives
- 860-034-0460** Applications for Approval of Amendments to Contracts to Avoid or Eliminate Duplicate Utility Service for Small Telecommunications Utilities and Telecommunications Cooperatives
- 860-034-0470** Applications for Allocation of Exclusively Served Territory by Small Telecommunications Utilities and Telecommunications Cooperatives
- 860-034-0480** Applications for Allocation of Unserved Territory for Small Telecommunications Utilities and Telecommunications Cooperatives
- 860-034-0490** Applications to Transfer Rights to Allocated Territory for Small Telecommunications Utilities and Telecommunications Cooperatives
- 860-034-0495** Application by an Unserved Person for Service from a Small Telecommunications Utility
- 860-034-0505** Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities

### Reports and Records for Utilities and Telecommunications Cooperatives

- 860-034-0580** Preservation and Destruction of Records for Small Telecommunications Utilities and Type 2 Cooperatives

### Rules Relating to Establishment of and Exceptions to Depreciation Guidelines for Utilities and Type 2 Cooperatives

- 860-034-0600** Definitions for Depreciation Guidelines for Small Telecommunications Utilities and Type 2 Cooperatives
- 860-034-0610** Revision of Depreciation Guidelines
- 860-034-0620** Filing Deadlines for a Request for an Exception by a Small Telecommunications Utility or Type 2 Cooperatives
- 860-034-0630** Information to be Included With a Request for an Exception Filed Under OAR 860-034-0620
- 860-034-0640** Review by Staff of a Request for an Exception Filed Under OAR 860-034-0620
- 860-034-0650** Petition to Open Depreciation Docket
- 860-034-0660** Review Procedure and Schedule for a Request for an Exception Filed Under OAR 860-034-0650
- 860-034-0670** Extension of Time for a Request for an Exception

### Joint Rates or Rates Charged for Through Services by Type 2 Cooperatives

- 860-034-0710** Tariffs for Joint Rates or Rates Charged for Through Services of Type 2 Cooperatives
- 860-034-0720** Announcement of Rate Increases for Joint Rates or Rates Charged for Through Services by Type 2 Cooperatives
- 860-034-0725** Telephone Solicitation Notices by Telecommunications Cooperatives

### Finance, Accounting, and Annual Reports for Type 2 Cooperatives

- 860-034-0730** Uniform System of Accounts for Type 2 Cooperatives
- 860-034-0740** Allocation of Costs by Type 2 Cooperatives
- 860-034-0750** Annual Report Requirements for Type 2 Cooperatives

## DIVISION 36

### WATER UTILITIES AND ASSOCIATIONS

#### General

- 860-036-0001** Scope and Applicability of Rules
- 860-036-0005** Applicability and Formal Requirements
- 860-036-0010** Definitions
- 860-036-0015** Information for Customers and Applicants
- 860-036-0020** Designation of Third Party to Receive Notices
- 860-036-0025** Dispute Resolution
- 860-036-0030** Threshold Levels of Rates and Charges for Water Utility Serving Fewer than 500 Customers
- 860-036-0035** Applications for Water Utility Service
- 860-036-0040** Establishing Credit for Residential Service
- 860-036-0045** Deposit Payment Arrangements for Residential Water Service
- 860-036-0050** Interest on Deposits for Residential and Nonresidential Service
- 860-036-0055** Refund of Water Utility Deposits for Residential and Nonresidential Service
- 860-036-0060** Installation of Water Service Connection
- 860-036-0065** Installation of Main Line Extension
- 860-036-0070** Temporary Service
- 860-036-0075** Interruption of Service
- 860-036-0080** Refusal of Water Utility Service
- 860-036-0085** Restrictions on Entering a Customer Residence

## Chapter 860 Public Utility Commission

<b>860-036-0095</b>	Annual Fees Payable to the Commission by a Water Utility		<b>Tariffs</b>
<b>860-036-0097</b>	Estimated Annual Fees Payable to the Commission by a Water Utility	<b>860-036-0605</b>	Tariff Specifications
		<b>860-036-0610</b>	Tariff Contents
		<b>860-036-0615</b>	Tariff Changes Require 30 Days' Notice to the Commission
	<b>Water Meters and Billing</b>	<b>860-036-0620</b>	Announcement to Customers of Tariff Changes
<b>860-036-0105</b>	Use of Water Meters	<b>860-036-0625</b>	Applications to Make Tariffs or Rate Schedules Effective on Less than Statutory Notice
<b>860-036-0110</b>	Testing Water Meters	<b>860-036-0630</b>	Requirements for Filing Tariffs or Schedules Changing Rates
<b>860-036-0115</b>	Customer Requested Meter Test	<b>860-036-0635</b>	Requirements for Filing Tariffs or Schedules Increasing Rates
<b>860-036-0120</b>	Meter Readings and Bill Forms	<b>860-036-0640</b>	Tariff Changes Effective with Service Rendered
<b>860-036-0125</b>	Due and Payable Period; Time-Payment Agreements for Residential Service	<b>860-036-0645</b>	Notice to Interested Persons of Tariffs Filed Under ORS 757.205
<b>860-036-0130</b>	Late-Payment Charge		
<b>860-036-0135</b>	Adjustment of Bills		
<b>860-036-0140</b>	Transfer Billings		
	<b>Disconnection of Water Service</b>		<b>Financial Transactions</b>
<b>860-036-0205</b>	Grounds for Disconnecting Water Utility Service	<b>860-036-0705</b>	Form and Filing of Applications
<b>860-036-0210</b>	Voluntary Disconnection	<b>860-036-0710</b>	Notice and Approval Requirements Relating to the Sale, Transfer, Merger, Termination or Abandonment of a Water Service, or Disposal of a Water Utility
<b>860-036-0215</b>	Emergency Disconnection	<b>860-036-0715</b>	Applications for Authority to Sell, Lease, Assign, Mortgage, Merge, Consolidate, or Otherwise Dispose of or Encumber its Property, or to Acquire Stock, Bonds, or Property of Another Public Utility
<b>860-036-0220</b>	Disconnection of Service on Weekends and Holidays	<b>860-036-0716</b>	Acquisition Adjustments
<b>860-036-0225</b>	Accounts Not Related to Residential Service	<b>860-036-0720</b>	Application by a Water Utility for Authority to Issue Stocks, Bonds, Notes, or Other Securities
<b>860-036-0230</b>	Disconnection of Water Service to Tenants	<b>860-036-0725</b>	Applications for Authority to Guarantee Indebtedness
<b>860-036-0235</b>	Multilingual Disconnection Notice	<b>860-036-0730</b>	Applications for Approval of Transactions Between Affiliated Interests
<b>860-036-0240</b>	Reconnection Fee	<b>860-036-0735</b>	Information Required for Water Utility Goods or Services Provided to Affiliated Interests
<b>860-036-0245</b>	Disconnection Procedures for All Customers of Water Utility Services	<b>860-036-0737</b>	Timeliness of Applications Made Under OAR 860-036-0730 and Filings Made Under 860-036-0735
<b>860-036-0250</b>	Unapproved Diversion of Irrigation Water by Tampering with or Damaging Water Utility Equipment	<b>860-036-0738</b>	Applications for Waiver of Requirements Under OARs 860-036-0730 and 860-036-0735
	<b>Service Quality</b>	<b>860-036-0739</b>	Allocation of Costs by a Water Utility
<b>860-036-0301</b>	Quality of Water Service		<b>Special Contracts</b>
<b>860-036-0305</b>	Maintenance and Repair of Plant and Equipment	<b>860-036-0740</b>	Special Contracts
<b>860-036-0310</b>	Purity of Water Supply for Domestic Purposes		<b>Fees, Taxes, and Other Assessments</b>
<b>860-036-0315</b>	Adequate Water Pressure Required	<b>860-036-0745</b>	Relating to City Fees, Taxes, and Other Assessments
<b>860-036-0320</b>	Pressure Surveys	<b>860-036-0750</b>	Relating to Local Government Fees, Taxes, and Other Assessments
<b>860-036-0325</b>	Water Supply		
<b>860-036-0335</b>	Maps and Records		<b>Accounting Records</b>
<b>860-036-0340</b>	Master Plan	<b>860-036-0755</b>	Accounting for Director's Fees
<b>860-036-0345</b>	Location of Underground Facilities	<b>860-036-0756</b>	Accounting for Contributions in Aid of Construction (CIAC)
<b>860-036-0350</b>	Construction, Safety, and Reporting Standards for Water Utilities	<b>860-036-0757</b>	Accounting for Construction Work In Progress (CWIP)
<b>860-036-0360</b>	Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities	<b>860-036-0760</b>	Preservation and Destruction of Records
<b>860-036-0365</b>	Compliance Enforcement by Commission Appointment of Regent(s) to Operate and Manage a Water System	<b>860-036-0765</b>	Uniform System of Accounts for Water Utilities — Class A, B, and C
<b>860-036-0370</b>	Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs		
<b>860-036-0380</b>	Commission-Assessed Civil Penalties for Noncompliance		
	<b>Changes in Regulatory Status</b>		
<b>860-036-0405</b>	Notice of Customer's Right to Petition for Full Rate Regulation		
<b>860-036-0407</b>	Notice of Commercial and Other Water Customers' Right to Petition for Full Rate Regulation		
<b>860-036-0410</b>	Relating to Rate Regulation of Water Quality by Customer Petition		
<b>860-036-0412</b>	Request for Rate Regulation of an Association by Members		
<b>860-036-0415</b>	Relating to Rate Regulation of Water Company by Customer Count		
<b>860-036-0420</b>	Request for Rate Regulation by a Water Utility	<b>860-036-0805</b>	Budget of Expenditures
	<b>New Water Utilities</b>	<b>860-036-0810</b>	New Construction Budget
<b>860-036-0505</b>	Relating to New Water Utilities	<b>860-036-0815</b>	Annual Reports
		<b>860-036-0820</b>	Use of Deferred Accounting as It Applies to Rate-Regulated Water Utilities

Service Territory Allocation		Service Quality	
860-036-0900	Service Territory Allocation	860-037-0307	Wastewater Utility Compliance Enforcement by Commission Appointment of Regent to Operate and Manage a Wastewater System
860-036-0905	Original Application Requirements		
860-036-0910	Commission Notice and Procedure	860-037-0308	Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs
860-036-0915	Filing an Application to Expand Exclusive Service Territory	860-037-0309	Commission-Assessed Civil Penalties for Noncompliance
860-036-0920	Reduction of Approved Service Territory Boundaries Procedure	860-037-0310	Maps and Records
860-036-0925	Transfer of Approved Service Territory	860-037-0320	Location of Underground Facilities
860-036-0930	Exclusive Obligation	860-037-0325	Construction, Safety, and Reporting Standards for Wastewater Utilities
DIVISION 37		860-037-0330	Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities
WASTEWATER SERVICE REGULATION FOR JOINT WATER/WASTEWATER UTILITIES			
General		Rate Regulation and Tariff Filings	
860-037-0001	Scope and Applicability of Rules	860-037-0405	Relating to New Wastewater Utilities
860-037-0005	Applicability and Formal Requirements	860-037-0407	Request for Rate Regulation of an Association within the Boundaries of a City
860-037-0010	Definitions	860-037-0410	Tariff Specifications
860-037-0015	Information for Customers and Applicants	860-037-0415	Tariff Contents
860-037-0020	Designation of Third Party to Receive Notices	860-037-0420	Tariff Changes Require 30 Days’ Notice to the Commission
860-037-0025	Dispute Resolution	860-037-0425	Announcement of Tariff Changes
860-037-0030	Applications for Water/Wastewater Utility Service	860-037-0430	Applications to Make Tariffs or Rate Schedules Effective on Less Than Statutory Notice
860-037-0035	Establishing Credit for Residential Service	860-037-0435	Requirements for Filing Tariffs or Schedules Changing Rates
860-037-0040	Deposit Payment Arrangements for Residential Wastewater Service	860-037-0440	Requirements for Filing Tariffs or Schedules Naming Increased Rates
860-037-0045	Interest on Deposits for Residential and Non-residential Service	860-037-0445	Tariff Changes Effective with Service Rendered
860-037-0050	Refund of Wastewater Utility Deposits	860-037-0450	Notice to Interested Persons
860-037-0055	Installation of Wastewater Service Connection	Financial Transactions	
860-037-0060	Installation of Main Line Extension	860-037-0505	Form and Filing of Applications
860-037-0065	Design, Construction, and Operation	860-037-0510	Notice and Approval Requirements Relating to the Sale, Transfer, Merger, Termination, Abandonment, or Disposal of a Wastewater Utility
860-037-0067	Wastewater Disposal	860-037-0515	Applications for Authority to Sell, Lease, Assign, Mortgage, Merge, Consolidate, or Otherwise Dispose of or Encumber its Property, or to Acquire Stock, Bonds, or Property of Another Public Utility
860-037-0070	Interruption of Service	860-037-0517	Acquisition Adjustment
860-037-0075	Refusal of Service	860-037-0520	Application by a Wastewater Utility for Authority to Issue Wastewater Stocks, Bonds, Notes, or Other Securities
860-037-0080	Restrictions on Entering a Customer Residence	860-037-0525	Applications for Authority to Guarantee Indebtedness
860-037-0095	Annual Fees Payable to the Commission by a Wastewater Utility	860-037-0530	Applications for Approval of Transactions Between Affiliated Interests
860-037-0097	Estimated Annual Fees Payable to the Commission by a Wastewater Utility	860-037-0535	Information Required Regarding Wastewater Utility Goods or Services Provided to Affiliated Interests
860-037-0101	Wastewater Service Charges	860-037-0540	Timeliness of Applications Made Under OAR 860-037-0530 and Filings Made Under OAR 860-037-0535
Billing and Payments		860-037-0545	Applications for Waiver of Requirements Under OARs 860-037-0530 and 860-037-0535
860-037-0105	Bill Forms	860-037-0547	Allocation of Costs by a Wastewater Utility
860-037-0110	Due and Payable Period; Time-Payment Agreements for Residential Service	Special Contracts	
860-037-0115	Late-Payment Charge	860-037-0550	Special Contracts
860-037-0120	Adjustment of Bills	Fees, Taxes, and Other Assessments	
860-037-0125	Transfer Billings	860-037-0555	Relating to City Fees, Taxes, and Other Assessments
Termination of Wastewater Service Through Disconnection of Customer’s Water Service		860-037-0560	Relating to Local Government Fees, Taxes, and Other Assessments
860-037-0205	Grounds for Terminating Customer Wastewater Service by Disconnecting Water Service		
860-037-0210	Voluntary Water Disconnection for Wastewater Service		
860-037-0215	Emergency Water Disconnection for Wastewater Service		
860-037-0220	Disconnection of Water Service on Weekends and Holidays		
860-037-0225	Accounts Not Related to Residential Service		
860-037-0230	Disconnection of Wastewater Service to Tenants		
860-037-0235	Multilingual Disconnection Notice		
860-037-0240	Reconnection Fee		
860-037-0245	Disconnection Procedures for All Customers of Wastewater Utility Services		

**Accounting Records**

<b>860-037-0565</b>	Accounting for Director's Fees
<b>860-037-0567</b>	Accounting for Contributions in Aid of Construction (CIAC)
<b>860-037-0570</b>	Accounting for Construction Work In Progress (CWIP)

**Record and Reporting Requirements**

<b>860-037-0605</b>	Preservation and Destruction of Records
<b>860-037-0610</b>	Uniform System of Accounts for Wastewater Utilities

**Annual Reports**

<b>860-037-0615</b>	Budget of Expenditures
<b>860-037-0620</b>	New Construction Budget
<b>860-037-0625</b>	Annual Reports
<b>860-037-0630</b>	Use of Deferred Accounting as it Applies to Wastewater Operations by Wastewater Utilities

**DIVISION 38**

**DIRECT ACCESS REGULATION**

<b>860-038-0001</b>	Scope and Applicability of Rules
<b>860-038-0005</b>	Definitions for Direct Access Regulation
<b>860-038-0080</b>	Resource Policies and Plans
<b>860-038-0100</b>	Auction Process
<b>860-038-0140</b>	Ongoing Valuation
<b>860-038-0160</b>	Transition Costs and Credits
<b>860-038-0200</b>	Unbundling
<b>860-038-0220</b>	Portfolio Options
<b>860-038-0240</b>	Cost-of-Service Rate
<b>860-038-0250</b>	Nonresidential Standard Offer
<b>860-038-0260</b>	Direct Access
<b>860-038-0275</b>	Direct Access Annual Announcement and Election Period
<b>860-038-0280</b>	Default Supply
<b>860-038-0300</b>	Electric Company and Electricity Service Suppliers Labeling Requirements
<b>860-038-0340</b>	Electric Company Ancillary Services
<b>860-038-0360</b>	Electric Company Customer Metering Requirements
<b>860-038-0380</b>	Aggregation
<b>860-038-0400</b>	Electricity Service Supplier Certification Requirements
<b>860-038-0410</b>	Scheduling
<b>860-038-0420</b>	Electricity Service Supplier Consumer Protection
<b>860-038-0445</b>	Coordination of Supplier Changes and Billing
<b>860-038-0450</b>	Location of Underground Facilities
<b>860-038-0460</b>	Construction, Safety, and Reporting Standards for Electricity Service Suppliers
<b>860-038-0470</b>	Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities
<b>860-038-0480</b>	Public Purposes
<b>860-038-0500</b>	Code of Conduct Purpose
<b>860-038-0520</b>	Electric Company Name and Logo
<b>860-038-0540</b>	Consumer Information
<b>860-038-0560</b>	Treatment of Competitors
<b>860-038-0580</b>	Prevention of Cross-subsidization Between Competitive Operations and Regulated Operations
<b>860-038-0590</b>	Transmission and Distribution Access
<b>860-038-0600</b>	Joint Marketing and Referral Arrangements
<b>860-038-0620</b>	Access to Books and Records
<b>860-038-0640</b>	Compliance Filings

**DIVISION 39**

**NET METERING RULES**

<b>860-039-0005</b>	Scope and Applicability of Net Metering Facility Rules
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<b>860-039-0010</b>	Net Metering Kilowatt Limit
<b>860-039-0015</b>	Installation, Operation, Maintenance, and Testing of Net Metering Facilities
<b>860-039-0020</b>	Net Metering Facility Requirements
<b>860-039-0025</b>	Application for Net Metering Interconnection
<b>860-039-0030</b>	Level 1 Net Metering Interconnection Review
<b>860-039-0035</b>	Level 2 Net Metering Interconnection Review
<b>860-039-0040</b>	Level 3 Net Metering Interconnection Review
<b>860-039-0045</b>	Net Metering Interconnection Fees and Costs
<b>860-039-0050</b>	Requirements After Approval of a Net Metering Interconnection
<b>860-039-0055</b>	Net Metering Billing
<b>860-039-0060</b>	Excess Energy from Net Metering Facilities
<b>860-039-0065</b>	Aggregation of Meters for Net Metering
<b>860-039-0070</b>	Public Utility Maps, Records and Reports
<b>860-039-0075</b>	Public Utility Not to Limit Net Metering Systems
<b>860-039-0080</b>	Net Metering Insurance

**DIVISION 11**

**GENERAL**

**860-011-0000**

**Applicability, Construction, and Waiver of Rules**

- (1) These general rules of practice and procedure apply to proceedings and hearings before the Commission.
- (2) Any special rules which may be adopted for a particular proceeding by the Commission or Administrative Law Judge (ALJ) shall govern, if inconsistent with the general rules.
- (3) The Oregon Rules of Civil Procedure shall govern in all cases except as modified by these rules, by order of the Commission, or by ruling of the ALJ.
- (4) Members of the public are encouraged to appear and be heard on matters relevant to the issues involved. The Commission or ALJ at a hearing may receive testimony from members of the public under conditions which protect the rights of all parties and avoid burdening the record.
- (5) These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.
- (6) For good cause shown, the Commission may deviate from or waive any of the rules contained in divisions 011 through 014.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-11-035 & 860-11-040; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-11-055; PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99

**860-011-0001**

**Notice to Interested Persons**

- (1) The Commission maintains mailing lists of persons interested in receiving notices of:
  - (a) Commission public meetings;
  - (b) Permanent rulemaking proceedings that involve electric, natural gas, telecommunications, water, wastewater or procedural matters; and
  - (c) Contested case proceedings that concern particular regulated industries.
- (2) The Commission will send advance notice of these events, by mail or electronic mail, to persons on these lists. Any person may request in writing to be included on the relevant list(s) for the person's particular area of interest.
- (3) The Commission will not delete the names of persons from a notice list without prior notification.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 169, f. & ef. 11-10-75 (Order No. 75-936); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-2004, f. & cert. ef. 4-29-04; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 5-2006, f. & cert. ef. 4-14-06

## 860-011-0010

### Filing Information: Physical Address and Electronic Mail

(1) The Commission's contact information, including physical and electronic mail address, is available on the Commission's website or by calling the Commission.

(2) All documents related to Commission proceedings must be filed at the addresses in section (1) of this rule. Inquiries regarding docketed proceedings pending before the Commission should be directed to the Administrative Hearings Division, Support Unit.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-011-0005; PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 11-2003, f. & cert. ef. 7-3-03; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-011-0011

### Format and Content Requirements

(1) All text documents related to Commission proceedings must be prepared using a readable font that, when printed, will fit on an 8-1/2 by 11 inch page. Footnotes or quotations may be single spaced and indented. The first page of a pleading, exhibit, appendix, or other document must bear the docket number of the proceeding in which the document is filed, unless no docket number has been assigned.

(2) All persons who communicate with the Commission must provide their name, physical and electronic mail addresses, and telephone number to assist the Commission in responding. Persons who file on behalf of a business, organization, or other entity must also state their names and titles or positions, and the name of the entity on whose behalf the communication is sent.

(3) The original document and all copies required by the Commission rules must be filed in the same envelope or container to the extent practicable. A party making simultaneous filings in more than one docket must enclose the documents for each docket in a separate envelope or container.

(4) With the exception of tariff sheets, the Commission prefers to receive copies of text documents printed on both sides. The Commission encourages the use of recyclable paper.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18-2004, f. & cert. ef. 12-30-04

## 860-011-0012

### Electronic File Format Requirements

(1) Electronic filings required by rule may be provided as an electronic mail file attachment addressed to the Commission's electronic mail address provided in OAR 860-011-0010(1), submitted on a 3-1/2 inch formatted high-density disk, compact disk (CD) or DVD, or uploaded via the Commission's website. The filing must be labeled with any applicable docket number of the proceeding, the name of the party submitting the document, a description of the contents, and the date filed. Any filing submitted as an electronic mail attachment must be less than 20 megabytes in size and include the docket number and name of the file in the subject line of the electronic mail message.

(2) The Commission prefers to receive electronic copies of text documents in text-searchable Portable Document Format (i.e., .pdf). Filers that cannot create text-searchable .pdf files are requested to provide a copy of the document converted to .pdf via scanning or other technology, and supplement the filing with a copy in Microsoft Word file format.

(3) Electronic files must be named in a way that accurately describes the file contents. Filers must use a format that identifies the docket type or, if assigned, docket number, the nature of the document, and the person submitting it. For example, an electronic file containing a motion in a docketed proceeding should be identified as follows: UT 123, Motion to Amend Schedule (name of party) (date). Similarly, an electronic file containing an application for the approval of an affiliated interest contract should be identified as follows: UI Affiliated Interest Application (name of applicant) (date).

(4) Electronic filings containing numerous documents must be separated into multiple attachments or indexed and organized to allow the reader the ability to locate and view individual files. For example,

a filing containing testimony from multiple witnesses should be divided into folders and subfolders and indexed accordingly as follows: Folder Name: UE 123 Direct Testimony (name of party) (date) Subfolders: Party/Exhibit 100 Witness Smith Party/Exhibit 101 Witness Smith Party/Exhibit 200 Witness Jones

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18-2004, f. & cert. ef. 12-30-04

## 860-011-0015

### Fees and Charges for Filings

A filing will not be accepted by the Commission until all fees and charges required by law are paid.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 18-2004, f. & cert. ef. 12-30-04

## 860-011-0035

### Definitions

(1) "Applicant" means any person requesting or applying for any right, privilege, power, or other authority or seeking permission to exercise any right or privilege under a statute requiring the filing of an application.

(2) "Complainant" means any person, including the Commission, who files a complaint under any statute providing for the filing of complaints before the Commission.

(3) "Copy" means paper copy, unless otherwise specified.

(4) "Defendant" means a person against whom a complaint is filed under ORS 756.500.

(5) "Interested person," except as provided in ORS 756.450, means any person who is not a party or staff and who asks to be listed as an interested person in any docketed Commission proceeding. Interested persons must be served with copies of any orders, rulings, notices, or other documents issued by the Commission or Administrative Law Judge (ALJ) in the Commission proceeding for which they are listed. Unless permitted by the Commission or ALJ, interested persons are not entitled to service of documents from staff or parties; to present evidence for the record; to conduct cross-examination of witnesses; to file pleadings, testimony, exhibits, or briefs; or otherwise exercise the rights of a party.

(6) "Intervenor" means a person named by the Commission to be a party to a proceeding.

(7) "Party" means any person entitled as a matter of right to a hearing before the Commission, or named as a party.

(8) "Person" means individuals; joint ventures; partnerships; limited liability companies; corporations and associations; governmental entities; or their officers, employees, agents, lessees, assignees, trustees, or receivers.

(9) "Petitioner" means any person applying for permission to exercise any right or privilege or power under a statute requiring the filing of a petition, any person requesting a declaratory ruling under ORS 756.450, or any person applying for other relief for which no specific pleading is designated by statute.

(10) "Protestant" means any person opposing an application under ORS 759.020.

(11) "Respondent" means any person designated as such in any matter over which the Commission has jurisdiction.

(12) "Staff" means any employee of the Commission except ALJs.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Former OAR 860-11-035 was Renumbered to 860-011-0000 by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-011-0036

### Personal Services Contracts

(1) The Commission may enter into personal services contracts as required or appropriate for the discharge of its duties.

(2) The model rules adopted by the Attorney General do not apply to the Commission.

(3) Department of Administrative Services Public Contracting Rules for Personal Services Contracts OAR chapter 125, divisions 246, 247 and 248 apply to all personal services contracts, except as specified in section (4) of this rule.

(4) The following public contracting rules do not apply to personal services contracts used by the Commission: OARs 125-246-0345(2), 125-246-0350, 125-246-0351, and 125-246-0352.

Stat. Auth.: ORS 756.036

Stats. Implemented: ORS 756.036 & 279A.050

Hist.: PUC 6-2005, f. & cert. ef. 11-28-05

#### 860-011-0080

##### Confidential Information

(1) Information filed or submitted in confidence with the Commission is exempt from public disclosure to the extent provided under the Public Records Law, ORS 192.410 to 192.505. This rule applies to any information filed or submitted under a claim of confidentiality, but does not apply to information designated and protected as confidential pursuant to a protective order in a contested case proceeding.

(2) At the time of filing or submission, a person may designate a document as containing confidential information. Any such designation must be made in good faith and be limited to only those portions of the document that qualify for protection. The person asserting confidentiality must state the legal basis upon which the information is claimed to be confidential.

(3) Settlement offers submitted pursuant to a settlement conference convened under OAR 860-014-0085 are exempt from disclosure to the extent provided in ORS 192.502(4). If a party to a settlement conference submits settlement material on the condition of confidentiality, the Commission obligates itself to protect this information from public disclosure.

(4) Unless otherwise provided by Commission order, any confidential information filed or submitted pursuant to this rule must be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. To the extent practicable, the provider must place only those portions of the document containing the confidential information in the envelope/container. The envelope/container shall bear the legend: "CONFIDENTIAL."

(5) Any failure to comply with the requirements specified in this rule may result in the filing or submission not being treated as one including confidential information or its return to the provider for correction and resubmission.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 192.420-192.505, 756.040 & 756.500-756.575

Hist.: PUC 13-1985, f. & cert. ef. 9-26-85 (Order No. 85-886); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-015-0005; PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 3-1996, f. & cert. ef. 7-19-96 (Order No. 96-181); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 16-1998, f. & cert. ef. 10-12-98; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 8-2005, f. & cert. ef. 12-21-05; PUC 4-2007, f. & cert. ef. 4-18-07

#### 860-011-0090

##### Public Records and Request for Documents

(1)(a) With prior notice, the Commission will make public records, not otherwise exempt from disclosure by law, available for inspection during regular business hours. The Commission may condition the time and manner of inspection of public records as necessary, under the circumstances, to protect the records and to prevent interference with the regular discharge of the duties of the Commission and its employees.

(b) The request must be sufficiently specific to allow the Commission to readily identify the document or other material that contains the requested information. The Commission may require that any request for public records be made in writing.

(c) The request must indicate the format in which any copies are desired and the date, if any, by which the records are needed. The Commission reserves the right to provide the information in a different format than requested, or to provide the information after the desired date, if the burden of meeting the requested format or date is impractical.

(2) The Commission will charge the following fees reasonably calculated to recover the costs of providing access to and copying of public records.

(a) Employee time: The Commission will charge for employee time in excess of 15 minutes spent locating, compiling, sorting, and reviewing records to prepare them for inspection, as well as all time

required to segregate or redact exempt information or to supervise inspection of documents. Employee time will be charged in 15-minute increments at the following rates:

(A) Assistant Attorney General: \$111 per hour, excluding time spent in determining the application of the provisions of ORS 192.410 to 192.505;

(B) Administrative Law Judge: \$52 per hour;

(C) Manager: \$32 per hour

(D) Utility Analyst: \$25 per hour

(E) Information Services: \$43 per hour;

(F) Law Clerk: \$22 per hour;

(G) General Clerical: \$15 per hour;

(b) Photocopies: If the request seeks copies of any documents identified in response to a request, the Commission will charge \$0.15 per page to recover the costs of photocopying. "Page" refers to the number of copies produced. A double-sided copy consists of two pages. The Commission may waive fees for photocopies provided in response to routine requests for a single copy of a Commission order or other public document.

(c) If the request seeks certification of true copies of public documents, the Commission will charge \$10 per document certification.

(d) Facsimile: When faxing records, the Commission will charge \$0.75 per page. The Commission limits the number of pages it will fax to 30 pages.

(e) Electronic Media: If the request seeks electronic reproduction of public records, the Commission will provide reproduction media at the following rates:

(A) Diskette, CD, or DVD: \$1.50 each

(B) Video Cassettes, 2 hours: \$2.00 each

(C) Audio Cassettes: \$2.50 each.

(f) Mailing: When sending voluminous records, the Commission will also charge the actual costs for sending the public records.

(3) Upon request, the Commission will provide notice of the estimated costs of making records available for inspection or providing copies of records. If the estimated costs exceed \$25, the Commission will provide written notice and not act further to respond to the request unless and until it receives written authorization to proceed with making the public records available. The Commission may require that all estimated fees and charges be paid before public records will be made available for inspection or copies provided.

(4)(a) If a public records request seeks the disclosure of information that has been designated as confidential pursuant to a protective order or OAR 860-011-0080, the Commission will provide, prior to the release of any such information, written notice to the person asserting confidentiality and allow an opportunity for the person to provide a written response to the request. The person asserting confidentiality bears the burden to show that part or all of a document is to be exempt from disclosure.

(b) In the event the Commission concludes that the information designated as confidential is not protected from disclosure, the Commission will provide notice of the decision and delay the release of the information to permit the person asserting confidentiality the ability to obtain a court order to protect the records from disclosure.

(c) If the person asserting confidentiality consents in writing to the release of the information, or does not commence proceedings to restrain disclosure by way of court order within ten days following notice of the decision, the Commission will remove the confidential designation from its files, and release the information to the requester.

(5) Any person denied the right to inspect or to receive a copy of any public record may appeal the Commission's decision to the Attorney General pursuant to ORS 192.450.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 192.420-192.505

Hist.: PUC 4-2007, f. & cert. ef. 4-18-07

#### 860-011-0100

##### Commission Publications

The Commission will charge the fees reasonably calculated to reimburse the agency for costs of annual subscriptions, agency publications, and materials related to agency proceedings. These fees, which include actual mailing costs, are as follows:

(1) Subscriptions to Commission Orders: \$100 (annually);

(2) Subscription to Notices of Hearings: \$50 (annually);

(3) Administrative Rules update service: \$75 (annually);

- (4) Bound Volume of Oregon Laws Relating to the Commission: \$15;
- (5) Maps of specific area boundaries: \$20;
- (6) Statistical reports: \$15;
- (7) Hearing transcripts: At cost. A copy of a public hearing transcript must be supplied to a party without cost upon the filing with the Commission of a satisfactory affidavit of indigency, pursuant to ORS 756.521.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 192.420-192.505, 756.040, 756.060 & 756.500-756.575

Hist.: PUC 4-2007, f. & cert. ef. 4-18-07

#### 860-011-0110

##### Late Fees and Penalties

(1) The Commission will impose the following late fees and penalties, as applicable:

(a) Check Returned for Non-Sufficient Funds: \$25.

(b) Costs Incurred by the Commission to Collect Past-Due Amounts: At Cost.

(2) The Commission will impose the following interest and penalties for the untimely payment of fees required by statute or rule:

(a) Annual Fees: No interest; 2 percent penalty of fee per month;

(b) Residential Service Protection Fund (RSPF) payments: 9 percent interest per Annum; 9 percent penalty of Unpaid Fee, up to \$500 maximum per reporting period.

(3) The Commission will impose the following fees for late-filed statements and reports:

(a) Electric Company Annual Fee Statement: \$100.

(b) Gas Utility Annual Fee Statement: \$100.

(c) Telecommunications Providers Annual Fee Statement: \$100.

(d) Water Utility Annual Fee Statement: \$40.

(e) RSPF Report: \$100.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500-756.575

Hist.: PUC 4-2007, f. & cert. ef. 4-18-07

### DIVISION 12

#### PRACTICE BEFORE THE COMMISSION

#### 860-012-0001

##### Petitions to Intervene

(1) Any person may petition to intervene in any proceeding before the Commission. The petition to intervene must contain the following information:

(a) The name and address of the petitioner;

(b) The name and address of the attorney or authorized representative of the petitioner;

(c) If the petitioner is an organization, the number of members in and the purposes of the organization;

(d) The nature and extent of the petitioner's interest in the proceeding;

(e) The issues petitioner intends to raise at the proceeding; and

(f) Any special knowledge or expertise of the petitioner that would assist the Commission in resolving the issues in the proceeding.

(2) If the Commission or Administrative Law Judge (ALJ) finds the petitioner has sufficient interest in the proceeding and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding, the Commission or ALJ will grant the petition. The Commission or ALJ may impose appropriate conditions upon any intervenor's participation in the proceeding.

(3) Notwithstanding section (2) of this rule, the Citizens' Utility Board may intervene in Commission proceedings as of right, pursuant to ORS 774.180, by filing a notice of intervention containing the information required by sections (1)(a) and (b) of this rule.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-011-0065; PUC 12-1999, f. & cert. ef. 11-18-99; Renumbered from 860-013-0021, PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-012-0005

##### Representation and Ethical Conduct

(1) All persons appearing in proceedings in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Oregon.

(2) If any person does not conform to such standards, the Commission may decline to permit such person to appear in a representative capacity in any proceeding.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127)

#### 860-012-0007

##### Representation by Authorized Representative or Agency Officer or Employee

(1) For purposes of this rule, the words listed below shall have the following meanings:

(a) "Authorized representative" means a member of a partnership; an authorized officer or regular employee of a corporation, association, or organized group; or an authorized officer or employee of a governmental authority other than a state agency.

(b) "Commission" means the Public Utility Commission of Oregon.

(c) "Contested case" means a proceeding before the Commission in which a person is provided the opportunity for a hearing which is substantially of the character described in ORS 183.310(2).

(d) "Legal argument" includes argument on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; or

(C) The application of court precedent to the facts of the particular contested case proceeding.

(e) "Legal argument" does not include presentation of evidence, examination, and cross-examination of witnesses, presentation of factual arguments, or argument on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the agency conducting the proceeding;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; or

(D) The admissibility of evidence or the correctness of procedures being followed.

(2) Except for the Commission's staff, a party or interested person participating in a contested case hearing before the Commission may be represented by an authorized representative, following a determination that the appearance by an authorized representative will not unreasonably broaden the issues, delay the proceeding, or otherwise hinder the orderly and timely development of the record:

(a) On or before the first appearance by an authorized representative, the Administrative Law Judge (ALJ) must be provided with a letter authorizing the named representative to appear on behalf of a party or interested person; and

(b) The ALJ shall have authority to limit an authorized representative's presentation of evidence, examination, and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record. The ALJ shall not allow an authorized representative to present legal argument as defined in subsection (1)(d) of this rule.

(3) Public Utility Commission staff may represent the agency in a contested case hearing in the following proceedings:

(a) Actions initiated by the Commission to recover telecommunications assistive devices, or the value of devices which the recipients fail to return, or the cost of repairing the equipment which the recipient returned in a damaged condition; and

(b) Denial or termination of Oregon Telephone Assistance Program benefits.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 2-1989, f. & cert. ef. 1-23-89 (Order No. 89-067); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-011-0007; PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 17-2002, f. & cert. ef. 9-13-02; PUC 16-2004, f. & cert. ef. 12-1-04

**860-012-0010**

**Former Employees**

(1) No former Commission employee may appear on behalf of other parties in a formal proceeding in which the former employee took an active part on the Commission's behalf.

(2) Except with the Commission's written permission, no former Commission employee shall appear as a witness on behalf of other parties in a formal proceeding in which the former employee took an active part on the Commission's behalf.

(3) Except with the Commission's written permission, no person now working for the Commission, who was formerly employed by a company subject to the jurisdiction of the Commission, or a company appearing before the Commission in a proceeding, or an affiliate of such company, shall appear as a witness on behalf of the Commission in a formal proceeding in which the person took an active part on the company's behalf as an employee of the company. Prior to giving its written permission to the person, the Commission shall notify the affected company and the other parties to the formal proceeding. The Commission shall allow the affected company an opportunity to object to the Commission granting permission to the person. The Commission will also allow the other parties to the formal proceeding an opportunity to respond to the affected company's objection, if any.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 3-2002, f. & cert. ef. 2-5-02; PUC 20-2002, f. & cert. ef. 12-9-02

**860-012-0015**

**Ex Parte Communications**

(1) Ex parte communications are discouraged and, if made, must be disclosed to ensure an open and impartial decision-making process.

(2) Except as provided in this rule, an ex parte communication is any oral or written communication that:

(a) Is made by any person directly to a Commissioner or presiding Administrative Law Judge (ALJ) outside the presence of any or all parties of record in a contested case proceeding, as defined in ORS 183.310(2), without notice to, or opportunity for rebuttal by, all such parties; and

(b) Relates to the merits of an issue in the pending contested case proceeding.

(3) For purposes of this rule, a contested case proceeding is pending:

(a) When any filing is made that initiates a proceeding between identified parties or a "major proceeding" as defined in OAR 860-014-0023; or

(b) After the Commission initiates a process similar to that described in OAR chapter 860, division 014, including but not limited to, an order suspending a tariff for investigation or the holding of a prehearing conference.

(4) A person who has an ex parte communication with a Commissioner must promptly notify the presiding ALJ that such communication has occurred.

(5) Upon notice of or receipt of an ex parte communication, the presiding ALJ shall promptly notify the parties of record of the communication and place in the record:

(a) The name of each person who made the communication and that person's relationship, if any, to a party in the case;

(b) The date and time of the communication;

(c) The circumstances under which the communication was made;

(d) A summary of the matters discussed;

(e) A copy of any written communication; and

(f) Any other relevant information concerning the communication.

(6) The presiding ALJ may require the person responsible for the ex parte communication to provide the disclosure and notice of the communication required by this rule.

(7) Within 10 days of receiving notice, a party may file a written rebuttal of any facts or contentions contained in the ex parte communication, with service on the parties of record in the proceeding.

(8) The provisions of this rule do not apply to communications that:

(a) Address procedural issues, such as scheduling or status inquiries, or requests for information having no bearing on the merits of the case;

(b) Are made to a Commissioner or presiding ALJ by a member of the Commission staff who is not a witness in the proceeding;

(c) Are made to a Commissioner or presiding ALJ by an Assistant Attorney General who is not representing the Commission staff in the proceeding;

(d) Are made in a rulemaking proceeding conducted pursuant to ORS 183.325 through 183.410; or

(e) The presiding ALJ determines should not be subject to this rule, including but not limited to communications from members of the public that are made part of the administrative file or communications that are the subject of *in camera* proceedings.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 183.462, 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 12-1999, f. & cert. ef. 11-18-99; PUC 17-2004, f. & cert. ef. 12-28-04

**860-012-0020**

**Joint Hearings with Federal Regulatory Agencies**

In any proceeding in which the Commission participates jointly with any federal regulatory agency, the rules of practice and procedure of the federal agency shall govern.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075)

**860-012-0025**

**Joint Hearings with Another State**

In any proceeding in which the Commission participates jointly with an administrative body of another state, the rules of procedure of the state where the hearing is held shall govern the proceeding. Any person entitled to appear in a representative capacity before any of the agencies involved in the joint hearing may do so in the joint hearing.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075)

**860-012-0035**

**Administrative Law Judges**

(1) The Commission delegates to the Administrative Law Judge (ALJ) authority to:

(a) Regulate the course of hearings including scheduling, recessing, reconvening, and adjourning;

(b) Administer oaths and affirmations;

(c) Issue subpoenas;

(d) Make evidentiary rulings, with or without objection;

(e) Limit, supervise, and control discovery;

(f) Hold appropriate conferences before, during or after hearings;

(g) Decide procedural matters but not to grant motions to dismiss or other motions which involve final determination of the proceedings;

(h) Limit or extend filing periods and grant waivers;

(i) Certify a question to the Commission for consideration and disposition;

(j) Take any other action consistent with the duties of an ALJ;

(k) Upon request by a party, and for good cause shown, issue a protective order which may include language agreed upon by all parties to a proceeding and the ALJ, to limit disclosure of confidential information. Decisions by the ALJ regarding the protective order may be appealed to the Commission pursuant to OAR 860-014-0091.

(2) The ALJ shall conduct a fair and impartial hearing and maintain order. If a person engages in conduct which interferes with this duty, the ALJ may suspend the hearing or exclude the person from the hearing.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.055 & 756.500 - 756.575

Hist.: PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 11-1989, f. & cert. ef. 7-10-89 (Order No. 89-817); PUC 12-1999, f. & cert. ef. 11-18-99; PUC 2-2003, f. & cert. ef. 3-11-03

**860-012-0040**

**Public Meetings**

Except in cases of emergency, for all votes of the Public Utility Commission of Oregon at a public meeting that approve a major rate change for an electric company or natural gas utility under ORS 757.205, a quorum is the full commission. For purposes of this rule, a major rate change is an increase of two percent or more for any customer class.

Stat. Auth.: ORS 183, 192, 756 & 757  
Stats. Implemented: ORS 192.610 et seq. & 757.205  
Hist.: PUC 6-2003, f. & cert. ef. 4-28-03; PUC 7-2005, f. & cert. ef. 11-30-05

**860-012-0100**

**Grant Eligibility (Precertification and Case-Certification)**

(1) Definitions:

(a) "Agreement" means a Commission approved agreement under ORS 234, OR Laws 2003 between a utility providing electricity or natural gas and a not-for-profit organization that represents broad customer interests in Commission regulatory proceedings.

(b) "Grant" means financial assistance to an intervenor under the terms of an agreement.

(2) General. Upon Commission approval of an agreement, the Commission shall apply the qualifications set forth in this rule to determine eligibility for a grant. Only parties that are precertified, or parties that become case-certified for a particular proceeding, will be eligible to receive grants under an agreement. The terms of an agreement will be binding on all organizations seeking a grant under that agreement and will be followed by the Commission in administering the agreement.

(3) Precertification. The Commission will precertify organizations meeting the criteria of subsection (3)(a) or (3)(b) as eligible to receive grants. Once precertified, an organization will remain precertified unless the Commission decertifies the organization under OAR 860-012-0190.

(a) The Citizens' Utility Board of Oregon (CUB), as a representative of residential customers; or

(b) Not-for-profit organizations that meet all of the following criteria:

(A) A primary purpose of the organization is to represent utility customers' interests on an ongoing basis;

(B) The organization represents the interests of a broad group or class of customers and those interests are primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the representation of the interests of customers as consumers of utility services;

(C) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(D) The organization's members, who are customers of one or more of the utilities that are parties to the agreement, contribute a significant portion of the overall support and funding of the organization's activities in the state; and

(E) The organization has demonstrated in past Commission matters the ability to substantively contribute to the record on behalf of customer interests.

(4) Case-Certification. Organizations meeting the following criteria may be case-certified by the Commission to be eligible to receive a grant:

(a) The organization represents the interests of a broad group or class of customers and its participation in the proceeding will be primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the impact of the rates and terms and conditions of service to the customer group;

(b) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(c) The organization's members who are customers of one or more of the utilities affected by the proceeding that are parties to the agreement contribute a significant percentage of the overall support and funding of the organization;

(d) The organization demonstrates, or has demonstrated in past Commission proceedings, the ability to substantively contribute to the record on behalf of customer interests related to rates and the terms and conditions of service, including in any proceeding in which the organization was case-certified and received a grant;

(e) The organization demonstrates that:

(A) No precertified intervenor participating in the proceeding adequately represents the specific interests of the class of customers represented by the organization related to rates and terms and conditions of service; or

(B) The specific interests of a class of customers will benefit from the organization's participation; and

(f) The organization demonstrates that its request for case-certification will not unduly delay the schedule of the proceeding.

Stat. Auth.: ORS 234, OL 2003  
Stats. Implemented: ORS 234, OL 2003  
Hist.: PUC 1-2004, f. & cert. ef. 1-8-04

**860-012-0190**

**Termination of Eligibility — Decertification**

(1) Termination of Eligibility. Upon the filing of a complaint pursuant to ORS 756.500 or upon a Commission investigation or motion pursuant to ORS 756.515, the Commission may terminate the precertification or case-certification of an intervenor if it finds that:

(a) The organization has committed fraud, misrepresentation, or misappropriation related to any grant made available under the terms of a Commission-approved agreement;

(b) In a proceeding before the Commission for which grants were awarded to the organization, the organization has failed to represent the interests of the broad class of customers that the organization purported to represent in its application for precertification;

(c) The organization has failed to comply with Commission orders or rules in a material way;

(d) The intervenor who is signatory to an agreement has violated terms and conditions of the agreement pertaining to the use and disclosure of information required to be provided by utilities under the agreement;

(e) For the Citizens' Utility Board of Oregon (CUB), there has been a substantial change in or repeal of ORS 774.101 through 774.990; or

(f) A precertified organization other than CUB no longer meets the criteria of OAR 860-012-0100(3).

(2) An intervenor that is decertified under paragraph (1)(d) will be ineligible for future precertification or case-certification under the agreement.

(3) Termination of the precertification or case-certification of an intervenor shall be prospective only.

Stat. Auth.: ORS 234, OL 2003  
Stats. Implemented: ORS 234, OL 2003  
Hist.: PUC 1-2004, f. & cert. ef. 1-8-04

**DIVISION 13**

**PLEADINGS AND TARIFF FILINGS**

**860-013-0005**

**Pleadings Enumerated**

Pleadings consist of applications, complaints, petitions, answers, protests, replies, and motions.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040 & 756.500 - 756.575  
Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & cert. 2-21-1996 (Order No. 96-043)

**860-013-0010**

**Applications**

(1) An application is a pleading which applies for any right, power, privilege, or other authority under a statute requiring the filing of an application.

(2) All applications shall be in writing, set forth the applicant's name and business address, state clearly and concisely the authorization or permission sought, cite by appropriate reference the statutory provision or other authority under which the Commissioner's action is sought, and specify such other information as is required by the Commission's rules and regulations under which application is made.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040 & 756.500 - 756.575  
Hist.: Adopted & ef. 3-10-13, (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126,

f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436) Former rule 860-013-0010 Renumbered to 860-013-0050; Renumbered from 860-013-0025; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075)

## 860-013-0015

### Complaints

A complaint is a written pleading filed with or by the Commission requesting or instituting a formal investigation or hearing. Such pleading shall:

- (1) Contain the full name and address of each party complainant and each party defendant;
- (2) Set forth the specific acts complained of in sufficient detail to advise the parties and the Commission of the facts constituting the grounds of complaint and the exact relief requested;
- (3) Cite the applicable statutes or rules alleged to have been violated.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted and ef. 3-10-13, (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-013-0020; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075)

## 860-013-0020

### Petitions

- (1) A petition is a written pleading requesting relief. A petition is not a complaint, answer, reply, application, or motion.
- (2) A petition shall set forth all facts upon which the request for relief is based, a citation of the statutes and rules upon which the petition is based, and other information required by the Commission.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436) Former rule 860-013-0020 Renumbered to 860-013-0015; Renumbered from 860-013-0030; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075)

## 860-013-0025

### Answers

Except as provided in OAR 860-013-0030 and 860-013-0035, any party who desires to respond to a pleading shall make the representations by a written answer as follows:

- (1) The answer to a complaint shall state fully and completely the nature of the defense and shall admit or deny, in detail, all material allegations of the complaint or motion.
- (2) Matters alleged by affirmative defense shall be separately stated and numbered. Any defense which challenges the Commission's jurisdiction over the subject matter of the proceeding may be pleaded as an affirmative defense.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Former rule 860-13-025 was Renumbered to 860-013-0010 by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 103, f. 7-20-61, ef. 7-25-61 (Order No. 37732); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-013-0035; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97

## 860-013-0030

### Protests

A protest is a written pleading addressed to an application under ORS 759.020. Every protest shall:

- (1) Identify the application or petition to which an objection is made; and
- (2) Fully and succinctly state the basis of the objection, that a hearing in the matter is requested, and that the protestant will appear at a hearing and may offer evidence in support of the protest.

Stat. Auth.: ORS 756

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436) Former rule 860-013-0030 Renumbered to 860-013-0020; PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 10-1984, f. & ef. 5-18-84 (Order No. 84-381); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & cert. 2-21-96 (Order No. 96-043)

## 860-013-0031

### Motions

A motion is a request to the Commission or Administrative Law Judge (ALJ) for a ruling or other action which affects the rights of a party to the proceeding. A motion shall be in writing unless made orally at a hearing or prehearing conference if the party against which the motion is directed is present, or when otherwise permitted by the Commission or ALJ.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 12-1999, f. & cert. ef. 11-18-99

## 860-013-0035

### Replies

A reply is a written pleading which responds to a defendant's pleading or other answer. A party replying shall file the reply with the Commission within the time set forth in OAR 860-013-0050. Failure to file a reply within that time shall be deemed a general denial.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 6798); PUC 120, f. 10-26-62, ef. 11-15-62, (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); Former rule 860-13-035, sections (1) thru (3) Renumbered to 860-013-0025 and sections (4) and (5) Renumbered to 860-013-0055 by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-013-0040; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 15-1997, f. & cert. ef. 11-20-97

## 860-013-0036

### Acceptable Filings of Pleadings and Other Documents

(1) Persons must file one original, signed document and any copies required by OAR 860-013-0060.

(2) Except as otherwise provided by rule, persons must supplement any filing by submitting an exact copy of the document in electronic form, as specified in OAR 860-011-0012. This requirement does not apply to:

(a) Any party excused from the obligation by the Commission or Administrative Law Judge (ALJ);

(b) Any filing containing information designated as confidential under a protective order; or

(c) Miscellaneous utility filings, reports, and other documents that do not directly relate to Commission proceedings. A list of these documents is posted on the Commission's website or is available by calling the Commission.

(3) Filings received by the Commission that are incomplete or not in substantial compliance with these rules, the Commission's orders, rulings or memoranda of an ALJ, or statutes will not be accepted for official filing.

(4) Documents required to be filed with the Commission within a specified time but which fail to substantially comply with these rules, the Commission's orders, or statutes may be accepted as conditionally received to satisfy the filing date.

(5) The Commission or ALJ may require the filing of additional information to clarify or explain a filing at any stage of a proceeding, or in ex parte matters. If such information broadens or changes the scope or intent of the filing, the Commission or ALJ will require notice be given to persons affected.

(6) Parties are encouraged, but not required, to provide an electronic copy of all filings in dockets containing the following case designation:

- (a) ADR — Alternative Dispute Resolution;
  - (b) AP — Oregon Telephone Assistance Program (OTAP) Denial of Benefits;
  - (c) NC — Utility Notification Center Complaints;
  - (d) TT — Telecommunication Devices Assistance Program (TDAP) Equipment Abuse;
  - (e) UNC — Utility Notification Rulemaking;
  - (f) UCR — Customer Complaint — Residential;
  - (g) UCB — Customer Complaint — Business;
  - (h) UW — Water;
  - (i) WA — Water Territory Allocation.
- Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040 & 756.500 - 756.575  
Hist.: PUC 18-2004, f. & cert. ef. 12-30-04

**860-013-0037**

**Filing Dates for Pleadings or Other Documents**

(1) Pleadings or other documents shall be filed by mail, personal delivery, or any other reasonable means of delivery at the address listed in OAR 860-011-0010(1). Except as modified by statute or by these rules, a document is filed on the date received by the Commission at Salem, Oregon, between the hours of 8 a.m. and 5 p.m. Pacific Time.

(2) If the prescribed filing date falls on a Saturday, Sunday, legal holiday, as defined in ORS 187.010, or when the Commission's office is closed pursuant to a Department of Administrative Services directive, the next business day following is the date of filing.

(3) A telephonic facsimile or electronic copy of a document will be accepted for filing if the original signed document is deposited in the mail and addressed to the Commission, with proof of service as required by OAR 860-013-0070 on the date the facsimile or electronic copy is received. The complete facsimile or electronic copy must be received by the Commission by 5 p.m. Pacific Time on the filing deadline.

(4) Conditionally received filings may not be officially filed until approved as being in substantial compliance with these rules, the Commission's orders, and statutes. Conditionally received filings will be rejected unless brought into compliance within the time granted by the Commission.

(5) The Commission must provide the filer the reason for rejecting or conditionally accepting a filing.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18-2004, f. & cert. ef. 12-30-04

**860-013-0050**

**Time for Answer, Reply, or Motion**

(1) Unless otherwise specified or directed by the Commission or Administrative Law Judge, answers shall be filed as follows:

(a) An answer to a complaint, application, or petition shall be filed within 20 days after service.

(b) An answer to a complaint under OAR 860-021-0015 shall be filed within 15 days after service.

(c) An answer to a petition to intervene shall be filed within 10 days after service.

(2) A reply to a responsive pleading shall be filed within 15 days of service of the pleading against which the reply is directed.

(3) Motions shall be filed as follows:

(a) A motion against a complaint, application, or petition shall be filed within 20 days of service.

(b) A motion against an answer or protest shall be filed within 15 days of service.

(c) A motion against a reply shall be filed within ten days of service.

(d) Unless otherwise specified by these rules or the Administrative Law Judge, a written response to a motion shall be filed within 15 days of service of the motion.

(4) Objections to the Commission's jurisdiction or that a pleading does not state facts sufficient to constitute grounds for relief are never waived.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Former rule 860-13-050: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); Former rule 860-13-055 was Renumbered to 860-013-0040 and repealed by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-013-0010; PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 4-2002, f. & cert. ef. 2-8-02

**860-013-0055**

**Default Upon Failure to Plead**

(1) If a party fails to plead or otherwise appear within the time specified in OAR 860-013-0050, the party shall be in default. All material allegations of the complaint shall be deemed admitted and hearing waived. The proceeding may be disposed of without further notice to the defaulting party.

(2) A defaulted party may file a motion to set aside a final order of default as follows:

(a) A motion to set aside a final order upon default must be filed within 60 days from the date of service of the order. The motion must

be served as provided in OAR 860-013-0070. The Commission may grant the motion if the moving party shows the default resulted from mistake, inadvertence, surprise, excusable neglect, or other good cause.

(b) A motion made under this rule must be accompanied by a pleading or motion which contains an assertion of a claim or a defense.

(c) The filing of a motion under this rule does not excuse the defaulted party from complying with the order nor is the enforcement of the order stayed or postponed, except upon Commission order.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 103, f. 7-20-61, ef. 7-25-61 (Order No. 37732); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-013-0035(4) and (5); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97

**860-013-0060**

**Copies of Filings Required**

In addition to supplemental electronic copies required by rule, the following pleadings and other documents must be filed with the specified number of paper copies.

(1) General rate revisions filed pursuant to OAR 860-013-0075:

(a) Utility initial filing: 20 copies;

(b) Work papers: 3 copies;

(2) Testimony filed pursuant to OAR 860-014-0060: 5 copies;

(3) Briefs filed pursuant to OAR 860-014-0090: 5 copies;

(4) Applications for Allocation of Territory filed pursuant to OAR 860-025-0000 to 860-025-0050, 860-034-0440 to 860-034-0495; or 860-036-0900 to 860-036-0925: 3 copies;

(5) Financing applications filed pursuant to OAR 860-027-0020 to 860-027-0035, 860-036-0715 to 860-036-0725, or 860-037-0515 to 860-037-0525: 3 copies; and

(6) Affiliated interest applications filed pursuant to OAR 860-027-0040 to 860-027-0044, 860-036-0730 to 860-036-0738, or 860-037-0530 to 860-037-0545: 3 copies.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 103, f. 7-20-61, ef. 7-25-61 (Order No. 37732); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 18-2004, f. & cert. ef. 12-30-04

**860-013-0065**

**Signature Required**

(1) Every pleading must be signed by the filer, the filer's attorney, or authorized representative.

(2) By signing the pleading, the signatory makes the certification set forth in ORCP 17C.

(3) For electronic filings, a filer may use any identifier that is executed or adopted by the person using it with the intent to authenticate a writing.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Former rule 860-013-0065 Renumbered to 860-013-0070; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075) Renumbered from 860-013-0070; PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 18-2004, f. & cert. ef. 12-30-04

**860-013-0070**

**Service by Parties**

(1) Parties must serve copies of all filed documents, including correspondence with the Commission or Administrative Law Judge (ALJ), pleadings, testimony, exhibits, memoranda of law, and briefs on all persons designated on the official service list. The official service list for each proceeding is posted on the Commission's website or is available by calling the Commission. Unless a party waives other forms of service under section (4) of this rule, a party is limited to two persons on the service list.

(2) Unless waived pursuant to section (4) of this rule, parties must serve those documents in person, by mail, or by any other reasonable means of delivery. Service is complete when the documents are delivered.

ered in person, deposited in the mail, or as otherwise allowed by the Commission or ALJ. Unless otherwise specified by the Commission or ALJ, required filing dates are in-hand dates. A telephonic facsimile or electronic copy of a document will satisfy an in-hand filing date if paper copies are deposited in the mail and addressed to the other parties on the date the facsimile or electronic copy is sent.

(3) When a party has appeared by attorney or other duly authorized representative, service upon the attorney or representative is valid service upon the party.

(4) A party may serve documents by electronic mail on parties that have waived other forms of service. The filing of a written waiver excuses the other parties and the Commission from the obligation to use methods of service specified in section (1) of this rule or in statute. Service by electronic mail is complete when the electronic message leaves the sender's electronic mail server. Parties effecting service by electronic mail are encouraged to secure electronic return receipts or otherwise confirm successful delivery.

(5) The original of all filed documents, including those listed in section (1) of this rule, must include an acknowledgement of service or a certificate in substantially the form shown as follows: [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted by order entered & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55 ef. 9-1-54 (Order No. 33203); PUC 103, f. 7-20-61, ef. 7-25-61 (Order No. 37732); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 47783); Former rule 860-13-070 was Renumbered to 860-013-0065 by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-130-0065; PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-013-0071

### Service of Complaints, Orders, and Rulings by the Commission

The Commission must serve upon all parties all complaints in which the Commission is the complainant, all formal consumer complaints filed pursuant to OAR 860-021-0015(5), all proposed orders, final orders, Administrative Law Judges' rulings and memoranda, and all other documents issued by the Commission or Administrative Law Judge in a docketed proceeding. Service must be made by mail or any other reasonable means of delivery to the addresses appearing in the Commission's records.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55 ef. 9-1-54 (Order No. 33203); PUC 103, f. 7-20-61, ef. 7-25-61 (Order No. 37732); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 47783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-013-0065; PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-013-0070(1); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-013-0075

### General Rate Revisions

(1) Unless waived by the Commission or Administrative Law Judge (ALJ) for good cause, any utility filing new or revised tariff schedules that constitute a general rate revision must include supporting testimony and exhibits, work papers, and trial briefs. A general rate revision is a filing by a utility that affects all or most of the utility's rate schedules. The term "general rate revision" does not include rate changes set forth in OAR 860-022-0017(1).

(a) As used in this rule, work papers consist of those documents that show the source, calculations, and details supporting the testimony and other exhibits submitted. When, subsequent to the initial filing made by the utility, a party files testimony and exhibits, it must at the same time provide a copy of its work papers to any other party that has requested a copy. Both the utility and any party must provide electronic copies of workpapers, if available.

(b) The trial brief must contain an exhibit showing in summary form the following information:

(A) The dollar amount of total revenues that would be collected under the proposed rates;

(B) The dollar amount of revenue change requested, total revenues, and revenues net of any credits from federal agencies;

(C) The percentage change in revenues requested, total revenues, and revenues net of any credits from federal agencies;

(D) The test period;

(E) The requested return on capital and return on equity;

(F) The rate base proposed in the filing;

(G) The results of operations before and after the proposed rate change; and

(H) The proposed effect of the rate change on each class of customers.

(2) The Commission or ALJ may require participants appearing in any proceeding to file testimony or other documents by a specific time.

(3) Telecommunications utilities partially exempt from regulation under ORS 759.040 must file tariffs in the manner specified in OAR 860-034-0300.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 3-2002, f. & cert. ef. 2-5-02; PUC 18-2004, f. & cert. ef. 12-30-04

## DIVISION 14

### HEARINGS AND PROCEEDINGS

## 860-014-0005

### Notice

The Commission or Administrative Law Judge must set the time and place for hearings. Notice of a hearing must be served on all parties at least ten days before the hearing date. For good cause, the Commission may require a hearing to be held on less than ten days' notice.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 103, f. 7-20-61, ef. 7-25-61 (Order No. 37732); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-014-0010

### Postponements and Continuances of Hearings

(1) Any party may request a postponement of a hearing. The party must provide the reasons why the postponement is necessary. The Commission or Administrative Law Judge (ALJ) may require oral requests for postponement of a hearing to be confirmed in writing.

(2) The Commission or ALJ may grant a postponement of a hearing and may, at any time, order a postponement on his/her own motion.

(3) The Commission or ALJ may continue a hearing or conference to receive additional evidence or argument. Additional notice of a continued hearing involving the same issue need only be provided to parties attending the initial hearing and other parties who have requested continuing notice.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-014-0020

### Conferences

(1) The Commission or Administrative Law Judge may schedule conferences to:

(a) Establish a procedural schedule, including dates for discovery, testimony, and exhibits;

(b) Identify, simplify, and clarify issues;

(c) Eliminate irrelevant or immaterial issues;

(d) Obtain stipulations, authenticate documents, admit documents into evidence, adopt witness schedules, cross-examination schedules, and decide the order of proof;

(e) Consider other matters which may expedite the orderly conduct and disposition of the proceeding.

(2) All discovery procedures provided in these rules may be applied to aid in the conference.

(3) The record shall reflect the results of any conferences, which shall be binding on all parties.

(4) Unaccepted proposals at conference shall be privileged and shall not be admissible in evidence in the proceeding.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 12-1999, f. & cert. ef. 11-18-99

#### 860-014-0023

##### Major Proceeding

(1) For purposes of ORS 756.518(2), a “major proceeding” is a proceeding that has, or is expected to have, a full procedural schedule with written testimony or written comments and that:

(a) Has a substantial impact on utility rates or service quality for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines; or

(b) Has a significant impact on utility customers or the operations of a regulated utility for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines.

(2) A party in a proceeding that does not meet the criteria in section (1) of this rule may petition the Administrative Law Judge (ALJ) for major case status if the case:

(a) Is likely to result in a significant change in regulatory policy; or

(b) Raises novel questions of fact or law.

(3) When a docket is opened, any party may file a motion with the ALJ requesting that the case be classified as a major proceeding.

(a) The motion must:

(A) Set out with specificity how the case qualifies as a major proceeding under the criteria listed in section (1) of this rule; or

(B) Argue how the case qualifies as a major proceeding under section (2) of this rule.

(b) Answers to the motion are due within ten days of filing.

(c) The ALJ must rule on the motion within 15 days of filing.

(4) If a case is classified as a major proceeding, parties must schedule a date for oral argument before the Commission at the pre-hearing conference or as soon thereafter as possible.

(5) Any party to a case may present argument before the Commission if the case is defined as a major proceeding.

(6) The ALJ must determine the length of each party’s presentation to the Commission, the right of any party to rebuttal of any other party’s presentation, and the order of presentation.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 19-2002(Temp), f. & cert. ef. 12-6-02 thru 6-4-03; PUC 3-2003, f. & cert. ef. 3-11-03; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-014-0025

##### Consolidation of Proceedings

Proceedings may be consolidated for hearing at the discretion of the Commission or Administrative Law Judge.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-76, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 12-1999, f. & cert. ef. 11-18-99

#### 860-014-0030

##### Appearances

(1) Parties shall enter appearances at the hearing by giving their names and addresses in writing to the reporter or Administrative Law Judge (ALJ).

(2) The Commission or ALJ may require appearances to be stated orally so that the identity and interest of all parties present will be known to those at the hearing.

(3) Parties withdrawing from a proceeding shall immediately notify the Commission or ALJ and all parties to the proceeding.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 12-1999, f. & cert. ef. 11-18-99

#### 860-014-0032

##### Failure to Appear

If a party fails to appear at a conference or hearing, the party waives its right to participate in the proceeding. Upon motion by any party, or upon the Commission’s own motion, the Commission may enter an order dismissing the party from the proceeding. Such order shall be served on the party dismissed. Unless allowed by the Commission or Administrative Law Judge (ALJ), the party may not reopen any matter determined at the conference or hearing or recall for further examination witnesses then available and excused. If the Commission or ALJ finds there was good cause for the party’s failure to appear, or the interests of other parties or the public would be prejudiced, the Commission or ALJ may reinstate the party or permit the matter to be reopened, heard, and considered.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 12-1999, f. & cert. ef. 11-18-99

#### 860-014-0035

##### Order of Procedure

(1) Unless modified by the Commission or Administrative Law Judge (ALJ), parties shall present evidence in the following order:

(a) Formal complaints: Complainant; defendant; Commission’s staff in proceedings in which the Commission is not the complainant; participants; and rebuttal by complainant;

(b) Investigation and suspension proceedings: Respondent; Commission’s staff; protestants against suspended schedules; other participants; and rebuttal by respondent;

(c) Applications and petitions: Applicant or petitioner; protestants; participants; Commission’s staff; and rebuttal by applicant or petitioner;

(2) In hearings where several proceedings are heard on a consolidated record, the Commission or ALJ shall designate the order of procedure.

Stat. Auth.: ORS 756

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 12-1999, f. & cert. ef. 11-18-99

#### 860-014-0040

##### Subpoenas

(1) A subpoena may be issued by an attorney of record of a party and subscribed by the signature of the attorney.

(2) Parties not represented by an attorney shall submit, in writing to the Commission or Administrative Law Judge (ALJ), requests for the issuance of subpoenas. The request shall set forth the general relevance and reasonable scope of the testimonial, documentary, or physical evidence sought.

(3) Requests for subpoenas duces tecum shall specify the particular document or part of a document to be produced.

(4) Parties shall serve subpoenas as provided in the circuit courts of the State of Oregon under the Oregon Rules of Civil Procedure. Parties shall return the originals to the Commission or ALJ.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.543, 756.500 - 756.575, 757 & 759

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 12-1999, f. & cert. ef. 11-18-99

#### 860-014-0045

##### Evidence

(1) Relevant evidence:

(a) Means evidence tending to make the existence of any fact at issue in the proceeding more or less probable than it would be without the evidence;

(b) Is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and

(c) May be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by undue delay.

(2) Parties objecting to the introduction of evidence shall state the grounds for objection at the time the evidence is offered.

(3) When objection is made to the admissibility of evidence, the Commission or Administrative Law Judge (ALJ) may have the evidence recorded and reserve ruling until a later time.

(4) When a party takes exception to a ruling excluding certain evidence, the Commission or ALJ may require the party to make an offer of proof by stating what the evidence would indicate if received. Alternatively, the Commission or ALJ may permit the excluded evidence to be received in like manner as other evidence, but it shall be marked and designated as evidence offered, excluded, and to which exception has been taken.

(5) No admission or offer of settlement made during compromise negotiations, including a settlement conference under these rules, shall be admissible in evidence against the party making the admission or offer in any formal hearing before the Commission. Independently ascertainable facts disclosed during compromise negotiations may be proved in any subsequent hearing.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-012-0030; PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99

## 860-014-0050

### Official Notice

(1) The Commission or Administrative Law Judge (ALJ) may take official notice of the following matters:

(a) All matters of which the courts of the State of Oregon take judicial notice;

(b) Rules, regulations, administrative rulings and reports of the Commission and other governmental agencies;

(c) Orders of the Commission;

(d) Permits, certificates, and licenses issued by the Commission;

(e) Documents and records in the files of the Commission which have been made a part of the file in the regular course of performing the Commission's duties;

(f) General, technical or scientific facts within the specialized knowledge of the agency;

(g) The results of the Commission's or ALJ's own inspection of the physical conditions involved after notice to the parties.

(2) The Commission or the ALJ shall notify the parties when official notice is taken. The notice may be given on the record during the hearing or in findings of fact in a proposed or final order. A party may object to the fact noticed within 15 days of that notification. The objecting party may explain or rebut the noticed fact.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 12-1999, f. & cert. ef. 11-18-99

## 860-014-0055

### Resolutions

(1) Properly authenticated resolutions of governing bodies of government, business, agricultural or civic organizations shall be received in evidence if offered at the hearing by the president, secretary, or other person authorized to offer the resolution.

(2) Parties may rebut the authenticity of the resolution or the circumstances surrounding its procurement.

(3) Recitals of fact contained in resolutions are not proof of the facts. The Commission or Administrative Law Judge may receive a resolution for the limited purpose of showing the expression of the

official action of the resolving body with respect to the matter under consideration in the proceeding.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 12-1999, f. & cert. ef. 11-18-99

## 860-014-0060

### Testimony and Exhibits

(1) When testimony or exhibits are offered in evidence, copies must be furnished to each party, the Commission and Administrative Law Judge (ALJ). When practicable, the parties must distribute copies of exhibits before or at the commencement of the hearing.

(2) When relevant evidence offered by a party is included in a book, paper, or document containing irrelevant material, the party offering the exhibit must plainly designate the matter offered:

(a) If irrelevant material is included in the exhibit that would encumber the record, the exhibit may not be received in evidence. The exhibit may be marked for identification, and, if properly authenticated, the relevant matter may be read into the record;

(b) If the Commission or ALJ directs, a copy of the relevant portions of the exhibit may be received as evidence. The offering party must offer copies of the document to all other parties appearing at the hearing. The parties must be afforded an opportunity to examine the exhibit and to offer in evidence other portions of the exhibit found to be relevant.

(3) Papers and documents on file with the Commission may be introduced by reference to number, date, or by any other method of identification satisfactory to the Commission or ALJ.

(4)(a) The Commission or ALJ may direct that the testimony of any witness, including supporting exhibits, be submitted in writing prior to hearing. Unless otherwise directed by the Commission or ALJ, such testimony, when sworn to orally or in writing by the witness under oath to be true, will be received in the same manner as an exhibit;

(b) The written testimony must be double spaced, prepared in question and answer or narrative form, and contain a statement of the qualifications of the witness. The written testimony is subject to rules of admissibility and cross-examination. Unless otherwise directed by the ALJ, all written testimony and exhibits must be paginated in the top right corner as follows: Party/Exhibit Number: Witness/Page Number:

(c) The Commission or ALJ may direct that demonstrative evidence be reduced to a diagram, map, photograph, or similar representation.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-014-0065

### Depositions

(1) The testimony of any witness may be taken by deposition at any time before the hearing is closed.

(2) A party proposing to take a deposition must notify in writing every other party. Unless notice is waived, a party must provide ten days' notice to the parties of a deposition to be taken within the state and 15 days' notice for a deposition to be taken elsewhere. The notice must state the witness's name and address, the subject matter on which the witness is expected to testify, the time and place of taking the deposition, the name and address of the officer before whom the deposition is to be taken, and the reason why the deposition is to be taken. Other parties in the proceeding may make any appropriate response to the notice of deposition.

(3) A party may take a deposition before a person designated in the notice or agreed upon by the parties. The Commission or Administrative Law Judge (ALJ) may impose such conditions on the taking of the deposition as may be necessary to ensure fairness in the proceeding.

(4) Every person whose testimony is taken by deposition must swear or affirm concerning the matter about which s/he will testify. The testimony must be transcribed. The person before whom the deposition was taken must certify, under oath on the transcript, that the witness was sworn in the reporter's or transcriber's presence, and the transcript is a true record of the testimony or a correct transcription of the recording.

(5) A party may examine a deponent on any matter not privileged which appears reasonably calculated to lead to the discovery of evidence relevant to the issues involved in the pending proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts.

(6) Unless received in evidence by the Commission or ALJ, no portion of a deposition may constitute a part of the record in the proceeding. A party may object at the hearing in the proceeding to receiving in evidence any portion of the deposition. Upon request, the party examining the deponent must provide the Commission or ALJ a transcribed copy of any deposition taken in the proceeding.

(7) The party requesting the deposition must pay the deponents and the person taking the deposition the same fees as are paid for like services in the courts of record of the state in which the deposition is taken.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Former OAR 860-14-065 was renumbered to 860-14-075 by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 4-2002, f. & cert. ef. 2-8-02; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-014-0070

### Data Requests

(1) Subject to limitations imposed by the Commission or Administrative Law Judge (ALJ), the Commission, ALJ, or any party may submit data requests to any party. Data requests are written interrogatories or requests for production of documents. The data requests must be answered within ten Commission business days from the date of service. Each data request must be answered fully and separately in writing or by production of documents, unless objected to, in which event the objection will be written in lieu of answer.

(2) A party submitting a data request must serve the request on all parties to the proceeding. The party answering the data request need only file a response to the submitting party, unless another party files a written request for a copy of a specific response. A party may not file a blanket request to receive copies of responses to all data request.

(3) If the party to whom the data requests are directed refuses to answer or objects to any data request, a party may file a motion seeking to compel an answer or impose sanctions for refusal to answer. Any motion regarding disputed data requests submitted to the Commission or ALJ, whether by motion or otherwise, must contain a certification that the parties have conferred and been unable to resolve the dispute. The certification may be included in the body of the motion. Any motion that does not contain this certification will be denied.

(4) Any party may offer into evidence data requests and the answers to the data requests. Any objection to substance or form of any data requests or answers must be attached to the submitted data requests with specific reference and grounds. The Commission or ALJ must rule on objections before receiving the submitted data requests in evidence. Every remedy available to a party using deposition procedures must be available to a party using data requests.

(5) Parties should not file data requests or responses to data requests with the Commission or ALJ, except when requested by the Commission or ALJ or when seeking resolution of a discovery dispute under these rules.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Former OAR 860-14-070 was Renumbered to 860-014-0080 by PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 13-1995, f. & cert. ef. 12-12-95 (Order No. 95-1284); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 4-2002, f. & cert. ef. 2-8-02; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-014-0080

### Records in Other Proceedings

If a portion of the record of any other proceeding before the Commission is offered in evidence, a copy of the portion shall be presented for the record and a copy furnished to each party to the proceeding.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436) 860-014-0080 Renumbered to 860-014-0090; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075) Renumbered from 860-014-0070; PUC 12-1999, f. & cert. ef. 11-18-99

## 860-014-0085

### Voluntary Settlements; Stipulation to Facts

(1) In all Commission proceedings, some or all of the parties may enter into a voluntary settlement of issues, or enter into a stipulation upon any matter in controversy, at any time during the proceeding. Any such agreement shall be subject to sections (2) through (6) of this rule.

(2) Any party may attend any settlement conference in which the Commission staff participates. A settlement conference is any meeting called for the purpose of discussing resolution of issues in a proceeding. Examples of communications not constituting settlement conferences for purposes of this rule include, but are not limited to communications primarily for the purpose of discovery, and communications occurring prior to initiation of docketed proceedings.

(3) All parties to a proceeding shall be provided reasonable prior notice by Commission staff of any settlement conference in which staff intends to participate. The notice shall include the time and place of the settlement conference, the party or parties involved, and the issue(s) to be discussed. Once notice has been given by staff of a settlement conference involving a particular issue, additional notice of continuing settlement conferences involving the same issue need only be provided to parties attending the initial conference, or who have requested continuing notice.

(4) A stipulation or settlement shall not be binding on the Commission or Administrative Law Judge (ALJ). Settlements and stipulations shall be reduced to writing, served on the parties to the case, and filed for review by the Commission or the ALJ. Unless waived by the Commission or ALJ, settlements and stipulations filed for review shall be supported by an explanatory brief or written testimony filed and served concurrently therewith. Parties may present oral or written stipulations on the record at the hearing or other appropriate time with leave of the Commission or ALJ.

(5) Within 20 days of the filing of the settlement or stipulation, any party may file written objections to the settlement or stipulation or request a hearing. Upon request or its own motion, the Commission or ALJ may set another time period for objections and request for hearing. Objections may be on the merits or based upon failure of staff or a party to comply with this rule. The Commission or ALJ may hold a hearing to receive testimony and evidence regarding the settlement or stipulation. The Commission or ALJ may require evidence of any facts stipulated, notwithstanding the stipulation of the parties. The parties shall be afforded notice and an opportunity to submit proof, if such evidence is requested.

(6) If a stipulation is rejected, the Commission or ALJ shall provide the parties sufficient opportunity on the record to present evidence and argument on the matters contained in the settlement or stipulation. No further hearing need be held where a review hearing has already been held under section (5) of this rule and the Commission or ALJ determines that the issues were fully addressed in the prior hearing.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436) 860-014-0085 Renumbered to 860-014-0095; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075) Renumbered from 860-014-0075; PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127) Renumbered from 860-012-0030; PUC 12-1999, f. & cert. ef. 11-18-99

## 860-014-0090

### Briefs and Oral Arguments

(1) Parties may file briefs in any proceeding. The Commission or Administrative Law Judge (ALJ) may require a party to file a brief.

(2) The Commission or ALJ may require the parties to present their arguments and authority orally at the close of the hearing instead of by written brief.

Stat. Auth.: ORS 183, 756, 757 & 759  
 Stats. Implemented: ORS 756.040 & 756.500 - 756.575  
 Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 126, f. 2-5-64, ef. 3-1-64 (Order No. 39889); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-014-0080; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-014-0091

##### Appeals to the Commission from Rulings of Administrative Law Judges

(1) A ruling of the Administrative Law Judge (ALJ) may not be appealed during the proceeding except where the ALJ certifies the question to the Commission pursuant to OAR 860-012-0035(1)(i), upon a finding that the ruling:

(a) May result in substantial detriment to the public interest or undue prejudice to any party; or

(b) Denies or terminates any person's participation.

(2) A request for certification of a ruling of the ALJ must be filed within ten days of the date of service of the ruling, or the date of the oral ruling.

Stat. Auth.: ORS 183, 756, 757 & 759  
 Stats. Implemented: ORS 756.040 & 756.500 - 756.575  
 Hist.: PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 12-1999, f. & cert. ef. 11-18-99

#### 860-014-0092

##### Proposed Order

(1) After a contested case hearing, the Administrative Law Judge may issue a proposed order.

(2) The Commission's staff and parties to the proceeding may file exceptions to a proposed order and a reply to the exceptions.

(3) The exceptions, if taken, must be:

(a) Confined to factual and legal issues that are essential to the ultimate and just determination of the proceeding and must be based on grounds that:

(A) A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence of record;

(B) A necessary legal conclusion is omitted or is contrary to law or the Commission's policy; or

(C) Prejudicial procedural error occurred.

(b) Numbered and specify the disputed findings, opinions, or conclusions. Supporting citations to the record and authorities must be provided. The nature of the suggested error must be specified and alternative or corrective language provided.

(c) Filed on or before the 15th day after the service date of the proposed order.

(4) A reply to the exceptions, if made, must be filed on or before the tenth day after the exceptions are due.

(5) The Commission may modify the proposed order, reject it, prepare a different order, or adopt the proposed order.

Stat. Auth.: ORS 183, 756, 757 & 759  
 Stats. Implemented: ORS 756.040 & 756.500 - 756.575  
 Hist.: PUC 8-1980, f. & ef. 12-11-80; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-014-0093

##### Extension of Date to Comply with Rules and Orders

(1) Within 60 days of the date of service of an order or an adoption of a rule, parties may file petitions for extension of an effective date or of time to comply with a rule or an order of the Commission.

(2) Petitions shall set forth specifically the reasons for the requested extensions.

Stat. Auth.: ORS 183, 756, 757 & 759  
 Stats. Implemented: ORS 756.040 & 756.500 - 756.575  
 Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 15-1997, f. & cert. ef. 11-20-97

#### 860-014-0094

##### Notice of Acceptance of Terms of Orders

The Commission may require any utility affected by any order to notify the Commission within a specified time whether the terms of the order are accepted and the time within which the order will be obeyed.

Stat. Auth.: ORS 183, 756, 757 & 759  
 Stats. Implemented: ORS 756.040 & 756.500 - 756.575  
 Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 15-1997, f. & cert. ef. 11-20-97

#### 860-014-0095

##### Rehearing or Reconsideration

(1) Within 60 days from the date of service of an order entered by the Commission, a party may file an application for rehearing or reconsideration of such order as provided by ORS 756.561. The application shall set forth all grounds for rehearing or reconsideration.

(2) The application shall specify:

(a) The portion of the challenged order which the applicant contends is erroneous or incomplete;

(b) The portion of the record, laws, rules, or policy of the Commission relied upon to support the application;

(c) The change in the order which the Commission is requested to make;

(d) How the applicant's requested changes in the order will alter the outcome; and

(e) One or more of the grounds for rehearing or reconsideration set forth under section (3) of this rule.

(3) The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:

(a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;

(b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;

(c) An error of law or fact in the order which is essential to the decision; or

(d) Good cause for further examination of a matter essential to the decision.

(4) Within 15 days from the date the application is filed, any party may file a reply setting forth its position on the application.

(5) Unless ordered by the Commission under OAR 860-014-0093, an order granting an application for rehearing or reconsideration shall not stay or postpone compliance with the original order.

(6) The application is deemed denied if, by the sixtieth day after filing, the Commission has not issued an order granting the application. If the application is granted, the Commission may adhere to, modify, or rescind its prior order or take such other action as it may deem appropriate.

Stat. Auth.: ORS 183, 756, 757 & 759  
 Stats. Implemented: ORS 756.040 & 756.500 - 756.575  
 Hist.: Adopted & ef. 3-10-13 (not filed with Secretary of State); PUC 1, f. & ef. 8-16-39 (Order No. 6798); PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 155, f. 7-3-73, ef. 7-15-73 (Order No. 73-436); Renumbered from 860-014-0085; PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 15-1990, f. & cert. ef. 8-17-90 (Order No. 90-1159); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); PUC 15-1997, f. & cert. ef. 11-20-97

## DIVISION 16

### MEDIATION AND ARBITRATION UNDER THE 1996 TELECOMMUNICATIONS ACT

#### 860-016-0000

##### Definitions

As used in division 016 of the rules:

(1) "The Act" means the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996.

(2) "Arbitration" means the submission of a dispute for resolution by a neutral third party appointed by the Commission pursuant to Section 252(b) of the Act.

(3) "Commission" means the Public Utility Commission of Oregon.

(4) "Mediation" means a process in which a neutral third party assists negotiating parties to reach their own solution pursuant to Section 252(a)(2) of the Act.

(5) "Petitioner" means a person who has filed a petition for arbitration under the Act.

(6) "Respondent" means the party to a negotiation, which did not make the request for arbitration.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 25-2001, f. & cert. ef. 11-5-01; PUC 6-2002, f. & cert. ef. 2-13-02

## 860-016-0010

### Commission Policy

The policy of the Public Utility Commission of Oregon relating to mediation and arbitration under the Act is to facilitate the execution of interconnection agreements among telecommunications carriers. The Commission encourages and will assist parties to reach agreement on access to the telecommunications network, as well as the routing of and payment for interconnected calls. When the parties do not reach agreement among themselves, the Commission will arbitrate disputes so that interconnection agreements will be fair and will comply with the provisions of the Act.

Stat. Auth.: ORS 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98

## 860-016-0015

### Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not the documents are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6) through (10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials, or employees and officials, unless a formal grievance under a labor contract, a tort claim notice, or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the administrative law judge in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rules, or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial, or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) and (d), (j) through (l), or (o) and (p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8) and (9) of this rule, mediation communications are confidential and may not be disclosed to any other person; are not admissible in any subsequent administrative, judicial, or arbitration proceeding; and may not be disclosed during testimony in or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondisclosable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

#### Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondisclosable and inadmissible to the extent authorized by OAR 860-016-0015(7) and this agreement. This agreement relates to the following mediation:

a) \_\_\_\_\_

(Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 860-016-0015(7), mediation communications in this mediation are: (check one or more)

\_\_\_ confidential and may not be disclosed to any other person.

\_\_\_ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding.

\_\_\_ not admissible in any subsequent administrative, judicial, or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial, or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial, or arbitration proceeding.

c) \_\_\_\_\_

Name of Agency \_\_\_\_\_

Date \_\_\_\_\_

Signature of Agency's authorized representative (when agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)

d) \_\_\_\_\_

Name of party to the mediation \_\_\_\_\_

Date \_\_\_\_\_

Signature of party's authorized representative \_\_\_\_\_

e) \_\_\_\_\_

Name of party to the mediation \_\_\_\_\_

Date \_\_\_\_\_

Signature of party's authorized representative \_\_\_\_\_

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents, and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation, are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged, or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that

person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify, or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial, or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial, or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Commission determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except

to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402, or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training, or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to the mediator and all parties to the mediation a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232 & 756.060

Hist.: PUC 10-2003, f. & cert. ef. 6-10-03

## 860-016-0020

### Agreements Arrived at Through Negotiation

(1) Upon receiving a request for interconnection, services, or network elements pursuant to Section 251 of the Act, the affected telecommunications carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier.

(2) The negotiating parties may ask a mediator outside the Commission to help them reach agreement. If they request the Commission to mediate, the Commission will use an Administrative Law Judge (ALJ) or a member of the utility Staff to mediate. Only the negotiating parties and the mediator will participate in mediation sessions.

(3) After the parties reach agreement under Section 252(a) of the Act, they must file an application with the Commission seeking approval of the agreement, or for approval of an amendment to an approved agreement on file with the Commission. The application must include an original plus two copies of the negotiated agreement and a completed Carrier-to-Carrier Agreement Checklist. A copy of the checklist is available on the Commission's website. The parties may also include any other supporting information with their application.

(4) The negotiating parties must supplement the filing with an exact copy of the negotiated agreement and checklist in electronic form as required in OAR 860-013-0036.

(5) The Commission will approve or reject the agreement within 90 days of filing, with written findings as to any deficiencies. Prior to rejecting the agreement, the Commission will notify the negotiating parties of its intended action and provide an opportunity for the carriers to respond. The grounds for rejection are that the agreement:

(a) Discriminates against a carrier not a party to the agreement; or

(b) Is not consistent with the public interest, convenience, and necessity. Applicable Commission policies will be a factor in public interest, convenience, and necessity determinations.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 25-2001, f. & cert. ef. 11-5-01; PUC 6-2002, f. & cert. ef. 2-13-02; PUC 12-2004(Temp), f. & cert. ef. 8-31-04 thru 2-26-05; PUC 2-2005, f. & cert. ef. 2-11-05; PUC 11-2006, f. & cert. ef. 12-15-06

## 860-016-0021

### Wholesale Promotions

(1) A carrier intending to offer a wholesale promotion that would modify the terms of a Carrier-to-Carrier Agreement must provide the Commission and other telecommunications carriers notice of the promotion at least 30 days prior to the effective date of the promotion. The notice to the Commission must include:

(a) A copy of a form contract, containing the terms and conditions of the promotional offering that would be submitted as an amendment to an existing Carrier-to-Carrier Agreement; and

(b) A description of the means used to notify other telecommunications carriers of the promotion.

(2) The offering carrier must file with the Commission an original plus two copies of the form contract. With the filing, the offering carrier must include a completed Carrier-to-Carrier Agreement Checklist, a copy of which is available on the Commission's Internet website. The carrier must supplement the filing with an exact copy of the contract and checklist in electronic form as required in OAR 860-013-0036.

(3) The Commission will approve the form contract unless it finds that the contract, if filed as an amendment to an interconnection agreement, would be subject to rejection under OAR 860-016-0020(5).

(4) If another carrier accepts the promotional offering, the offering and accepting carriers must file, within ten days of execution by the parties, an amendment to an existing Carrier-to-Carrier Agreement incorporating the exact terms and conditions of the approved amendment in the form contract. Any such filed amendment will be deemed effective upon the later of the Commission approval of the form contract or execution of the amendment by the parties.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 12-2004(Temp), f. & cert. ef. 8-31-04 thru 2-26-05; PUC 2-2005, f. & cert. ef. 2-11-05; PUC 11-2006, f. & cert. ef. 12-15-06

#### 860-016-0025

##### Adoption of Previously Approved Agreement or Statement of Generally Available Terms

(1) If a requesting telecommunications carrier decides to adopt an identical agreement or an identical individual arrangement contained in an agreement, pursuant to Section 252(i) of the Act and 47 CFR Section 51.809, with the exception of the adopting party's name and new effective date, previously approved by and on file with the Commission, or a Statement of Generally Available Terms approved by the Commission under OAR 860-016-0040, it shall file notice of the adoption with the Commission. The notice shall include a completed Carrier-to-Carrier Agreement Checklist.

(2) The requesting carrier shall also submit a copy of the checklist in electronic format compatible with Adobe Acrobat Reader or Rich Text Format.

(3) If the notice is filed jointly with the affected telecommunications carrier, the adoption shall become effective on the date filed.

(4) If the notice is filed unilaterally by the requesting telecommunications carrier, the requesting telecommunications carrier shall simultaneously provide notice of the adoption to the affected carrier. The affected carrier may then file objections to the adoption within 21 calendar days of such notice. If no objections are filed, the adoption shall become effective on the 22nd day after filing.

(5) An affected carrier may object to an adoption on the following grounds:

(a) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement;

(b) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible;

(c) There is new federal or state law that requires modification of the agreement proposed to be adopted;

(d) The agreement proposed to be adopted has expired or been cancelled; or

(e) The proposed adoption is unlawful.

(6) If the affected carrier files objections, the requesting carrier may file a reply within 14 calendar days after the objections are filed. An assigned Administrative Law Judge (ALJ) shall schedule a conference within five business days after the reply is filed, to be held as soon thereafter as practicable. At the conference, the ALJ shall determine whether the issues raised by the affected carrier's objection can be resolved based on the pleadings and all supporting documentation, or whether further proceedings are necessary. If further proceedings are necessary, the ALJ shall establish a schedule for resolving the dispute on an expedited basis. Pending resolution of the dispute, other provisions of the proposed adoption not contested by the affected carrier will become effective.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 25-2001, f. & cert. ef. 11-5-01; PUC 6-2002, f. & cert. ef. 2-13-02; PUC 11-2006, f. & cert. ef. 12-15-06

#### 860-016-0030

##### Arbitration of Disputes

(1) Negotiating parties may engage the services of an outside arbitrator rather than file a petition with the Commission. If the negotiating parties petition the Commission to arbitrate their dispute, the Commission will use an ALJ as arbitrator unless workload constraints necessitate the use of an outside arbitrator.

(2) A petition for arbitration must contain:

(a) A statement of all unresolved issues;

(b) A description of each party's position on the unresolved issues;

(c) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute. Wherever possible, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously approved by the Commission;

(d) Documentation showing that the request complies with the time requirements of the Act.

(3) Respondent may file a response within 25 days of the request for arbitration. In the response, the respondent shall address each issue listed in the request, describe the respondent's position on those issues, and identify and present any additional issues for which the respondent seeks resolution.

(4) The arbitration will be conducted in a manner similar to a contested case proceeding, and the arbitrator will have the same authority to conduct the arbitration process as an ALJ has in conducting hearings under the Commission's rules. However, the arbitration process will be streamlined to meet the Act's timelines. An early conference will be held to discuss processing of the case, and to receive the proposal put forth by each party. The arbitrator will establish the schedule, and decide whether an oral hearing would be helpful. After the oral hearing or other procedures (for example, rounds of comments), each party will submit its "final offer" proposed agreement. The arbitrator will choose between the two final offers. However, if neither offer is consistent with the Act and Commission policies, the arbitrator will make an award that meets those requirements.

(5) Formal discovery procedures will be allowed only to the extent deemed necessary by the arbitrator. Parties will be required to cooperate in good faith in voluntary, prompt, and informal exchanges of information relevant to the matter. Unresolved discovery disputes will be resolved by the arbitrator upon request of a party. The arbitrator will order a party to provide information if he/she determines the requesting party has a reasonable need for the requested information and that the request is not overly burdensome.

(6) Only the two negotiating parties will have full party status. The arbitrator may confer with Staff for assistance throughout the arbitration process. If Staff assistance is desired, the arbitrator will notify (by telephone or other means) the parties at least 24 hours before the consultation with Staff. The parties may attend or listen to the consultation and may respond in a manner allowed by the arbitrator.

(7) To keep the process moving forward, appeals to the Commission will not be allowed during the arbitration process. An arbitrator may certify a question to the Commission if deemed necessary.

(8) To accommodate the need for flexibility, the arbitrator may use procedures that vary from those set out here if he/she deems it helpful in a particular arbitration, as long as the procedures are fair, treat the parties equitably, and substantially comply with the procedures listed here.

(9) Each arbitration award must:

(a) Ensure that the requirements of sections 251 and 252 of the Act and any valid applicable Federal Communications Commission regulations under that section are met;

(b) Establish interconnection and network element prices consistent with the Act;

(c) Establish a schedule for implementation of the agreement; and

(d) Be consistent with Commission policies.

(10) After an arbitration award is submitted to the Commission, notice will be served on those who have indicated a desire to receive notice of mediated and arbitrated agreements. Any person may then file comments within 10 days of service of the award.

(11) The Commission will accept or reject an arbitration award within 30 days.

(12) Within 14 days after the Commission issues its arbitration decision, petitioner must prepare an interconnection agreement complying with the terms of the arbitration decision and serve it on respondent. Respondent shall either sign and file the agreement, or file objections to it, within 10 days of service of it. If objections are filed, respondent shall state how the agreement fails to comply with the arbitration decision, and offer substitute language complying with the decision. The Commission will approve or reject a filed interconnection agreement within 30 days of its filing, or the agreement will be deemed approved. If petitioner, without respondent's consent, fails to timely

prepare and serve an interconnection agreement on respondent, respondent may file a motion requesting the Commission dismiss the petition for arbitration with prejudice. The Commission may grant such motion if the petitioner's failure to timely prepare and serve the interconnection agreement was the result of inexcusable neglect on the part of petitioner.

Stat. Auth.: ORS 756  
Stats. Implemented: 47 USC 252  
Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 11-2006, f. & cert. ef. 12-15-06

#### 860-016-0040

##### Statement of Generally Available Terms

(1) A Bell Operating Company may file a statement of generally available terms that comply with Sections 251 and 252 of the Act. Any person may file comments concerning the statement of generally available terms within 30 days of the filing of the statement. The comments shall be limited to the standards for review established in this rule.

(2) The Commission will review the statement of generally available terms within 60 days of its submission, and either reject it or permit it to go into effect. The period for review may be extended if the submitting carrier agrees to a time extension. The Commission may continue to review the statement after it has gone into effect.

Stat. Auth.: ORS 756  
Stats. Implemented: 47 USC 252  
Hist.: PUC 8-1998, f. & cert. ef. 4-8-98

#### 860-016-0050

##### Petitions for Enforcement of Interconnection Agreements

(1) Purpose of rule. This rule specifies the procedure for a telecommunications provider, as defined in OAR 860-032-0001, to file a complaint for the enforcement of an interconnection agreement that was previously approved by the Commission. For purposes of this rule, the term "interconnection agreement" is an agreement executed pursuant to the Telecommunications Act of 1996 (the Act). This includes interconnection agreements, resale agreements, agreements for the purchase or lease of unbundled network elements (UNEs), or statements of generally available terms and conditions (SGATs), whether those agreements were entered into through negotiation, mediation, arbitration, or adoption of a prior agreement or portions of prior agreements. Section (11) of this rule specifies procedures for complaints alleging that telecommunications utilities have engaged in prohibited acts under ORS 759.455.

(2) The complaint. A complaint for enforcement of an interconnection agreement must contain the following:

(a) A statement of specific facts demonstrating that the complainant telecommunications provider conferred with defendant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

(b) A copy of a written notice to the defendant telecommunications provider indicating that the complainant intends to file a complaint for enforcement of the interconnection agreement, as described in subsection (3)(a) below;

(c) A copy of the interconnection agreement or the portion of the interconnection agreement that the complainant contends was or is being violated. If a copy of the entire interconnection agreement is provided, complainant must specify provisions at issue. If the interconnection agreement adopted a prior agreement or portions of prior agreements, the complaint must also indicate the provisions adopted in those agreements;

(d) A statement of the facts or a statement of the law demonstrating defendant's failure to comply with the agreement and complainant's entitlement to relief. The statement of entitlement to relief must indicate that the remedy sought is consistent with the dispute resolution provisions in the agreement, if any. Statements of facts must be supported by written testimony or one or more affidavits, made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits;

(e) The complaint may designate one additional person to receive copies of other pleadings and documents; and

(f) Complainant shall also file with the complaint, as a separate document, any motions for affirmative relief. Motions for injunctive or temporary relief must be clearly marked. Nothing in this subsection

shall preclude complainant from filing a motion subsequent to the filing of the complaint if the motion is based upon facts or circumstances unknown or unavailable to complainant at the time the complaint was filed;

(g) Complainant shall also file with the complaint, as a separate document, an executive summary outlining the issues and relief requested. Such summary shall be no more than eight pages.

(3) Service of the complaint. The complaint for enforcement must be served as follows:

(a) At least ten days prior to filing a complaint for enforcement with the Commission, complainant must give written notice to defendant and the Commission that complainant intends to file a complaint for enforcement. The notice must identify the provisions in the agreement that complainant alleges were or are being violated and the specific acts or failure to act that caused or is causing the violation and whether the complainant anticipates requesting temporary or injunctive relief. The notice must be served in the same manner as set forth in subsections (b) and (c) below, except that complainant must also serve the notice on all persons designated in the interconnection agreement to receive notices;

(b) Complainant must serve a copy of the complaint for enforcement on defendant the same day the complaint is filed with the Commission. Service may be by fax or overnight mail, provided the complaint arrives at defendant's location on the same day the complaint is filed with the Commission. Service by fax must be followed by a hard copy the next day in overnight mail; and

(c) Complainant must serve a copy of the complaint for enforcement on defendant's authorized representative, attorney of record, or designated agent for service of process.

(4) The answer. An answer must comply with the following:

(a) The answer must contain a statement of specific facts demonstrating that the responding telecommunications provider conferred with complainant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

(b) The answer must respond to each allegation set forth in the complaint and must set forth all affirmative defenses;

(c) The answer must contain a statement of the facts or a statement of the law supporting defendant's position. Statements of facts must be supported by written testimony or one or more affidavits, made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits;

(d) The answer may designate one additional person to receive copies of other pleadings and documents;

(e) Any allegations raised in the complaint and not addressed in the answer are deemed admitted; and

(f) Defendant shall file with the answer, as a separate document, a response to any motion filed by complainant, and any motion defendant wishes to file that seeks affirmative relief. Nothing in this subsection shall preclude defendant from filing a motion subsequent to the filing of the answer if the motion is based upon facts or circumstances unknown or unavailable to defendant at the time the answer was filed.

(5) Service of the answer. The answer must be served as follows:

(a) Defendant must file a copy of the answer with the Commission within ten business days after service of the complaint for enforcement;

(b) Defendant must deliver a copy of the answer to complainant the same day the answer is filed with the Commission, in the manner set forth in subsections (3)(b) and (3)(c) above;

(c) Defendant must serve a copy of the answer on the complainant's attorney, as listed in the complaint, or the person who signed the complaint, if complainant has no attorney.

(6) The reply. Complainant must file a reply to an answer that contains affirmative defenses within five business days after the answer is filed. The reply must be served in the manner set forth in subsections (3)(b) and (3)(c) above. If the reply contains new facts or legal issues not raised in the complaint, the reply must also comply with subsection (2)(d) above.

(7) Cross-complaints or counterclaims. A cross-complaint or counterclaim shall be answered within the ten-day time frame allowed for answers to complaints.

(8) Conference. The Commission will conduct a conference regarding each complaint for enforcement of an interconnection agreement.

(a) The Administrative Law Judge (ALJ) will schedule a conference within five business days after the answer is filed, to be held as soon thereafter as is practicable. At the discretion of the ALJ, the conference may be conducted by telephone;

(b) Based on the complaint and the answer, all supporting documents filed by the parties, and the parties' oral statements at the conference, the ALJ will determine whether the issues raised in the complaint can be determined on the pleadings and submissions without further proceedings or whether further proceedings are necessary. If further proceedings are necessary, the ALJ will establish a procedural schedule. The procedural schedule may include a mandatory mediation session. Either party may request that a person other than the ALJ preside over the mediation. Nothing in this subsection is intended to prohibit the bifurcation of issues where appropriate;

(c) In determining whether further proceedings are necessary, the ALJ will consider, but is not limited to, the positions of the parties; the need to clarify evidence through the examination of witnesses; the complexity of the issues; the need for prompt resolution; and the completeness of the information presented;

(d) The ALJ may make oral rulings on the record during the conference on all matters relevant to the conduct of the proceeding.

(9) Discovery. A party may file with the complaint or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue.

(10) Expedited procedure. When warranted by the facts, the complainant or defendant may file a motion requesting that an expedited procedure be used. The moving party shall file a proposed expedited procedural schedule along with its motion. The ALJ will schedule a conference to be held as soon after the motion is filed as is practicable, to determine whether an expedited schedule is warranted.

(a) The ALJ shall consider whether the issues raised in the complaint or answer involve a risk of imminent, irrevocable harm to a telecommunications provider and to the public interest;

(b) If a determination is made that an expedited procedure is warranted, the ALJ shall establish a procedure that ensures a prompt resolution of the merits of the dispute, consistent with due process and other relevant considerations. The ALJ shall consider, but is not bound by, the moving party's proposed expedited procedural schedule;

(c) An expedited procedure may be appropriate if the complainant shows that its ability to provide telecommunications services will be substantially harmed unless the Commission acts promptly. In general, the Commission will not entertain a motion for expedited procedure where the dispute solely involves the payment of money.

(11) Procedures for complaints alleging violation of ORS 759.455.

(a) An answer under section (4) of this rule shall be filed with the Commission and served on the complainant within ten calendar days after service of the complaint;

(b) A reply under section (6) of this rule shall be filed with the Commission and served on the defendant within five calendar days after the answer is filed;

(c) The ALJ shall schedule a conference to be held in person or by telephone not later than 15 calendar days after the complaint is filed;

(d) A hearing shall begin no later than 30 days after the complaint is filed;

(e) The ALJ may consult with the Commission Staff in the manner set forth in OAR 860-016-0030(6).

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040, 756.518, 759.030(1), 759.455, Ch. 1093, OL 1999 & 47 USC § 252

Hist.: PUC 7-1999, f. & cert. ef. 10-18-99; PUC 7-2000, f. & cert. ef. 5-3-00; PUC 21-2002, f. & cert. ef. 12-9-02; PUC 1-2005, f. & cert. ef. 2-2-05

## DIVISION 21

### UTILITY REGULATION

#### General

#### 860-021-0000

##### Applicability of Division 021

The rules contained in this division apply to energy utilities and large telecommunications utilities, as defined in OAR 860-021-0008.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 11-2001, f. & cert. ef. 4-18-01

#### 860-021-0005

##### Scope of the Rules

The adoption of these rules shall in no way preclude the Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any utility. Furthermore, these rules shall not in any way relieve any utility from any of its duties under Oregon law. Upon application by a utility, the Commission may relieve the utility of any obligations under these rules.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 11-1998, f. & cert. ef. 5-7-98

#### 860-021-0008

##### Definitions for Regulation of Utility Services

(1) "Applicant" means a person who:

(a) Applies for service with an energy or large telecommunications utility;

(b) Reapplies for service at a new or existing location after service has been discontinued; or

(c) Has not satisfied the requirements of OAR 860-021-0205 or 860-021-0335(2) within the required time period, if either rule is applicable.

(2) "Co-customer" means a person who meets the definition of "customer" and is jointly responsible with another person for utility service payments on an account with the energy or large telecommunications utility. If only one co-customer discontinues service in his/her name, the remaining co-customer shall only retain customer status if s/he reapplies for service in his/her own name within 20 days of such discontinuance, provided the energy or large telecommunications utility contacts the remaining co-customer or mails the remaining co-customer a written request for an application within one business day of the discontinuance.

(3) "Customer" means a person who has applied for, been accepted, and is currently receiving service. Notwithstanding section (1) of this rule, a customer who voluntarily disconnects service and later requests service with the same utility at a new or existing location within 20 days after disconnection retains customer status.

(4) "Energy utility" has the meaning given to a public utility in ORS 757.005, except water and wastewater. An energy utility can be an "electric company," "gas utility," or "steam heat utility."

(5) "Large telecommunications utility" means any telecommunications utility, as defined in ORS 759.005, that is not partially exempt from regulation under ORS 759.040.

(6) "Local exchange service" has the meaning given to "local exchange telecommunications service" in ORS 759.005(1)(c).

(7) "OTAP" has the meaning given to "Oregon Telephone Assistance Program" in OAR chapter 860, division 033.

(8) "Registered dispute" means an unresolved issue between a customer or applicant and an energy or large telecommunications utility that is under investigation by the Commission's Consumer Services Division but is not the subject of a formal complaint.

(9) "Regulated charges" means charges for services delivered in Oregon and subject to the jurisdiction and approval of the Commission.

(10) "Utility" means all large telecommunications and energy utilities, as defined in sections (4) and (5) of this rule, except when a more limited scope is explicitly stated.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.010, 757.005 & 759.005  
 Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-021-0009

##### Applications for Utility Service from an Energy or Large Telecommunications Utility

(1) An application for energy or telecommunications utility service must be made when:

(a) Service is requested by a person who has not previously been served by the energy or large telecommunications utility;

(b) Service has been involuntarily discontinued in accordance with these rules, and the person later seeks to have service restored; or

(c) Service has been voluntarily discontinued, and a request to restore service has not been made within 20 days.

(2) An application is a request for energy or telecommunications utility service. The energy or large telecommunications utility shall not accept an application for service until the applicant establishes credit as set forth in OAR 860-021-0200 and 860-021-0205. However, the energy or large telecommunications utility may refuse a service application under OAR 860-021-0335.

(3) An energy or large telecommunications utility may require an applicant to provide the following information when applying for service:

(a) The name of person(s) responsible for payment on the account;

(b) The name to be used to identify the account, if different than the actual name;

(c) The birth date of person(s) responsible for payment on the account;

(d) The social security number of person(s) responsible for payment on the account;

(e) A current valid Oregon driver license number of the person(s) responsible for payment on the account;

(f) The service address;

(g) The billing address, if different than service address; and

(h) Any available telephone numbers where the applicant can be reached night and day.

(4) In lieu of providing a valid social security number or current valid Oregon driver license number under section (3) of this rule, an applicant may provide:

(a) A valid state or federal identification containing name and photograph of the person(s) responsible for payment on the account;

(b) A combination of:

(A) An original or certified true copy of his or her birth certificate;

(B) A current identification from school or employer containing a photograph; and

(C) The name, address, and telephone number of a person who can verify the applicant's identity, such as a teacher, employer, or case-worker; or,

(c) Other information deemed sufficient by the utility to establish an applicant's identification.

(5) If an applicant is denied service for failure to provide an acceptable form of identification, the applicant may pursue conflict resolution under the Commission's rules.

(6) Upon request, the energy or large telecommunications utility shall protect the account from access by others through the use of a personalized password or other means acceptable to both the energy or large telecommunications utility and the customer.

(7) A large telecommunications utility shall protect the identity of a customer at risk of domestic violence or other abuse. At its option, the large telecommunications utility shall provide the identity protection by allowing the customer to use a modified or alternative name for a directory listing or by providing, at no cost, a non-published listing in accordance with other applicable tariff provisions for the length of time the endangerment exists. A customer requesting a non-published listing under this section must provide:

(a) A copy of a court order that restrains another person from contact with the customer by reason of risk of domestic violence, as

defined in ORS 135.230, or unwanted sexual contact, as defined in ORS 163.305, abuse, as defined by the Elderly and Disabled Person Abuse Prevention Act, ORS 124.005 et seq., or stalking, as defined by ORS 163.730 et seq.; and

(b) An affidavit, stating that the customer is financially unable to pay for the nonpublished listing.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-021-0010

##### Information for Utility Customers and Applicants

(1) Each energy utility and large telecommunications utility shall, upon request, furnish each customer and applicant with such information as is reasonable to permit him/her to secure efficient service and select appliances properly adapted to their service needs. Gas utilities shall, upon request, inspect and adjust customer-owned appliances and facilities for safe and efficient operation.

(2) Each energy utility or large telecommunications utility providing metered service shall, upon request, inform its customers and applicants how to read meters, either in writing or by explanation at the utility's offices.

(3) Each energy utility or large telecommunications utility shall keep on file and open for public inspection at its offices, complete rate schedules, contract forms, rules and regulations of the utility, and a copy of the Commission's rules and regulations.

(4) Each energy utility or large telecommunications utility shall supply, upon request, a copy of the tariffs applicable to the type or types of service furnished to the customer by the utility.

(5) Upon application for new service, or upon later request, the energy or large telecommunications utility shall assist the customer or applicant in selecting the most advantageous rate to meet individual service requirements. The customer or applicant shall be responsible for making the final selection of a rate schedule.

(6) When service is initiated and not less than once each year thereafter, every energy or large telecommunications utility shall give its residential customers a written summary of their rights and responsibilities, as they relate to the utility providing service. If service is initiated without a personal visit between the energy or large telecommunications utility and the customer, the utility shall mail the summary to the customer no later than when the first bill statement is mailed. Large telecommunications utilities satisfy the annual notification requirement by prominent publication of the information in a telephone directory distributed to their customers annually. The summary shall include the text of a summary reviewed and approved by the Commission's Consumer Services Division and describe:

(a) The customer's option to designate a third party to receive bills and notices and the availability of notices in languages other than English;

(b) Applicable financial assistance programs, such as the Energy Assistance Fund for gas utilities and electric companies and Link-Up America for telecommunications utilities;

(c) The availability of medical certificates;

(d) Special payment options such as equal-payment plans. Late-payment charges, if any, shall be explained, along with the availability of any preferred billing date option;

(e) Procedures for conflict resolution, including how to register a dispute with the energy or large telecommunications utility and with the Commission and the toll-free number of the Commission's Consumer Services Division;

(f) Listings of consumer organizations that participate in Commission proceedings, including addresses and telephone numbers, may be requested from the Commission's Consumer Services Division; and

(g) The Commission's telephone solicitation rules (telecommunications utilities only) as defined in OAR 860-021-0610(1)(a).

(7) When service is initiated, the energy or large telecommunications utility shall inquire whether the customer would like to receive notices in a language other than English and will inform the customer of the type of notices and translations currently available. If the language chosen is not available, the energy or large telecommunications utility will tell the customer the translated version does not yet exist but the customer's interest will be recorded for the Commission. Each

energy or large telecommunications utility shall report to the Commission the number of requests for notices and summaries in non-English languages. The reports shall specify the number of requests for each language.

(8) Each energy or large telecommunications utility shall post notices approved by the Commission in a conspicuous place in each utility office where credit matters are transacted, setting forth the rights and responsibilities of customers under these rules. The notices shall be printed in large boldface type and shall be written in language that is easy to understand.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

## 860-021-0011

### Multilingual Notices

(1) All energy utilities' and large telecommunications utilities' disconnect notices shall contain the following information translated into Spanish, Vietnamese, Cambodian, Laotian, and Russian:

IMPORTANT NOTICE: Your (electric, gas, or telephone) services will be shut off due to an unpaid balance on your account. You must act immediately to avoid shutoff. Important information about how you can avoid shutoff is printed in English in the enclosed notice. If you cannot understand English, please find someone to translate the notice. If translation assistance is unavailable, please contact (name) at (phone number) who will try to help you. Information on customer's rights and responsibilities printed in this language is also available by calling that number. YOU MUST ACT NOW TO AVOID SHUTOFF.

(2) The Commission will translate a consumer's rights and responsibilities summary into the designated non-English languages and provide copies to utilities. The customer information published by an energy or large telecommunications utility pursuant to OAR 860-021-0010 shall prominently display the following information printed in the designated non-English languages, in boldface, at the beginning of the summary:

A version of a consumer rights and responsibilities summary printed in this language is available by calling (name of utility) at (phone number).

(3) The energy or large telecommunications utility shall record all requests and promptly mail the requested version of the summary to the consumer.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987

Hist.: PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 14-1997, f. & cert. ef. 11-20-97; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 16-2001, f. & cert. ef. 6-21-01

## 860-021-0015

### Dispute Resolution

(1) When a dispute occurs between a customer or applicant and a utility about any bill, charge, or service, the utility shall thoroughly investigate the matter and promptly report the results of its investigation to the customer or applicant. Each utility shall prepare a written record showing the name and address of the customer or applicant involved, the date and character of the dispute, and the disposition of the matter. The utility shall retain records of the dispute pursuant to OAR 860-028-0010.

(2) The utility shall inform the customer or applicant of the right to supervisory review of any dispute, including but not limited to, establishment of credit and termination of service. If a dispute is not resolved, the utility shall notify the customer or applicant of the Commission's dispute resolution procedure and its toll-free telephone number.

(3) A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services Division. The Commission shall notify the utility upon receipt of such a request.

(4) The Commission's Consumer Services Division shall assist the complainant and the utility in an effort to reach an informal resolution of the dispute.

(5) If a registered dispute cannot be resolved informally, the Commission's Consumer Services Division shall advise the complainant of the right to file a formal written complaint with the Commission. The complaint shall state the facts of the dispute and the relief requested. The utility shall answer the complaint within 15 days of service of the complaint. The matter shall then be set for expedited hearing.

A hearing may be held on less than ten days' notice when good cause is shown.

(6) Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.

(7) A customer or applicant who has a registered dispute or formal complaint pending with the Commission shall be entitled to continued or restored service provided:

(a) Service was not terminated for theft of service or failure to establish credit;

(b) A bona fide dispute exists in which the facts asserted by the customer or applicant entitle the customer or applicant to service;

(c) When termination is based on nonpayment, the customer or applicant makes adequate arrangement to avoid future loss to the utility, such as prepaying estimated monthly utility charges; and

(d) The customer or applicant diligently pursues conflict resolution under the Commission's rules.

(8) If the conditions in section (7) of this rule are not satisfied, the utility has no obligation to provide continued service. A utility discontinuing service because of a failure to meet the conditions of subsections (7)(c) or (7)(d) of this rule shall give the customer five-day notice served in the same manner as provided by OAR 860-021-0405 or 860-021-0505, whichever applies, except the notice need only describe the defect in performance, the date and time when utility service will terminate, and the toll-free number of the Commission's Consumer Services Division. In deciding whether the conditions are met, the utility shall consult with the Commission's Consumer Services Division. A customer or applicant who has filed a formal complaint, the utility, or the Commission's Consumer Services Division may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the utility, and the Commission's Consumer Services Division at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.500 & 756.512

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 4-1985, f. & ef. 4-22-85 (Order No. 85-350); PUC 5-1987, f. & ef. 7-2-87 (Order No. 87-723); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & ef. 5-7-98 (Order No. 98-188); PUC 8-1999, f. & cert. ef. 10-18-99; PUC 19-2001, f. & cert. ef. 6-21-01; PUC 11-2003, f. & cert. ef. 7-3-03

## 860-021-0017

### Designation of Third Party to Receive Notices

Each energy or large telecommunications utility shall offer its customers the option to designate a third party to receive bills and notices set forth in these rules. When an energy or large telecommunications utility receives such designation, it shall send bills and notices required under these rules to the customer's representative, with duplicate copies of disconnect notices also served on the customer.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.500 & 757.760

Hist.: PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0080; PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01

## 860-021-0019

### Restrictions on Entering a Customer Residence

No employee of an energy or large telecommunications utility shall enter the residence of a customer without proper authorization except in an emergency endangering life or property.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0066; PUC 16-2001, f. & cert. ef. 6-21-01

## 860-021-0021

### Interruption of Utility Service

(1) Each energy or large telecommunications utility shall keep a record of any interruption of service affecting its whole system, or a

major section thereof, including a statement of the time, duration, and cause of interruption.

(2) Each energy or large telecommunications utility shall make all reasonable efforts to prevent interruptions of service. When such interruptions occur, the energy or large telecommunications utility shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(3) Each energy or large telecommunications utility shall make reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service, but such notice shall not be required in case of interruption due to emergency repairs or for repairs or maintenance work performed by a telecommunications utility that results in an interruption of less than five minutes. All scheduled interruptions shall be made at a time causing minimum inconvenience to customers. In determining reasonable notice, the energy or large telecommunications utility shall consider the length of the planned interruption, the type and number of customers affected, the potential impact of the interruption on customers, and other surrounding circumstances. Notice may be given in writing, either via US mail or a door hanger on the affected premises, or by contact with the customer or an adult at the residence by personal visit or by telephone.

(4) In addition to the requirements above, electric utilities shall comply with OAR 860-023-0080 through 860-023-0160, which set additional requirements for electric service reliability and reporting.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); Renumbered from 860-021-0070; PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0067; PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-021-0033

##### Annual Fees Payable to the Commission by an Electric Utility

(1) On statement forms prescribed by the Commission, each electric company must provide the requested information for the subject year.

(2) Each electric company must pay to the Commission an annual fee on gross operating revenues derived within Oregon at a rate determined by Commission orders entered on or after March 1 of each year. Each electric company must pay the annual fee on or before the date specified in a notice, which date must be at least 15 days after the mailing of the notice. For the purpose of this section, the gross operating revenues of an electric company do not include revenues from sales of power for resale to the extent that the revenues from those sales exceed an amount equal to 25 percent of the total revenues received by the electric company from sales of electricity to end users in the preceding calendar year.

(3) Each electric company must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0110, if the Commission has not received the electric company's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0110 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the electric company.

(4) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(5) For any year in which an electric company's statement form was due, the Commission may audit the electric company as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the electric company has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the electric company has overpaid its annual fee, the Commission may, at its discretion, recompense the electric company with a refund or a credit against annual fees subsequently due.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 14-1998, f. & cert. ef. 7-15-98; PUC 11-1999, f. & cert. ef. 11-18-99; PUC 15-2003, f. & cert. ef. 7-24-03; Renumbered from 860-011-0022, PUC 18-2004, f. & cert. ef. 12-30-04; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 10-2007, f. & cert. ef. 9-13-07

#### 860-021-0034

##### Annual Fees Payable to the Commission by Gas Utility or Steam Heat Utility

(1) On statement forms prescribed by the Commission, each gas utility and steam heat utility must provide the requested information for the subject year.

(2) Each gas utility and steam heat utility must pay to the Commission an annual fee on gross operating revenues derived within Oregon at a rate determined by Commission orders entered on or after March 1 of each year.

(3) Each gas utility and steam heat utility must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the Oregon revenue during the prior calendar year.

(b) A late statement fee in accordance with OAR 860-011-0110, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0110 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(4) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(5) For any year in which a gas utility or steam heat utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 11-1999, f. & cert. ef. 11-18-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 10-2007, f. & cert. ef. 9-13-07

#### 860-021-0036

##### Annual Fees Payable to the Commission by a Large Telecommunications Utility

(1) On statement forms prescribed by the Commission, each large telecommunications utility must provide the requested information for the subject year.

(2) Each large telecommunications utility must pay to the Commission:

(a) An annual fee of no less than \$100. The annual fee is due on or before April 1 of the year after the calendar year on which the annual

al fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the gross retail intrastate revenue during the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350 and OAR 860-032-0008(1).

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) Each large telecommunications utility must:

(a) Collect the annual fee by charging an equitable amount to each retail customer, using apportionment methods that are consistently applied by the utility throughout Oregon, and

(b) Describe the amount of the apportioned charge upon each retail customer's bill.

(5) If the annual fee charge is embedded in the large telecommunications utility's Commission-approved retail rates, and:

(a) If the utility does not separately charge the customer an additional amount for the apportioned annual fee, then the utility may comply with section (4) of this rule by merely describing the apportioned amount of the charge on the retail customer's bill.

(b) If the utility separately charges the customer an additional amount for the apportioned annual fee, then the utility must comply with ORS 756.310(6)(c).

(6) For any year in which a large telecommunications utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

(7) Each large telecommunications utility must:

(a) Maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services, as defined in OAR 860-032-0080;

(b) Follow the revenue allocation procedures in OAR 860-032-0090; and

(c) Make its revenue accounting records available to the Commission upon the Commission's request.

(8) If the Commission receives a public record request for the confidential information required by this rule, the Commission may assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 13-1999, f. & cert. ef. 12-7-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 8-2003, f. & cert. ef. 4-28-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-021-0037

### Estimated Annual Fees Payable to the Commission

(1) For any year in which an energy or large telecommunications utility fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-011-0080; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission must provide written notice of the proposed annual fee to the energy or large telecommunications utility.

(3) Within 30 days after service of the notice of proposed annual fee, the energy or large telecommunications utility may file a petition with the Commission for a hearing. In its petition, the utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the energy or large telecommunications utility has not filed a petition by the end of the 30-day period, the Commission will enter an order based upon information in its files. The Commission's order is final upon service, and the ordered assessment is due and payable on the tenth day after the order becomes final.

(5) During the 30-day period allowed for filing a petition, the energy or large telecommunications utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 8-2003, f. & cert. ef. 4-28-03; PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

## Installation of Service

### 860-021-0045

#### Installation of Electric Service

(1) For the connection of its distribution system to the customer's premises, an electric company shall, with the exceptions provided under its extension rules, furnish service connections to the customer's service entrance.

(2) The electric company shall furnish, own, operate, maintain, and replace the service connections with the exceptions as may be listed in these rules or its tariff for line extensions.

(3) The service entrance on a customer's premises shall be so located as to make the meter and service easily accessible from the electric company's distribution lines and convenient for the installation, operation, and maintenance of the company's meters and equipment.

(4) The electric company will not be required to install or maintain more than one service connection directly from its distribution lines to the premises of any customer. Each customer may be required to install and maintain, at his/her own expense, all wiring and equipment needed to be installed on his/her premises to enable the company to furnish and meter, at a single point on the customer's premises, all service to be used by the customer. If conditions make it advisable for the company to use a single connection from its distribution line to furnish service to two or more customers on the same or different premises, the service connection shall be of adequate capacity for the purpose, and the service furnished to each customer shall be metered and billed separately.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 7-2005, f. & cert. ef. 11-30-05

### 860-021-0050

#### Installation of Gas Service

(1) Each gas utility shall furnish, a gas service from the gas main adjacent to the customer's premises to and including the meter. Each gas utility shall develop, with the Commission's approval, a uniform policy governing the amount of service extension that will be made free to connect a new customer. This policy should be related to the investment that can prudently be made for the probable revenue.

(2) Each gas utility shall furnish, own, operate, maintain, and replace the service connections when needed.

(3) The gas utility will not be required to make more than one connection to its main to furnish service to the premises of any customer and will not be required to install or maintain pipes for the distribution of gas beyond a single point of delivery to points of use upon the customer's premises.

(4) Each gas utility shall not be responsible for the condition or maintenance of the piping or appliances installed by the customer.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 28-2001, f. & cert. ef. 12-28-01

#### 860-021-0051

##### Main Extensions for Gas Service

Each gas utility shall develop, with the Commission's approval, a uniform policy governing the amount of main extension which will be made free to connect a new customer. This policy should be related to the investment that can prudently be made for the probable revenue.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 11-1998, f. & cert. ef. 5-7-98

#### 860-021-0055

##### Temporary Utility Service

Each energy or large telecommunications utility may render temporary service to a customer and may require the customer to bear all the cost of installing and removing the service in excess of any salvage realized. The length of temporary service shall be specified in the applicable tariffs approved by the Commission.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040

[Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 16-2001, f. & cert. ef. 6-21-01]

#### 860-021-0057

##### Connection of Residential Energy Utility Service

(1) This rule applies to the connection of energy service for an applicant or customer who has satisfied the requirements of all applicable rules and regulations, and requested connection. This rule applies for connection at a location with existing service facilities where the utility need only activate service, or after any necessary line extension, construction or repair work has been completed.

(2) Each energy utility must provide a means by which an applicant or customer may contact the utility on a Business Day so that the applicant or customer may pay applicable charges, submit any necessary credit information and request connection of service. For purposes of this rule, Business Day is defined as Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding state- or utility-recognized holidays.

(3) An energy utility must connect service as soon as reasonably possible, within the normal course of business, after an applicant or customer has satisfied the requirements for and requested connection. At a minimum, service must be connected within two Business Days, except as provided in section (4) of this rule.

(4) This section only applies to a natural gas service connection that is completed between September 15 and November 15 of each year, at an address where the applicant received service at any time during the past 12 months that was disconnected, but not reconnected within 20 days. Service must be connected as soon as reasonably possible, within the normal course of business, after an applicant or customer has satisfied the requirements for and requested connection. At a minimum:

(a) Service must be connected within two (2) Business Days when the applicant's prior service at the address was disconnected from August 15 to November 15 of the current year.

(b) Service must be connected within five (5) Business Days when the applicant's prior service at the address was disconnected from November 16 of the previous year to August 14 of the current year.

(5) With Commission concurrence, the connection requirements under this rule may be temporarily waived for any cause not reasonably within the control of the utility including, but not limited to, the following:

(a) A documented Force Majeure event;

(b) An action or default by an applicant or other person outside of the utility's control, including a cancellation of the request made by the applicant or customer;

(c) Major events, such as storms or system outages;

(d) Safety-related issues that preclude the utility from connecting service;

(e) The applicant's facilities cannot be accessed due to circumstances beyond the utility's control;

(f) The utility's equipment or facilities prevent the reconnection from occurring; or

(g) When the Commission approves a waiver.

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: ORS 756.040

Hist.: PUC 7-2006, f. & cert. ef. 7-6-06

##### Measuring and Billing Service

#### 860-021-0120

##### Meter Readings and Bill Forms

(1) Every energy utility providing metered service will clearly indicate on the meter the units of service for which the charge is made to the customer. The energy utility will clearly and plainly mark on the meter the proper constant to be applied when the dial reading on an electric meter must be multiplied by a constant to obtain the units consumed.

(2) All bills must display:

(a) The total consumption for the billing period;

(b) The beginning and ending meter readings for the billing period, where available;

(c) The beginning and ending dates of the billing period;

(d) The number of units of service supplied;

(e) The schedule number under which the bill was computed; and

(f) Any other information needed to compute the bill. Each bill will specify the delinquent date of the bill. When there is good reason for so doing, the energy utility may submit estimated bills. The energy utility will clearly note on the bill when total consumption is estimated for more than twenty-four hours in one billing period.

(3) The energy utility will read all service meters at least once a month, as nearly as possible, on the corresponding day of each meter reading period. Special authority may be granted for reading the meters less frequently than once a month if the circumstances warrant or upon the customer's request if agreed to by the energy utility and the customer:

(a) When access to a meter is difficult due to the meter's location or other circumstance, the energy utility may seek the customer's cooperation in obtaining meter readings. The energy utility will verify the actual meter reading not less than once every four months.

(b) A customer must provide the energy utility with regular access to a meter on the customer's property. Failure to permit access at reasonable times and after reasonable notice is grounds for disconnection.

(4) On written customer request, an energy utility that manually obtains monthly meter reads must, at the time of such reading, leave at the premises, information containing the date and time of the meter read and the meter read data.

(5) An energy utility will make a reasonable effort to prepare opening and closing bills from actual meter readings.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.250

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0020; PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 4-2006, f. & cert. ef. 2-27-06

#### 860-021-0125

##### Due and Payable Period

(1) Each energy or large telecommunications utility shall establish procedures to ensure that the period from the billing transmittal for all current charges, including payment for final bills, to the due date is not less than 15 days.

(2) If the bill is delivered by US mail, the due and payable period begins the day after the US Postal Service postmark or the day after the date of postage metering.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0035; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-021-0126

##### Late-Payment Charge

(1) Except as provided in section (2) of this rule, an energy or large telecommunications utility may apply a late-payment charge to

customer accounts not paid in full each month, provided the utility has filed the late-payment charge in its rate schedule.

(2) An energy utility shall not impose late-payment charges on residential customers unless:

(a) The energy utility offers residential customers a preferred billing date option under which the customer can select or change a bill date. Utilities shall not be required to change a customer's bill date more than once in any 12-month period;

(b) The energy utility's rate schedule provides that the late charge is not applied on residential balances less than \$200; or

(c) The charge is applied only to amounts carried forward for two consecutive months.

(3) The charge will be based on a monthly late-payment rate applied to overdue account balances at the time of preparing the subsequent month's bill for residential accounts or by the bill due date for all other accounts. The late-payment charge may not be applied to time-payment or equal-payment accounts that are current. The Commission will determine the late-payment rate based on a survey of prevailing market rates for late-payment charges of commercial enterprises and will advise all utilities of the changes in the rate they may use to determine late-payment charges on overdue customer accounts as needed. The current late-payment rate and the conditions for its application to customer accounts shall be specified on the energy or large telecommunications utility bill.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040

Hist.: PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 16-2001, f. & cert. ef. 6-21-01

## 860-021-0130

### Meter Test

(1) Any customer may ask the energy utility to test a meter. Such tests shall be made within 20 working days of the request at no cost to the customer. If a customer requests more than one meter test within any 12-month period, the energy utility may charge the customer to recover the reasonable cost of the test. The energy utility may not charge the customer if the meter is found to register outside the 2 percent accepted tolerance standard under normal operating conditions.

(2) A customer and/or a designated representative shall have the right to be present at any meter test. The test shall be conducted at a mutually acceptable time during regular business hours.

(3) A written report showing the customer's name, the request date, the address where the meter has been installed, the meter's number, the date tested, and the test result shall be supplied to the customer within a reasonable time after completing the test.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.255

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0025; PUC 13-1997, f. & cert. ef. 11-12-97; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

## 860-021-0135

### Adjustment of Utility Bills

(1) When an underbilling or overbilling occurs, the energy or large telecommunications utility shall provide written notice to the customer detailing the circumstances, period of time, and amount of adjustment. If it can be shown that the error was due to some cause and the date can be fixed, the overcharge or undercharge shall be computed back to such date. If no date can be fixed, the energy or large telecommunications utility shall refund the overcharge or rebill the undercharge for no more than six months' usage. In no event shall an overbilling or underbilling be for more than three years' usage.

(2) The energy or large telecommunications utility may waive rebilling for underbillings when the costs to the utility of rebilling make it uneconomical.

(3) No billing adjustment shall be required if an electric or gas meter registers less than 2 percent error under conditions of normal operation.

(4) When a customer is required to repay an underbilling, the customer shall be entitled to enter into a time-payment agreement without regard to whether the customer already participates in such an agreement. If the customer and utility cannot agree upon payment terms, the Commission shall establish terms and conditions to govern the repayment obligation. The energy or large telecommunications

utility shall provide written notice advising the customer of the opportunity to enter into a time-payment agreement and of the Commission's complaint process.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 757.250

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0030; PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01

## Credit Establishment

### 860-021-0200

#### Establishing Credit for Residential Utility Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous utility service of the same type applied for (energy or telecommunications) during the preceding 24 months and the utility can verify, either by contacting the former utility or through an authorized letter provided by former utility on utility letterhead to include dates of service and presented by the applicant, customer or former utility, that the applicant or customer voluntarily terminated service and timely paid for all services rendered;

(b) Meets Commission approved minimum credit requirements based on a third party credit report score or the energy or large telecommunications utility's own credit scoring formula; or

(c) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the energy or large telecommunications utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the energy or large telecommunications utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of utility service from it or any Oregon energy or telecommunications utility, as defined in ORS 757.005 or 759.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon utility as defined in ORS 757.005 or 759.005, was found to have tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service.

(3) In lieu of paying a deposit, an applicant or customer may:

(a) Provide the energy or large telecommunications utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit; or

(b) For energy utilities, elect to use demand limiter or "pay as you go" metering, if equipment is available.

(4) For energy utilities, a deposit required under this rule shall not exceed one-sixth the amount of reasonable estimated billing for 12 months at rates then in effect. This estimate shall be based upon actual use at the premises during the prior 12 months, if known, or will be estimated based upon the type and size of the equipment at the premises. Each deposit shall be rounded to the nearest whole dollar.

(5) For large telecommunication utilities, a deposit required under these rules shall be based upon two months' average or estimated bills

for usage of the applicable telecommunications utility's tariff and price-listed services. Each deposit shall be rounded to the nearest whole dollar. For telecommunications service, applicants eligible for Oregon Telephone Assistance Program (OTAP) funding and who voluntarily elect to receive toll-blocked service, no deposit may be charged. The large telecommunications utility shall make toll blocking available at no charge to all applicants identified in OAR 860-033-0030.

(6) A new or additional deposit, calculated as provided by sections (4) and (5) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The energy or large telecommunications utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The energy or large telecommunications utility discovers that the customer has stolen utility service, has tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service;

(c) For energy utilities, a customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit; or

(d) For large telecommunications utilities, if service records for the customer indicates unbilled intraLATA toll activity under the utilities' tariff and price list is greater than the basis of the prior deposit.

(7) Paying a deposit does not excuse a customer from complying with the energy or large telecommunications utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) An energy or large telecommunications utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756, 757, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1981, f. & ef. 8-10-81 (Order No. 81-498); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-21-040; PUC 5-1989(Temp), f. & cert. ef. 4-19-89 (Order No. 89-493); PUC 13-1989, f. & cert. ef. 9-12-89 (Order No. 89-1173); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04; PUC 16-2004, f. & cert. ef. 12-1-04

## 860-021-0205

### Deposit Payment Arrangements for Residential Energy Utility Service

(1) When an energy utility requires a deposit, the customer or applicant may pay the deposit in full or in three installments. The first installment is due immediately; the remaining installments are due 30 days and 60 days after the first installment payment. Except for the last payment, installments shall be the greater of \$30 or one-third of the deposit.

(2) When an installment payment or a deposit is made with a payment for energy utility service, the amount paid shall first be applied toward payment of the amount due for deposit.

(3) When the energy utility requires the customer or applicant to pay an additional deposit, the customer shall pay one-third of the total deposit, or at least \$30, whichever is greater, within five days. The remainder of the deposit is due under the terms of section (1) of this rule. If the customer has an existing deposit installment agreement, the remaining installment payments will be adjusted to include the additional deposit; however, two installment payments cannot be required within the same 30-day period.

(4) When a customer or applicant enters into an installment agreement for payment of a deposit under section (1) of this rule, the energy utility shall provide written notice explaining its deposit requirements. The notice shall specify the date each installment payment shall be due and shall include a statement printed in bold-face type informing the customer or applicant that utility service will be disconnected if the energy utility does not receive the payment when due. The notice shall also set forth the name and telephone number of the appropriate unit within the Department of Human Services or other agencies which may be able to help the customer obtain financial aid.

(5) If a customer fails to abide by the terms of a deposit installment agreement, the energy utility may disconnect service after a five-

day notice. The notice shall contain the information set forth in OAR 860-021-0405(2)(a), (b), (c), (e), (f), and (g) and shall be served as required by OAR 860-021-0405(5).

(6) When good cause exists, the Commission or the energy utility may provide more liberal arrangements for payment of deposits than those set forth in this rule. The energy utility shall keep a written record of the reasons for such action.

(7) If disconnection for nonpayment of a deposit occurs, the customer disconnected shall pay the full amount of the deposit, any applicable reconnection fee, late-payment fee, and one-half the past due amount before service is restored. The customer shall pay the balance of the past-due amount within 30 days of the date service is restored. A customer may continue with an existing time-payment agreement by paying all past-due installments, the full deposit, and other applicable fees.

Stat. Auth.: ORS 183, 756, 757 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 12-1983 f. & ef. 10-7-83 (Order No. 83-623); PUC 5-1987, f. & ef. 7-2-87 (Order No. 87-723); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 7-2005, f. & cert. ef. 11-30-05

## 860-021-0206

### Payment Arrangements for Deposit and Installation Charges for Residential Telecommunications Utility Service

(1) Time payments for deposits and nonrecurring charges shall be limited to charges for residential service and intraLATA toll. When the large telecommunications utility requires deposits and/or nonrecurring charges to establish or reestablish service from an applicant, the applicant shall pay one-fourth of the deposit and/or nonrecurring charges immediately. The customer or applicant shall pay the remainder in three equal installments, which shall be due 30, 60, and 90 days, respectively, after the date the payment agreement is executed. Except for the last payment, installments shall be the greater of \$20 or one-fourth of the total deposit. In communicating with an applicant to establish service or to require a deposit and/or nonrecurring charge, the large telecommunications utility shall inform the applicant of the availability of Link-Up America and Oregon Telephone Assistance Program benefits and inform the applicant that details are available from the Commission.

(2) When a customer makes an installment payment or a deposit with a payment for telecommunications utility service, the large telecommunications utility shall first apply the amount paid toward the amount due for deposit and/or nonrecurring charges.

(3) A customer who is required to pay an additional deposit shall pay one-fourth of the total deposit within five days to the large telecommunications utility. The remainder of the deposit is due under the terms of section (1) of this rule. If the customer has an existing deposit installment agreement, the remaining installment payments will be adjusted to include the additional deposit; however, two installment payments cannot be required within the same 30-day period.

(4) When a customer enters into an installment agreement for payment of a deposit and/or nonrecurring charges under section (1) of this rule, the large telecommunications utility shall provide written notice explaining its deposit and nonrecurring charges requirements. The notice shall specify the date each installment payment shall be due and shall include a statement printed in bold-face type informing the customer that utility service will be disconnected if payment is not received when due.

(5) If a customer fails to abide by the terms of an installment agreement, the large telecommunications utility may disconnect local exchange service after providing a written five-day notice. The notice shall contain the information set forth in OAR 860-021-0505(3)(a) through (e) and shall be served as required by in OAR 860-021-0505(4) and (5). In lieu of permanent disconnection, the large telecommunications utility may curtail service pursuant to OAR 860-021-0505(7).

(6) When good cause exists, the large telecommunications utility may provide or the Commission may require, more liberal arrangements for payment of deposits and/or nonrecurring charges than those set forth in this rule. The large telecommunications utility shall keep a written record of the reasons for such action.

(7) If disconnection for nonpayment of a deposit and/or nonrecurring charges occurs, the customer disconnected shall pay the full

amount of the deposit, and/or nonrecurring charges, any applicable reconnection fee, late-payment fee, and past due tariff and price-listed amount before service is restored. A customer may continue with an existing medical certificate time-payment agreement by paying all past-due installments.

Stat. Auth.: ORS 183, 756, 757 & Ch. 290, OL 1987  
 Stats. Implemented: ORS 756.040 & Ch. 290 OL 1987  
 Hist.: PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-021-0210

##### Interest on Deposits for Residential and Nonresidential Utility Service

(1) Each year, the Commission shall establish an annual interest rate that must be paid on customer deposits. The Commission will base the rate upon consideration of the effective interest rate for new issues of one-year Treasury Bills issued during the last week of October, the interest rate on the most recent issuance of one-year Treasury Bills, or the effective interest rate for the average yield of Treasury Bills of the closest term issued during the last week of October. This interest rate, rounded to the nearest one-half of one percent, shall apply to deposits held during January 1 through December 31 of the subsequent year. The Commission will advise all energy and large telecommunications utilities of the changes in the rate to be paid on customer deposits held as needed.

(2) Upon payment of a deposit, the energy or large telecommunications utility shall provide the customer documentation showing the date, name of the applicant or customer, the service address, the amount of deposit, a statement that the deposit will accrue interest at the rate prescribed by the Commission, and an explanation of the conditions under which the deposit will be refunded.

(3) If the deposit is held beyond one year, accrued interest will be paid by a credit to the customer's account. If held less than one year, interest will be prorated. An energy or large telecommunications utility shall keep a detailed record of each deposit received until the deposit is credited or refunded.

Stat. Auth.: ORS 183, 756, 757, 759 & Ch. 290, OL 1987  
 Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987  
 Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-021-0215

##### Refund of Deposits for Residential and Nonresidential Utility Service

(1) An energy or large telecommunications utility shall promptly refund a customer's deposit with accrued interest when service is terminated, provided a refund due shall first be applied to any unpaid balance on the customer's account.

(2) An energy or large telecommunications utility may continue holding a deposit until credit is satisfactorily established or reestablished. For purposes of this rule, credit shall be considered to be established or reestablished if one year after a deposit is made:

- (a) The account is current;
- (b) Not more than two five-day disconnection notices were issued to the customer during the previous 12 months; and
- (c) The customer was not disconnected for nonpayment during the previous 12 months.

(3) After satisfactory credit has been established or reestablished, the deposit plus any accrued interest shall be promptly refunded or credited to the customer's account. A customer shall be entitled to a refund upon request.

(4) When the customer moves to a new address within the energy or large telecommunications utility's service area, the deposit and accrued interest will be transferred to the new account.

(5) Deposits plus accrued interest may be refunded or credited, in whole or in part, to the customer's account at any time earlier than prescribed in this rule, provided the energy or large telecommunications utility's procedures are nondiscriminatory.

(6) Unless otherwise specified by the customer, an energy or large telecommunications utility shall mail deposit refunds to the customer's last known address. The energy or large telecommunications utility shall promptly honor a valid claim for payment of refund if the request is received within one year of the date service is terminated. Funds

held beyond one year will be disposed of in accordance with ORS 98.316.

Stat. Auth.: ORS 183, 756, 757, 759 & Ch. 290, OL 1987  
 Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987  
 Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01

### Disconnection Rules — All Utility Service

#### 860-021-0305

##### Grounds for Disconnecting Utility Service

Utility service may be disconnected by an energy utility or large telecommunications utility:

- (1) For failure to establish credit by:
  - (a) Failing to pay a deposit or make payments in accordance with the terms of a deposit payment arrangement (OAR 860-021-0206); or
  - (b) Providing false identification or verification of identity.
- (2) When facilities provided are unsafe or do not comply with state and municipal codes governing service or the utility's rules and regulations (OAR 860-021-0335); or when the customer does not cooperate in providing access to the meter (OAR 860-021-0120).

(3) When a customer requests the utility to disconnect service or close an account (OAR 860-021-0310) or when a co-customer fails to reapply for service within 20 days after a joint account is closed by the other co-customer, so long as the utility has provided a notice of pending disconnection.

(4) When dangerous or emergency conditions exist at the service premises (OAR 860-021-0315).

(5) For failure to pay Oregon tariff or price-listed charges due for services rendered (OAR 860-021-0405 and 860-021-0505); or by meter-tampering, diverting service, or other theft of service.

(6) For failure to abide by the terms of a time-payment agreement (OAR 860-021-0410(6), 860-021-0415(5), and 860-021-0510).

(7) When the Commission approves the disconnection of service.  
 Stat. Auth.: ORS 183, 756, 757, 759 & Ch. 290, OL 1987  
 Stats. Implemented: ORS 756.040, 757.035, 757.225 & 757.760  
 Hist.: PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0075; PUC 8-1983, f. & ef. 8-15-83 (Order No. 83-502); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-021-0310

##### Voluntary Disconnection of Utility Service

Every customer who is about to vacate any premises supplied with service by the energy or large telecommunications utility, or who for any reason wishes to have such service discontinued, shall give five days' notice in advance of specified date of discontinuance of service to the utility. Until the energy or large telecommunications utility shall have such notice, the customer shall be held responsible for all service rendered.

Stat. Auth.: ORS 183, 756, 757 & 759  
 Stats. Implemented: ORS 756.040  
 Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0065; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-021-0315

##### Emergency Disconnection of Utility Service

In emergencies endangering life or property, an energy or large telecommunications utility may terminate service without following the procedures in division 021. However, the energy or large telecommunications utility shall immediately thereafter notify the Commission. In such cases, when the necessity for emergency termination was through no fault of the customer, the utility will not make a charge to restore service.

Stat. Auth.: ORS 183, 756, 757 & 759  
 Stats. Implemented: ORS 756.040 & 757.035  
 Hist.: PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83; ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0068; PUC 8-1983, f. & ef. 8-15-83 (Order No. 83-502); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-021-0320

##### Disconnection of Service on Weekends and Holidays

Utility service shall not be disconnected for nonpayment on a weekend or a state- or utility-recognized holiday. Utility service shall not be disconnected for nonpayment on a Friday or the day before a

state- or utility-recognized holiday unless mutually agreed upon by the customer, utility, and the Commission's Consumer Services Division.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 757.760

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217)

#### 860-021-0325

##### Accounts Not Related to Residential Utility Service

An energy or large telecommunications utility may not deny or disconnect residential service due to the failure to pay for nonresidential service or to meet obligations in connection with nonresidential service.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-021-0326

##### Disconnection of Gas or Electric Service to Tenants

(1) When an energy utility's records show that a residential billing address is different from the service address, the utility must provide a duplicate of the five-day disconnect notice required under OAR 860-021-0405(6) for gas and electric service to the occupants of the premises in the manner described in OAR 860-021-0405(6) unless the utility has reason to believe that the service address is occupied by the customer. This requirement is satisfied by serving a notice addressed to "Tenants" in the same manner provided for in OAR 860-021-0405. The notice to occupants need not include the dollar amount owing.

(2) When an energy utility's records show that a residence is a master-metered multi-family dwelling (including rooming houses), the utility must notify the Commission's Consumer Services Division at least five business days before disconnecting the service. The utility will use reasonable efforts to notify occupants of the impending disconnection and alternatives available to them.

Stat. Auth.: ORS 183, 756, 757 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 757.760 & Ch. 290, OL 1987

Hist.: PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-021-0328

##### Reconnection of Residential Energy Utility Service

(1) This rule applies to a service reconnection requested within 20 calendar days of the date of disconnection, after an applicant or customer has satisfied the requirements for service under all applicable rules and regulations, and requested reconnection.

(2) Each energy utility must provide a means by which an applicant or customer may contact the utility on a Business Day so that the applicant or customer may pay applicable charges, submit any necessary credit information, and request reconnection of service. A Business Day is defined as Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding state-recognized holidays.

(3) For energy utility service that has been disconnected in accordance with OAR 860-021-0305(1), (3), (6), (7), or involuntarily disconnected for failure to pay Oregon tariff charges:

(a) An energy utility must reconnect service as soon as reasonably possible, within the normal course of business, after an applicant or customer has satisfied the requirements for and requested reconnection. At a minimum, service must be restored as follows:

(A) For a request for reconnection received during the Business Day, Monday through Thursday, service must be restored by 5:00 p.m. the following day, except when the following day is a state-recognized holiday.

(B) For a request for reconnection received on a Friday Business Day before 3:00 p.m., service must be restored by 5:00 p.m. the following day.

(C) For a request for reconnection received on a Friday Business Day between 3:00 p.m. and 5:00 p.m., service must be restored by the end of the next Business Day.

(b) For a request for reconnection received anytime other than a Business Day: Except as provided under section (6) of this rule, the request for reconnection must be treated as if it were received at 8:00 a.m. on the next Business Day and service must be restored in accordance with Subsection (3)(a)(A) of this rule.

(4) For energy utility service that has been involuntarily disconnected in accordance with OAR 860-021-0305(2), or due to meter tampering, diverting service, or theft of service, an energy utility must reconnect service as soon as reasonably possible, within the normal course of business, but no later than 5:00 p.m. of the next Business Day after the customer has satisfied the requirements for and requested reconnection.

(5) For energy utility service that has been involuntarily disconnected in accordance with OAR 860-021-0315, service will be reconnected in accordance with section (4) of this rule. If the necessity for emergency termination was through no fault of the customer, the energy utility will reconnect in accordance with section (3) of this rule, at no charge to the customer.

(6) An applicant or customer may request reconnection that falls outside of the requirements of sections (3), (4), and (5) of this rule and, for purposes of this rule, such a request will be defined as an After Hours Reconnect. The tariff of each energy utility must specify the hours other than a Business Day when the energy utility will offer an After Hours Reconnect, the terms of the service, and the applicable charges.

(a) At a minimum, an energy utility must:

(A) Provide a means by which an applicant or customer may contact the utility Monday through Friday from 8:00 a.m. to 6:00 p.m., excluding state- or utility-recognized holidays, so that the applicant or customer may pay applicable charges, submit any necessary credit information and request an After Hours Reconnect.

(B) Allow, for a customer request made in accordance with subsection (6)(a)(A) of this rule, an After Hours Reconnect on the same day as the request, or allow an After Hours Reconnect to be scheduled for any subsequent Monday through Friday, except for state- or utility-recognized holidays.

(b) The utility must notify a customer verbally or in writing of the customer's right to an After Hours Reconnect. The notification must include information that the charges associated with a same day or a scheduled After Hours Reconnect exceed the utility's standard reconnection charge.

(7) Utility fees for service reconnection must be charged as follows:

(a) An applicant or customer must pay the utility's standard reconnection fee for a reconnection made under subsection (3)(a) or (3)(b) of this rule.

(b) An applicant or customer must pay an After Hours Reconnect fee for any reconnection made under subsection (6)(a) of this rule. For an After Hours Reconnect that is completed the same day as the request, the reconnection fee may be higher than for an After Hours Reconnect scheduled for a subsequent day.

(8) Reconnection of service following an interruption of service must comply with the requirements of OAR 860-021-0021.

(9) With Commission concurrence, the reconnection requirements under this rule may be temporarily waived for any cause not reasonably within the control of the utility including, but not limited to, the following:

(a) A documented Force Majeure event;

(b) An action or default by an applicant, customer, or other person outside of the utility's control, including a cancellation of the request made by the applicant or customer;

(c) Major events, such as storms or system outages;

(d) Safety-related issues that preclude the utility from reconnecting service;

(e) The applicant's or customer's facilities cannot be accessed due to circumstances beyond the utility's control;

(f) The utility's equipment or facilities prevent the reconnection from occurring; or

(g) When the Commission approves a waiver.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040

Hist.: PUC 1-2006(Temp), f. & cert. ef. 2-17-06 thru 8-15-06; PUC 7-2006, f. & cert. ef. 7-6-06

#### 860-021-0330

##### Reconnection Fee for Utility Service

When a utility service is disconnected pursuant to OAR 860-021-0305, the energy or large telecommunications utility may charge the reconnection fee in its tariff.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 757.225  
Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01

### 860-021-0334

#### Transfer Billings

(1) If an energy or large telecommunications utility identifies a balance a customer owes the utility from the customer's prior account for Oregon service, the utility may transfer the amount to the customer's current account after giving the customer notice of the transfer, the amount due under the prior account, the period when the balance was incurred, and the service address or telephone number under which the bill was incurred; or the utility may send a separate notice to the customer giving the same information that would be included in the transfer, but collecting the amount due separately from the customer's current account. If the bill is identified when a customer changes residences, the provisions of this rule apply. An energy or large telecommunications utility may pursue disconnection for nonpayment of a customer's current utility service only in compliance with OAR 860-021-0405 or 860-021-0505.

(2) If the customer has six months or more remaining on a time-payment agreement, the installment amount will be adjusted to bring the account into balance within the time specified in the original agreement. If the customer has less than six months remaining on a time-payment agreement, the energy or large telecommunications utility will recalculate the agreement to bring the account into balance within 12 months. The customer must pay any past due time-payment installments before the energy or large telecommunications utility adjusts or recalculates the agreement. Energy and large telecommunications utilities may make more liberal payment arrangements for customers on medical certificates who cannot reasonably be expected to pay the outstanding balance in the time otherwise applicable under this rule.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040 & 757.225

Hist.: PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01

### 860-021-0335

#### Refusal of Utility Service

(1) Except as provided in section (2) of this rule, an energy utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to an Oregon prior account.

(2) Except for a residential customer or applicant who was disconnected for theft of service, an energy utility shall provide service to a residential customer or applicant upon receiving payment equal to at least one-half of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, except deposits which must be paid in full, provided the customer or applicant has made reasonable partial payment on the account during the time service has been discontinued. The customer shall pay the balance of the amount owed to the energy utility within 30 days of the date service is initiated. Upon failure to pay, the energy utility may disconnect service after providing a five-day notice to the customer. The notice shall contain the information set forth in OAR 860-021-0405(2)(a),(b), (c), (f), and (g) and shall be served as required by OAR 860-021-0405(5). If a customer or applicant whose service was terminated applies for service within 20 days of the termination, the provisions of this rule apply.

(3) If electric or gas service is disconnected for a residential customer's failure to comply with the payment terms in section (2) of this rule, the utility may refuse to restore service until the utility receives full payment of any overdue obligation of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, including any reconnection fee, late payment fee, and past due bill.

(4) Refusal of service by a large telecommunications utility:

(a) A large telecommunications utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account except for telecommunications service applicants who are eligible for OTAP.

(b) A large telecommunications utility may refuse to provide service to a residential customer or applicant who is eligible for OTAP until the utility receives full payment of any overdue amount relating to a prior account for tariffed local exchange and price-listed services, excluding any toll charges.

(5) An energy or large telecommunications utility may refuse to provide service until the utility receives payment when all the following circumstances exist:

(a) An overdue balance has been incurred by a residential customer or applicant at a service address;

(b) A residential applicant for service resided at the service address described in subsection (5)(a) of this rule during the time the overdue balance was incurred; and

(c) The residential customer or applicant described in subsection (5)(a) of this rule will reside at the location to be served under the new application.

(6) Any energy or large telecommunications utility shall refuse to provide service if a customer or applicant has not complied with state and city codes and regulations governing service and with the utility's rules and regulations.

(7) An energy or large telecommunications utility shall reject an application for service or materially change service to a customer or applicant if, in the best judgment of the utility, the utility lacks adequate facilities to render the service applied for or if the desired service is likely to unfavorably affect service to other customers.

(8) An energy or large telecommunications utility shall refuse to serve a customer or applicant, if, in the best judgment of the utility, the facilities of the customer or applicant cannot provide safe and satisfactory service.

(9) When an energy or large telecommunications utility refuses to provide service, the utility shall notify the customer or applicant of the reasons for refusal and of the Commission's complaint process.

Stat. Auth.: ORS 183, 756, 757, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 757.035, 757.225 & Ch. 290, OL 1987

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0060 and 860-021-0100; PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 22-2002, f. & cert. ef. 12-9-02; PUC 7-2005, f. & cert. ef. 11-30-05

#### Disconnection Rules — Residential Electric or Gas Service

### 860-021-0405

#### Notice of Pending Disconnection of Residential Electric or Gas Utility Service

(1) When a written notice is given under these rules:

(a) The notice must conform to the requirements of OAR 860-021-0010 concerning multilingual requirements and service on any designated representative; and

(b) The notice must conform to the requirements of OAR 860-021-0326 if the energy utility's records show the billing address is different than the service address or the residence is a master-metered multi-family dwelling. The notice may be addressed to "tenant" or "occupant." The envelope must bear a bold notice stating, "Important notice regarding disconnection of utility service," or words to that effect.

(2) The notice must be printed in boldface type and must state in easy to understand language:

(a) The reason for the proposed disconnection;

(b) The amount to be paid to avoid disconnection;

(c) The earliest date for disconnection;

(d) An explanation of the time-payment agreement provisions of OAR 860-021-0415;

(e) An explanation of the medical certificate provisions of OAR 860-021-0410;

(f) The name and telephone number of the appropriate unit of the Department of Human Services or other agencies which may be able to provide financial aid; and

(g) An explanation of the Commission's complaint process and toll-free number.

(3) At least 15 days before an energy utility may disconnect a residential customer for nonpayment for services rendered, the energy utility must provide written notice to the customer. A 15-day notice is

not required when disconnection is for failure to establish credit or theft of service.

(4) The energy utility may not send a notice of disconnection before the due date for payment of a bill.

(5) The energy utility may serve the 15-day notice of disconnection in person or send it by first-class mail to the customer's last known address. Service is complete on the date of personal delivery or, if the notice is delivered by US Mail, service is complete on the day after the date of the US Postal Service postmark or on the day after the date of postage metering.

(6) At least five business days before the proposed disconnection date, the energy utility must mail or deliver a written disconnection notice to the customer. Service is complete on the date of personal delivery or, if the notice is delivered by US Mail, service is complete on the day after the date of the US Postal Service postmark or on the day after the date of postage metering.

(a) The disconnection notice must inform the customer that service will be disconnected on or after a specific date and must explain the alternatives and assistance that might be available as required in section (2) of this rule; or

(b) If notification is delivered to the residence, the energy utility must attempt personal contact. If personal contact cannot be made with the customer or an adult resident, the energy utility must leave the notice in a conspicuous place at the residence.

(7) The energy utility must make a good-faith effort to personally contact the customer or an adult at the residence to be disconnected on the day the energy utility expects to disconnect service or, where the service address has remote disconnection capability installed, at least three (3) business days prior to the day the energy utility expects to disconnect service:

(a) If contact is made, either in person or via the telephone, the energy utility must advise the customer or an adult at the residence of the proposed disconnection; or

(b) If contact is not made, the energy utility must:

(A) Leave a notice in a conspicuous place at the residence informing the customer that service has been, or is about to be, disconnected or

(B) Attempt to contact the customer at a service address where remote disconnect capability is installed via the telephone at least twice a day for the three consecutive days prior to the proposed disconnection, and at least one call must be placed during the morning or afternoon (8:00 am to 5:00 pm) and another call placed during early evening (6:00 pm to 8:00 pm). Where an answering machine or service is available, the utility must leave a message at the end of each calling day informing the customer of the proposed disconnection. Initial implementation of section 7(b)(B) may not occur during the winter heating season (November 1 through April 30).

(8) When an energy utility has an in-person or telephone conversation with the customer or an adult at the residence under this rule, and the circumstances are such that a reasonable person would conclude the customer or an adult at the residence does not understand the possible consequences of disconnection, the utility must:

(a) Notify the Department of Human Services and the Commission; and

(b) Delay the proposed disconnection date for five additional business days.

(9) When the energy utility makes personal contact under this rule, the utility's representative making contact is empowered to accept reasonable partial payment of the overdue balance under the time-payment provisions of OAR 860-021-0415.

(10) An energy utility must document its efforts to provide notice under this rule and make that documentation available to the customer and the Commission upon request.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.760

Hist.: PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0085; PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 4-2006, f. & cert. ef. 2-27-06

## 860-021-0410

### Emergency Medical Certificate for Residential Electric and Gas Service

(1) An energy utility shall not disconnect residential service if the customer submits certification from a qualified medical professional stating that disconnection would significantly endanger the physical health of the customer or a member of the customer's household. "Qualified medical professional" means a licensed physician, nurse-practitioner, or physician's assistant authorized to diagnose and treat the medical condition described without direct supervision by a physician.

(2) The oral certification to the utility must be confirmed in writing within 14 days by the qualified medical professional prescribing medical care. Written certifications must include:

(a) The name of the person to whom the certificate applies and relationship to the customer;

(b) A complete description of the health conditions;

(c) An explanation of how the person's health will be significantly endangered by terminating the service;

(d) A statement indicating how long the health condition is expected to last;

(e) A statement specifying the particular type of utility service required (for example, electricity for respirator); and

(f) The signature of the qualified medical professional prescribing medical care.

(3) If a medical certificate is not submitted in compliance with sections (1) and (2) of this rule, the energy utility may disconnect service after providing a five-day notice to the customer. The notice shall comply with the requirements of OAR 860-021-0405, except subsection (1)(b), subsection (2)(e), and section (4) of this rule shall not be applicable.

(4) An emergency medical certificate shall be valid only for the length of time the health endangerment is certified to exist, but no longer than six months without renewal for certificates not specifying chronic illnesses and no longer than twelve months for certificates specifying illnesses identified as chronic by a "Qualified Medical Professional" as defined in this rule. At least 15 days before the certificate's expiration date, an energy utility will give the customer written notice of the date the certificate expires unless it is renewed with the utility before that day arrives.

(5) A customer submitting a medical certificate is not excused from paying for electric or gas service:

(a) Customers are required to enter into a written time-payment agreement with the energy utility when an overdue balance exists. Terms of the time-payment agreement shall be those in OAR 860-021-0415 or such other terms as the parties agree upon in writing;

(b) When financial hardship can be shown, a customer with a medical certificate may renegotiate the terms of a time-payment agreement with the energy utility; and

(c) Time-payment arrangements in effect when a medical certificate terminates remain in effect for the balance then owing. If a customer fails to pay charges incurred after the certificate terminates, the provisions of OAR 860-021-0415 (standard time-payment provisions) shall apply to payment of the arrearage incurred after the medical certificate expires. The terms of the medical certificate time-payment plan continue to apply to the arrearage accrued during the disability.

(6) If a medical certificate customer fails to enter into a written time-payment agreement within 20 days of filing the certificate, or to abide by its terms, the energy utility shall notify the Commission's Consumer Services Division of its intent to disconnect service and the reason for the disconnection. The energy utility may disconnect service after providing a notice 15 days in advance of disconnection for nonpayment, or five days before disconnection for failure to enter into a written time-payment agreement. The notice shall comply with the requirements of OAR 860-021-0405, except subsection (2)(e) shall not be applicable. A hearing may thereafter be held to determine whether the energy utility should be permitted to disconnect service to the customer.

(7) An energy utility may verify the accuracy of a medical certificate. If the energy utility believes a customer does not qualify, or no longer qualifies for a medical certificate, the utility may apply to the Commission to terminate the service of the customer.

Stat. Auth.: ORS 183, 756, 757 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 757.750, 757.755 & 757.760

Hist.: PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0095; PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-021-0414

##### Equal-Payment Plans for Residential Electric and Gas Service

Electric companies and gas utilities will make equal-payment plans available to residential customers. A customer with no outstanding balance who agrees to remain on an equal-payment plan for 12 months may enter into equal-payment agreement at any time during the year. The plan will provide for an annual adjustment between the estimated charge and the actual charges. If a customer changes residences during the term of the agreement, the payments may be adjusted to reflect the anticipated change in usage. Nothing in this rule is intended to restrict a utility's right to adopt additional payment options.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040, 757.750 & 757.760

Hist.: PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-021-0415

##### Time-Payment Agreements for Residential Electric and Gas Service (Nonmedical Certificate Customers)

(1) An energy utility may not disconnect residential service for nonpayment if a customer enters into a written time-payment plan. An energy utility will offer customers a choice of payment agreements. At a minimum, the customer may choose between a leveled payment plan and an equal-pay arrearage plan.

(2) A customer who selects a leveled payment plan will pay a down payment equal to the average annual bill including the account balance, divided by 12, and a like payment each month for 11 months thereafter:

(a) The energy utility shall review the monthly installment plan periodically. If needed due to changing rates or variations in the amount of service used by the customer, the installment amount may be adjusted to bring the account into balance within the time specified in the original agreement;

(b) If a customer changes service address at any time during the period of a time-payment agreement, provided that payments are then current and the customer pays other tariff charges associated with the change in residence, the energy utility shall recalculate the customer's deposit and/or monthly installment. The recalculated amount shall reflect the balance of the account at the previous service address and the average annual bill at the new service address for the months remaining in the original time-payment agreement. When installments on a time-payment agreement have not been kept current, a customer shall pay all past-due installments and any other applicable charges before service is provided at the new residence.

(3) A customer who selects an equal-pay arrearage plan will pay a down payment equal to one-twelfth the amount owed for past electric or gas service (including the overdue amount and any amounts owed for a current bill or a bill being prepared but not yet delivered to the customer) each month, for the next 11 months, an amount equal to the down payment will be added to, and payable with, the current charges due for utility service. If a customer changes service address at any time during the period of an equal-pay arrearage plan, the plan continues. However, the customer must pay any past-due charges and all other applicable charges before the energy utility provides service at the new address.

(4) The energy utility and customer may agree in writing to alternate payment arrangement, provided the utility first informs the customer of the availability of the payment terms in sections (2) and (3) of this rule.

(5) If a customer fails to abide by the time-payment agreement, the energy utility may disconnect service after serving 15 days' notice. The notice shall comply with OAR 860-021-0405, except subsection (2)(d) of this rule shall not be applicable. If a medical certificate is in effect, OAR 860-021-0410(6) shall apply.

Stat. Auth.: ORS 183, 756, 757 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 757.750 & 757.760

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-021-0420

##### Field Visit Charge

A Commission approved fee may be charged whenever an energy utility visits a residential service address intending to reconnect or disconnect service, but due to customer action, the energy utility is unable to complete the reconnection or disconnection at the time of the visit.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.225

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 7-2005, f. & cert. ef. 11-30-05

#### Disconnection Rules — Utility Service Other than Residential Electric and Gas Service

#### 860-021-0505

##### Disconnection Procedures for All Commercial Electric and Gas Utility Customers and All Customers of Large Telecommunications Utilities

(1) This rule applies to the involuntary termination of all commercial electric and natural gas customers and all utility services provided by large telecommunications utilities.

(2) At least five days before an energy or large telecommunications utility disconnects service for nonpayment for services rendered, the utility must provide the customer a written notice of the disconnection.

(3) The notice must be printed in bold face type and must state in easy to understand language:

(a) The reasons for the proposed disconnection;

(b) The earliest date for disconnection;

(c) The energy or large telecommunications utility shall prominently identify the amount necessary to be paid to avoid disconnection of regulated services;

(d) An explanation of the Commission's complaint process and the Commission's toll-free number; and

(e) An explanation of the availability of an emergency medical certificate for local exchange residential telecommunications service customers under OAR 860-021-0510.

(4) The energy or large telecommunications utility may not send the notice before the due date for payment for the services billed.

(5) The energy or large telecommunications utility may serve the notice of disconnection in person or send it by first class mail to the last known addresses of the customer and the customer's designated representative. Service is complete on the date of personal delivery or, if service is by U S Mail, on the day after the U S Postal Service postmark or the day after the date of postage metering.

(6) If a premises visit is required to complete disconnection, the energy or large telecommunications utility must make a good-faith effort to personally contact the customer or a resident at the service address to be disconnected. If the energy or large telecommunications utility's attempt to make personal contact fails, the utility must leave a notice in a conspicuous place at the premises informing the customer that service has been disconnected.

(7) In lieu of permanent disconnection, a large telecommunications utility may temporarily curtail service by preventing the transmission of incoming telephone messages and/or outgoing toll messages while continuing to let the customer make outgoing local messages. Temporary curtailment of service, as defined in this section, shall be permitted only upon five days' written notice as set forth in section (3) of this rule. The notice shall state that permanent disconnection will follow within ten days unless the customer makes full payment of any overdue amount or any other obligation.

(8) Except for telecommunications service provided by an office incapable of restricting toll service, a large telecommunications utility shall not disconnect or deny local exchange service for an applicant's or customer's failure to pay for services not under the local exchange utility's tariff or price list. A telecommunications utility may limit access to toll and special services using the "9XX" prefix or Numbering Plan Area (NPA) for the failure to pay for such services.

(9) A large telecommunications utility may not disconnect or deny local service to customers or applicants, who are eligible to receive OTAP, for failure to pay toll charges.

(10) A large telecommunications utility may request a limited waiver of the requirement of section (9) of this rule upon meeting all the following conditions:

(a) Showing the large telecommunications utility would incur substantial costs in complying with the requirement;

(b) Demonstrating the large telecommunications utility offers toll-blocking services to customers identified in section (9) of this rule; and

(c) Showing that telecommunications subscribership among low-income customers in its service area in Oregon is at least as high as the national subscribership level for low-income customers.

Stat. Auth.: ORS 183, 756, 757, 759 & 290, OL 1987

Stats. Implemented: ORS 756.040, 757.750, 757.755, 757.060 & 290, OL1987

Hist.: PUC 6-1979, f. & cf. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, cf. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0105; PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 6-1989, f. & cert. ef. 5-22-89 (Order No. 89-662); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 5-1999(Temp), f. & cert. ef. 9-21-99 thru 3-18-00; PUC 14-1999, f. & cert. ef. 12-15-99; PUC 16-2001, f. cert. ef. 6-21-01

#### 860-021-0510

#### Emergency Medical Certificate for Residential Telecommunications Utility Service

(1) A large telecommunications utility shall not disconnect local exchange residential service if the customer submits certification from a qualified medical professional stating that disconnection would significantly endanger the physical health of the customer or a member of the customer's household. "Qualified medical professional" means a licensed physician, nurse-practitioner, or physician's assistant authorized to diagnose and treat the medical condition described without direct supervision by a physician.

(2) The oral certification to the large telecommunications utility must be confirmed in writing within 14 days by the qualified medical professional prescribing medical care. A written certification must include:

(a) The name of the person to whom the certificate applies and relationship to the customer;

(b) A complete description of the health conditions;

(c) An explanation of how the person's physical health will be significantly endangered by terminating the service;

(d) A statement indicating how long the health condition is expected to last;

(e) A statement specifying the particular type of service required (for example, electricity for respirator); and

(f) The signature of the qualified medical professional prescribing medical care.

(3) If an emergency medical certificate is not submitted in compliance with section (2) of this rule, the large telecommunications utility may disconnect local exchange service after providing five days' notice to the customer. The notice shall contain the information set forth in OAR 860-021-0505(3)(a) through (d) and shall be served as required by OAR 860-021-0505(4) and (5).

(4) An emergency medical certificate shall be valid only for the length of time the health endangerment is certified to exist, but no longer than six months without renewal.

(5) A customer submitting an emergency medical certificate:

(a) Remains responsible for payment of telecommunications services provided by the large telecommunications utility; and

(b) Must enter into a time payment agreement with the large telecommunications utility pursuant to OAR 860-021-0575 if the customer has an overdue balance. This time payment agreement must be entered into within 10 days after submission of the certificate.

(6) A large telecommunications utility may verify the accuracy of an emergency medical certificate. If the large telecommunications utility believes a customer does not qualify, or no longer qualifies for an emergency medical certificate, the large telecommunications utility may apply to the Commission for permission to disconnect service to the customer.

(7) After notice to the Commission, a large telecommunications utility may terminate local exchange residential service if the large telecommunications utility providing the service lacks the technical ability to terminate toll telecommunications service without also terminating local exchange service.

Stat. Auth.: ORS 183, 756 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 757.750, 757.760, 757.755 & Ch. 290, OL 1987

Hist.: PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 3-2006, f. & cert. ef. 2-27-06

#### 860-021-0550

#### Termination of Local Exchange Residential Service for Telecommunications Customers at Significant Risk

(1) "At significant risk" means:

(a) At risk of domestic violence, as defined in ORS 135.230;

(b) At risk of unwanted sexual contact, as defined in ORS 163.305;

(c) A person with disabilities, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS 124.005(1)(a), (1)(d), or (1)(e);

(d) An elderly person, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS 124.005(1)(a), (1)(d), or (1)(e); or

(e) A victim of stalking, as described in ORS 163.732.

(2) To establish that termination of local exchange residential service would significantly endanger the customer, or a person in the household of the customer, the customer must give the large telecommunications utility:

(a) A copy of an order issued under ORS 30.866, 107.700 to 107.732, 124.005 to 124.040, or 163.738 that restrains another person from contact with the customer, or a person in the household of the customer, at significant risk; or

(b) A copy of any other court order that restrains another person from contact with the customer, or a person in the household of the customer, due to a significant risk; and

(c) An affidavit signed by the customer stating that termination would place the customer, or a person in the household of the customer, at significant risk. The affidavit must include the name of the person to whom the court order applies, the relationship of the person to the customer, and the expiration date of the order.

(3) A large telecommunications utility must establish and maintain procedures for receiving affidavits and orders from customers.

(4) A customer submitting an affidavit and order under section (2) of this rule:

(a) Remains responsible for payment of telecommunication services provided by the large telecommunications utility; and

(b) Must enter into a time payment agreement with the large telecommunications utility pursuant to OAR 860-021-0575 if the customer has an overdue balance. This time payment agreement must be made within 10 days after submission of the affidavit and order.

(5) If a customer who has submitted an affidavit and order fails to enter into or abide by the terms of a time payment agreement pursuant to OAR 860-021-0575, the large telecommunications utility may disconnect local exchange service after complying with all provisions of OAR 860-021-0505. Five days' notice of disconnection must also be provided to the Commission's Consumer Services Section.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: Ch.290, OL 2005

Hist.: PUC 4-2005(Temp), f. 8-22-05, cert. ef. 9-1-05 thru 2-27-06; PUC 2-2006, f. & cert. ef. 2-27-06

#### 860-021-0575

#### Time Payment Agreements for Large Telecommunications Utilities

(1) A time payment agreement must contain, at a minimum, the following terms:

(a) An initial customer down payment of \$10 or 25 percent of the balance owing for tariffed or price-listed large telecommunications utility services on file with the Commission, whichever is greater;

(b) Full payment of the overdue balance within 90 days of the date of the agreement; and

(c) Customer agreement to keep subsequent bills current.

(2) The large telecommunications utility must send a letter to the customer confirming the terms of the time payment agreement.

(3) Payments must be made on a monthly basis. The large telecommunications utility cannot require more frequent payments unless agreed to by the customer. The customer cannot extend the time payment agreement beyond 90 days without the consent of the large telecommunications utility.

(4) The large telecommunications utility may not accelerate payments under a time payment agreement when the customer changes residences. The customer must pay tariff charges associated with the change in residence.

(5) The large telecommunications utility may terminate the customer's local exchange residential service pursuant to OAR 860-021-0505 if the customer refuses to enter into or fails to abide by the terms of the time payment agreement. The large telecommunications utility must provide five days' notice to the Commission's Consumer Services Section.

(6) Nothing in this rule prevents a large telecommunications utility and a customer from entering into a time payment agreement for other charges.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 2005  
Stats. Implemented: ORS 756.040, 757.750, 757.760, 757.755, Ch. 290, OL 1987 & Ch. 290, OL 2005  
Hist.: PUC 3-2006, f. & cert. ef. 2-27-06

### Telephone Solicitation

#### 860-021-0610

#### Telephone Solicitation Notices by Large Telecommunications Utilities

Each large telecommunications utility shall notify its residential customers of the provisions of ORS 646.561, 646.563, 646.567 through 646.578, and 646.608. The notice shall include a statement that a customer not wishing to be solicited may file a request, together with the required fees, with the telephone solicitation program administrator contracted by the State Attorney General. The notice shall include the address and the telephone number for the customer to contact the telephone solicitation program administrator. The notice shall be provided in the following manner and a copy shall be forwarded to the Commission:

- (a) Annual inserts in the billing statements mailed to parties; or
- (b) Conspicuous publication of the notice in the consumer information pages of local telephone directories.

Stat. Auth.: ORS 183, 646 & 756  
Stats. Implemented: ORS 646.578 & 756.040  
Hist.: PUC 7-1991, f. & cert. ef. 5-10-91 (Order No. 91-583); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 1-2000(Temp), f. & cert. ef. 1-18-00 thru 7-15-00; PUC 5-2000, f. & cert. ef. 4-17-00; PUC 3-2001, f. & cert. ef. 1-24-01; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-021-0620

#### Customer Notification and Information Delivery Services for Large Telecommunications Utilities

- (1) As used in this rule:

(a) "Information provider" means any person, company, or corporation that operates an information delivery service on a pay-per-call basis;

(b) "Information delivery service" means any telephone-recorded messages, interactive programs, or other information services provided for a charge to a caller through an exclusive telephone number prefix or service access code. When a preexisting written contract exists between the customer and the information provider, this definition does not apply.

(2) A large telecommunications utility providing billing services for information providers shall inform customers:

(a) Of the availability of blocking for information delivery services if and when it is technically available;

(b) That a customer's local and long distance service shall not be suspended or terminated for nonpayment of information delivery service charges;

(c) That any customer who suffers damage from a violation of ORS 646.608, 646.639, and 759.700 through 759.720 by an information provider has a cause of action against such information provider and a court may award the greater of three times the actual damages or \$500, order an injunction or restitution and award attorney fees and court costs to a prevailing plaintiff;

(d) That when an information provider has failed to comply with any provision of ORS 646.608, 646.639, and 759.700 through 759.720, any obligation by a customer that may have arisen from dialing a pay-per-call telephone number is void and unenforceable;

(e) That any obligation that may have arisen from the dialing of a pay-per-call telephone number by an unemancipated child under 18 years of age; or

(f) For a person whose physician substantiates the following conditions, the obligation is void and unenforceable:

(A) The person has a mental or emotional disorder generally recognized in the medical or psychological community that makes the

person incapable of rational judgments and comprehending the consequences of the persons' action; and

(B) The disorder was diagnosed before the obligation was incurred; and

(g) Upon written notification to the information provider or the billing agent for the information provider that a bill for information delivery services is void and unenforceable under (d), (e), or (f) of this rule, no further billing or collection activities shall be undertaken in regard to that obligation.

(3) The notice shall include text prepared by the Commission's Consumer Services Division or prepared by the large telecommunications utility and approved by the Commission. The notice shall be provided in the following manner:

(a) An annual insert in the billing statements mailed to customers or conspicuous publication of the notice in the consumer pages of local telephone directories; and

(b) Including the notice in the letters setting out the rights and responsibilities of customers sent to all new customers.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 759.700 - 759.720  
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01

## DIVISION 22

### RATES

#### 860-022-0000

#### Applicability of Division 022

The rules contained in this division apply to energy utilities and large telecommunications utilities, as defined in OAR 860-022-0001.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045  
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 11-2001, f. & cert. ef. 4-18-01

#### 860-022-0001

#### Definitions for Utility Rates

For purposes of this division, except when a different scope is explicitly stated:

(1) "Consumer-owned utility" has the meaning given to the term under ORS 757.270(2).

(2) "Energy utility" means a public utility as defined in ORS 757.005 except a water utility or wastewater utility. An energy utility can be an "electric company," "gas utility," or "steam heat utility."

(3) "Large telecommunications utility" means any telecommunications utility, as defined in ORS 759.005 that is not partially exempt from regulation under ORS 759.040.

(4) "Non-energy attributes" means the environmental, economic, and social benefits of generation from renewable energy facilities. These attributes are normally transacted in the form of Tradable Renewable Certificates.

(5) "Utility" means all energy utilities and large telecommunications utilities, as defined in sections (2) and (3) of this rule.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 759.005  
Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-022-0003

#### Through Service

"Through service" means an Oregon intrastate telecommunications service the provision of which involves the facilities, equipment, or services of two or more telecommunications utilities and/or cooperatives. Examples of "through services" may include, but are not limited to, intrastate toll/access service, extended area service, and E 9-1-1 service. Whether a service is a "through service" is determined on a case-by-case basis.

Stat. Auth.: ORS 183 & 759  
Stats. Implemented: ORS 759.220  
Hist.: PUC 3-1998, f. & cert. ef. 2-24-98

**860-022-0005**

**Tariff Specifications for Energy Utilities and Large Telecommunications Utilities**

- (1) Form and style of tariffs:
    - (a) All tariffs must be in loose-leaf form so changes can be made by reprinting and inserting a single leaf;
    - (b) Each energy or large telecommunications utility must designate the initial tariff as PUC Oregon No. 1, and designate successive tariffs with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;
    - (c) The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used; and
    - (d) Separate tariffs must be filed for electric, telecommunications, telegraph, gas, heat, or for any other service entered.
  - (2) Size of tariffs and copies required:
    - (a) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and
    - (b) Energy and large telecommunication utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. The utility must supplement the filing with an exact copy of the tariff in electronic form as required in OAR 860-013-0036. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.
- Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 757.205  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 176, f. 11-17-76, ef. 12-1-76 (Order No. 76-806); PUC 15-1987, f. & ef. 12-3-87 (Order No. 87-1185); PUC 8-1995, f. & cert. ef. 8-30-95 (Order No. 95-858); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

**860-022-0010**

**Tariff Contents for Energy Utilities and Large Telecommunications Utilities**

- (1) The tariffs of each energy utility and large telecommunications utility must explicitly state the utility rates and charges for each class of service rendered, designating the area or district to which they apply.
  - (2) The energy or large telecommunications utility's rules and regulations that in any manner affect the rates charged or to be charged or define the extent or character of the service to be given shall be included with each tariff.
- Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 757.205 & 759.175  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

**860-022-0015**

**Tariff Changes by Energy Utilities and Large Telecommunications Utilities Require 30 Days' Notice to the Commission**

- Except as hereinafter provided in this division, energy utilities and large telecommunications utilities must file with the Commission all tariffs, rate schedules, or supplements thereto containing any change in rates, tolls, charges, rules, or regulations at least 30 days before the effective date of such changes. The Commission will reject tariffs or schedules not conforming with the rules in this division.
- Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 757.007, 757.220 & 759.190  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 176, f. 11-17-76, ef. 12-1-76 (Order No. 76-806); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

**860-022-0017**

**Announcement of Utility Tariff Changes**

- (1) Within 15 days of filing with the Commission new or revised tariff schedules which constitute a general rate revision, an energy or large telecommunications utility shall inform its customers of the filing. A "general rate revision" is a filing by an energy or large telecommunications utility which affects all or most of a utility's rate schedules. "General rate revision" excludes changes in an automatic adjustment clause under ORS 757.210(1), changes in the credit reflect-

ed on certain electric company rate schedules relating to Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, or similar changes in one rate schedule, such as for an amortization, that affects other rate schedules.

- (2) The energy or large telecommunications utility shall inform its customers by:
    - (a) Inserting a display announcement, not less than a three column standard advertising unit (SAU) by ten-inch advertisement, at least once in a newspaper of general circulation in the communities served by the energy or large telecommunications utility;
    - (b) Inserting an announcement in the energy or large telecommunications utility's regular billing to its customers; or
    - (c) Mailing an announcement to each customer.
  - (3) The energy or large telecommunications utility's announcement shall include:
    - (a) The approximate annualized amount of the proposed total change, expressed both in dollar and in percentage terms; and the approximate amount of the proposed change for an average residential customer's monthly bill, expressed in dollar terms;
    - (b) A brief statement of the reasons why the energy or large telecommunications utility seeks the change;
    - (c) A statement that copies of the energy or large telecommunications utility's testimony and exhibits are available for inspection at its main and district offices;
    - (d) The mailing address and telephone number of the energy or large telecommunications utility's office that customers may contact for additional information about the filing;
    - (e) The mailing address and toll-free telephone number of the Commission to which requests to receive notice of the time and place of any hearing on the matter may be directed; and
    - (f) A statement that the purpose of the announcement is to provide the energy or large telecommunications utility's customers with general information about the utility's proposals and their effects on its customers, but that the calculations and statements contained in the announcement are not binding on the Commission.
  - (4) Within 20 days of issuing the announcement, the energy or large telecommunications utility shall file an affidavit that notice has been given and a copy of the notice.
  - (5) An energy or large telecommunications utility may submit to the Commission, and request approval of, a list of the newspapers of general circulation in the communities served by the utility. The utility may revise the list by written request to the Commission.
  - (6) The Commission may waive the requirements of this rule upon a showing by the energy or large telecommunications utility that the notice required by this rule has been given with respect to a particular general rate revision, and upon a further showing that additional notice with respect to that rate revision would be duplicative, confusing to customers, and burdensome to the utility.
- Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 757.205 - 757.220 & 759.175 - 759.190  
Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 11-1990(Temp), f. & cert. ef. 6-21-90 (Order No. 90-968); PUC 22-1990, f. & cert. ef. 12-31-90 (Order No. 90-1917); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

**860-022-0020**

**Applications to Make Tariffs or Rate Schedules Effective on Less Than Statutory Notice**

- An energy or large telecommunications utility seeking authority to make tariffs or rate schedules effective on less than statutory notice must use application forms approved by the Commission.
- [ED. NOTE: Forms referenced are available from the agency.]
- Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 757.220 & 759.190  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 16-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

**860-022-0025**

**Requirements for Filing Tariffs or Schedules Changing Rates**

- (1) An energy or large telecommunications utility may make tariff changes by filing an entirely new tariff or by filing revised sheets which shall refer to the tariff sheets on file. Additions to the tariff on file may be made by filing additional sheets.
- (2) Each energy or large telecommunications utility filing tariffs or schedules changing existing tariffs or schedules shall submit therewith the following information:

(a) A statement plainly indicating the increase, decrease, or other change thereby made in existing rates, charges, tolls, or rules and regulations;

(b) A statement setting forth the number of customers affected by the proposed change and the resulting change in annual revenue; and

(c) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed change.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.205, 757.061 & 759.175

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-022-0026

##### Requests to Abandon, Exempt from Regulation, or Price-List Regulated Telecommunications Services

A large telecommunications utility is subject to the requirements set forth in OAR 860-032-0020, 860-032-0023, 860-032-0025, and 860-032-0035.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.030, 759.035, 759.050, 759.190 & 759.195

Hist.: PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-022-0030

##### Requirements for Filing Tariffs or Schedules Naming Increased Rates

(1) Each energy or large telecommunications utility filing tariffs or schedules which name increased rates shall submit therewith, in addition to requirements of OAR 860-022-0025, the following information:

(a) A statement setting forth for each separate schedule the total number of customers affected, the total annual revenue derived under the existing schedule, and the amount of estimated revenue which will be derived from applying the proposed schedule;

(b) A statement setting forth for each separate schedule the average monthly use and resulting bills under both the existing rates and the proposed rates for characteristic customers, which will fairly represent the application of the proposed tariff or schedules; and

(c) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed increase.

(2) Additional information from the energy or large telecommunications may be required to be filed either before the Commission's acceptance of the tendered filing or at any stage in the proceeding.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.205 & 759.175

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-022-0032

##### Tariff Changes Effective With Service Rendered by an Energy or Large Telecommunications Utility

An energy or large telecommunications utility shall make all tariff changes applicable with service rendered on and after the effective date of the changes, unless the Commission by order provides otherwise. As used in this rule, "service rendered" means units of energy consumed, toll calls connected, basic service provided, or likewise as the context requires

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.007, 757.220 & 759.190

Hist.: PUC 176, f. 11-17-76, ef. 12-1-76 (Order No. 76-806); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-022-0035

##### Special Contracts

(1) Energy and telecommunications utilities within Oregon entering into special contracts with certain customers prescribing and providing rates, services, and practices not covered by or permitted in the general tariffs, schedules, and rules filed by such utilities are in legal effect tariffs and are subject to supervision, regulation, and control as such.

(2) All special agreements designating service to be furnished at rates other than those shown in tariffs now on file in the Commission's office shall be classified as rate schedules. True and certified copies shall be filed subject to review and approval pursuant to the requirements of OARs 860-022-0005 through 860-022-0030.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.007 & 759.250

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-022-0038

##### Notice to Interested Persons of Tariffs Filed Under ORS 757.205 or 759.175

(1) This rule applies to any tariff filed by an energy utility under ORS 757.205 or by a telecommunications utility under ORS 759.175.

(2) Any person who requests of the Commission, in writing, to be notified of utility tariff filings covered under section (1) of this rule must be included on a notice list.

(3) The Commission must notify all persons on the notice list referred to in section (2) of this rule of any applicable tariff filing. The notice will be given within ten days of any tariff filing under section (1) of this rule that complies with OARs 860-022-0025 through 860-022-0035.

(4) The Commission may periodically delete persons' names from the notice list who do not demonstrate a continued interest in receiving the notices in section (2) of this rule. No person's name may be deleted from the list without 20 days' notice before deletion.

(5) The notice must include the following information:

(a) Name of the filing utility;

(b) Subject;

(c) Advice number;

(d) Filing date;

(e) Effective date;

(f) Date of the public meeting when the tariff will be considered (when the information is available);

(g) Customer classes affected, if readily ascertainable from the utility's advice letter; and

(h) Whether the tariff schedule is primarily related to price competition or a service alternative, if readily ascertainable from the utility's advice letter.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.205, 757.230, 759.175 & 759.210

Hist.: PUC 16-1988, f. & cert. ef. 10-21-88 (Order No. 88-1216); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-022-0040

##### Relating to City Fees, Taxes, and Other Assessments Imposed Upon Electric Companies, Gas Utilities, and Steam Heat Utilities

(1) The aggregate amount of all business or occupation taxes, license, franchise or operating permit fees, or other similar exactions or costs, excepting volumetric-based fees in section (3) of this rule, imposed upon energy utilities by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, which does not exceed 3 percent for gas utilities or 3.5 percent for electric companies and steam heat utilities, applied to gross revenues as defined herein, shall be allowed as operating expenses of such utilities for rate-making purposes and shall not be itemized or billed separately. All other costs not allowed as operating expenses shall be itemized or billed separately.

(2) Except as otherwise provided herein, "gross revenues" means revenues received from utility operations within the city less related net uncollectibles. Gross revenues of an energy utility shall include revenues from the use, rental, or lease of the utility's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

(3) Each electric company subject to volumetric-based privilege taxes or fees shall determine for each city imposing such volumetric charges a base volumetric rate for each customer class calculated as 3.5 percent of the class 1999 gross operating revenues within the city divided by the amount of electric energy in kilowatt-hours delivered to the class in 1999. In cases where 1999 data is not available for a particular city and/or class, the utility's total 1999 Oregon revenues and kilowatt-hour deliveries for the customer class shall be used to calculate the base volumetric rate. An amount equal to the base volumetric rates multiplied by the corresponding amount of electric energy in kilowatt hours delivered in the 12-month period used to determine the electric company's revenue requirement shall be allowed as operating expenses and shall not be itemized or billed separately. The privilege tax shall be allocated across an electric company's customer classes

in the same proportional amounts as levied by cities against the electric company.

(4) Permit fees or similar charges for street opening, installations, construction, and the like to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in exercising its police powers, and the value of any utility services or use of facilities provided on November 6, 1967, to a city without charge, shall not be considered in computing the percentage levels set forth in sections (1) and (3) of this rule. Any such services may be continued within the same category or type of use. The value of any additional category of utility service or use of facilities provided after November 6, 1967, to a city without charge shall be considered in computing the percentage levels herein set forth.

(5) This rule shall not affect franchises existing on November 6, 1967, granted by a city. Payments made or value of service rendered by an energy utility under such franchises shall not be itemized or billed separately. When compensation different from the percentage levels in section (1) of this rule is specified in a franchise existing on November 6, 1967, such compensation shall continue to be treated by the affected utility as an operating expense during the balance of the term of such franchise. Any tax, fee, or other exaction set forth in section (1) of this rule, unilaterally imposed or increased by any city during the unexpired term of a franchise existing on November 6, 1967, and containing a provision for compensation for use and occupancy of streets and public ways, shall be charged pro rata to local users as herein provided.

(6) Except as provided in section (5) of this rule, to the extent any city tax, fee, or other exaction referred to in sections (1) and (3) of this rule exceeds the percentage levels allowable as operating expenses in sections (1) and (3) of this rule, such excess amount shall be charged pro rata to energy customers within said city and shall be separately stated on the regular billings to such customers.

(7) The percentage levels in sections (1) and (3) of this rule may be changed if the Commission determines after such notice and hearing, as required by law, that fair and reasonable compensation to a city or all cities should be fixed at a different level or that by law or the particular circumstances involved a different level should be established.

(8) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the energy utility.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 3-1990, f. & cert. ef. 4-6-90 (Order No. 90-417); PUC 14-1990, f. & cert. ef. 7-11-90 (Order No. 90-1031); PUC 7-1998, f. & cert. ef. 4-8-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 17-2000, f. & cert. ef. 9-29-00; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 15-2002, f. & cert. ef. 6-14-02; PUC 14-2003, f. & cert. ef. 7-24-03; PUC 7-2005, f. & cert. ef. 11-30-05

## 860-022-0041

### Annual Tax Reports and Automatic Adjustment Clauses Relating to Utility Taxes

(1) This rule applies to regulated investor-owned utilities that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003, or to any successors in interest of those utilities that continue to be regulated investor-owned utilities.

(2) As used in this rule:

(a) "Affiliated group" has the meaning given to "affiliated group" in ORS 757.268(13)(a);

(b) "Deferred taxes" for purposes of the utility means the total deferred tax expense of regulated operations that relate to the year being reported in the utility's results of operations report or tax returns, excluding deferred taxes related to the establishment of a regulatory receivable or payable account for any rate adjustment imposed under ORS 757.268, in the year the deferred tax is established but not thereafter, to eliminate the iterative tax effect of the rate adjustment;

(c) "Income" means taxable income as determined by the applicable taxing authority, except that income means regulatory taxable income when reporting or computing the stand-alone tax liability resulting from a utility's regulated operations;

(d) "Income tax losses" means the negative taxable income of an entity in the federal taxpayer or unitary group, excluding the current deduction of tax depreciation on public utility property and federal investment tax credits related to public utility property;

(e) "IRC" means Internal Revenue Code;

(f) "Investment" means capital outlays for utility property necessary or useful in providing regulated service to customers;

(g) "Iterative tax effect" means the tax effect of a rate adjustment for taxes related to ORS 757.267 or 757.268 in the tax reporting period that includes the rate adjustment;

(h) "Local taxes collected" means the total amount collected by the utility from customers under the local tax line-item of customers' bills calculated on a separate city or county basis;

(i) "Pre-tax income" means the utility's net revenues before income taxes and interest expense, as determined by the Commission in a general rate proceeding;

(j) "Properly attributed" means the share of taxes paid that is apportioned to the regulated operations of the utility as calculated in section (3), subject to subsections (4)(a), (4)(b), (4)(g) and (4)(h), of this rule;

(k) "Public utility property" means property as defined by the Code of Federal Regulations, Title 26, Section 168(i)(10);

(l) "Regulated operations of the utility" has the meaning given to "regulated operations of the utility" in ORS 757.268(13)(c);

(m) "Results of operations report" means the utility's annual results of operations report filed with the Commission;

(n) "Revenue" means utility retail revenues received from ratepayers in Oregon, excluding supplemental schedules or other revenues not included in the utility's revenue requirement and adjusted for any rate adjustment imposed under this rule;

(o) "Revenue requirement" means the total revenue the Commission authorizes a utility an opportunity to recover in rates pursuant to a general rate proceeding or other general rate revision, including an annual automatic adjustment clause under ORS 757.210;

(p) "Stand-alone tax liability" means the amount of income tax liability calculated using a pro forma tax return and revenues and expenses in the utility's results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effects from investment tax credits, and calculating interest expense in the manner used by the Commission in establishing rates;

(q) "System regulated operations" means those activities of the utility, in Oregon and other jurisdictions, that are subject to rate regulation by any state commission;

(r) "Tax" has the meaning given to "tax" in ORS 757.268(13)(d);

(s) "Taxes authorized to be collected in rates" means:

(A) The following for federal and state income taxes calculated by multiplying the following three values:

(i) The revenue the utility collects, as reported in the utility's results of operations report;

(ii) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, calculated using the pre-tax income and revenue the Commission authorized in establishing rates and revenue requirement; and

(iii) The effective tax rate used by the Commission in establishing rates for the time period covered by the tax report as set forth in the most recent general rate order or other order that establishes an effective tax rate, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income;

(B) For purposes of paragraph (2)(s)(A) of this rule, when the Commission has authorized a change during the tax year for gross revenues, net revenues or effective tax rate, the amount of taxes authorized to be collected in rates will be calculated using a weighted average of months in effect;

(t) "Taxes paid" has the meaning given to "taxes paid" in ORS 757.268(13)(f);

(u) "Taxpayer" means the utility, the affiliated group or the unitary group that files income tax returns with units of government;

(v) "Tax report" means the tax filing each utility must file with the Commission annually, on or before October 15 following the year for which the filing is being made, pursuant to ORS 757.268;

(w) "Unitary group" means the utility or the group of corporations of which the utility is a member that files a consolidated state income tax return; and

(x) "Units of government" means federal, state, and local taxing authorities.

(3) The amount of income taxes paid that is properly attributed to regulated operations of the utility is calculated as follows:

(a) The amount of federal income taxes paid to units of government that is properly attributed to the regulated operations of the util-

ity is the product of the values in paragraphs (3)(a)(A) and (B), subject to subsection (3)(b) of this rule:

(A) The total amount of federal income taxes paid by the federal taxpayer, to which is added:

(i) The current tax benefit, at the statutory federal income tax rate, of tax depreciation on public utility property;

(ii) The tax benefits associated with federal investment tax credits related to public utility property; and

(iii) Imputed tax benefits on charitable contributions and IRC section 45 renewable electricity production tax credits of the affiliated group, except those tax benefits or credits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales, using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the federal taxpayer in the denominator;

(b) The amount of federal income taxes paid that is properly attributed to the regulated operations of the utility under subsection (3)(a) of this rule shall not be less than the amount of the federal stand-alone tax liability calculated for the regulated operations of the utility, reduced by the product of:

(A) The imputed negative tax associated with all federal income tax losses of entities in the utility's federal taxpayer group; and

(B) The average of the ratios for the utility's gross plant, wages and salaries and sales, using amounts allocated to the regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the system regulated operations in the denominator;

(c) The total amount of state income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(c)(A) and (B), subject to paragraphs (3)(c)(C) and (D) and subsection (3)(d) of this rule:

(A) The total amount of Oregon income taxes paid by the Oregon unitary group taxpayer, to which is added:

(i) The current tax benefit, at the state statutory rate, of tax depreciation on public utility property; and

(ii) Imputed Oregon tax benefits on charitable contributions of the unitary group, except those tax benefits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the unitary group taxpayer in Oregon, adjusted to reflect amounts allocated to regulated operations of the utility, in the denominator;

(C) If a utility's taxes collected in rates reflect non-Oregon state income taxes, the utility must make a one-time permanent election in its October 15, 2006, tax report filing, or in the case of a change of the majority ownership of the utility's voting shares pursuant to ORS 757.511, in the first tax report filing that includes a tax reporting period reflecting the new ownership, to either:

(i) Multiply the total amount of Oregon income taxes paid in paragraph (3)(c)(A) of this rule before adjustments by the ratio calculated as the state income tax rate used by the Commission in establishing rates divided by the Oregon statutory tax rate set forth in ORS 317.061; or

(ii) Calculate the total state taxes paid using the formula set forth in paragraphs (3)(c)(A) and (B) of this rule on a state by state basis, apportioned to Oregon by multiplying the total state taxes paid by the average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator;

(D) When Oregon income tax attributable to system regulated operations is 100 percent allocated to Oregon in setting rates, 100 percent of the Oregon income tax of system regulated operations must be attributed to the regulated operations of the utility;

(d) The amount of state income taxes paid that is properly attributed to the regulated utility operations of the utility under subsection (3)(c) of this rule must not be less than:

(A) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the amount of the Oregon state stand-alone tax liability calculated for the regulated operations of the

utility, minus the imputed negative tax associated with all Oregon state income tax losses of entities in the utility's unitary group; or

(B) For a utility for which non-Oregon state income taxes are included in rates, the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group, minus the sum of the imputed negative tax associated with all state income tax losses of entities in the utility's unitary group in each state; and

(ii) The average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator;

(e) The amount of local income taxes paid to units of government that is properly attributed to the regulated operations of a utility is the product of the values in paragraphs (3)(e)(A) and (B) of this rule for each local taxing authority in Oregon:

(A) The total amount of income taxes paid by the taxpayer to the local taxing authority, as adjusted to include the imputed effect on local income taxes of:

(i) The current tax benefit of tax depreciation on public utility property; and

(ii) Imputed tax benefits on charitable contributions of the taxpayer except those associated with regulated operations of the utility; and

(B) The ratio calculated using the method for apportioning taxable income used by the local taxing authority, with the amount for the regulated operations of the utility in the local taxing authority in the numerator and the amount for the taxpayer in the local taxing authority in the denominator.

(4) On or before October 15 of each year, each utility must file a tax report with the Commission. The tax report must contain the following applicable information for each of the three preceding fiscal years:

(a) The amount of federal and state income taxes paid to units of government by the taxpayer, as adjusted pursuant to subparagraphs (3)(a)(A)(i), (ii) and (iii) of this rule;

(b) The amount of the utility's federal and state income taxes paid that is incurred as a result of income generated by the regulated operations of the utility, where:

(A) The amount of federal income taxes paid is equal to the federal stand-alone tax liability calculated for the regulated operations of the utility;

(B) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the utility's state income taxes paid is the Oregon state stand-alone tax liability calculated for the regulated operations of the utility; and

(C) For a utility for which non-Oregon state income taxes are included in rates, the amount of state income taxes paid is the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group; and

(ii) The ratio calculated as the income of the regulated operations of the utility divided by the income of the system regulated operations;

(c) The amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule;

(d) The lowest of the amounts in subsections (4)(a), (4)(b) and (4)(c) of this rule, after making adjustments in paragraphs (4)(d)(A), (4)(d)(B), (4)(d)(C), (4)(d)(D), and (4)(d)(E), but no less than the deferred taxes related to depreciation of public utility property for regulated operations of the utility, except the deferred tax amount must be reduced by any tax refunds recognized in the reporting period and allocated to the regulated operations of the utility;

(A) The items defined in subsection (2)(t) of this rule;

(B) A reduction equal to the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility;

(C) A reduction equal to the tax benefit related to federal investment tax credits recognized by the Commission in establishing rates;

(D) An increase equal to the tax benefit of Oregon business energy tax credits, including those credits transferred pursuant to ORS

469.206 and ORS 469.208, of the unitary group, excluding those credits covered by ORS 757.268(13)(f)(B); and

(E) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(d)(A) of this rule;

(e) The amount of federal and state income taxes authorized to be collected in rates;

(f) The amount of the difference between the amounts in subsections (4)(d) and (4)(e) of this rule;

(g) The amount of local income taxes paid to units of government by the taxpayer, calculated for each local taxing authority, and to which is added the imputed effect on local income taxes of the amount in subparagraph (3)(e)(A)(i) of this rule;

(h) The amount of local income taxes paid to units of government by the taxpayer that is incurred as a result of income generated by the regulated operations of the utility, calculated as the stand-alone tax liability in each local taxing authority;

(i) The amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule for each local taxing authority;

(j) The lowest of the amounts in subsections (4)(g), (4)(h) and (4)(i) of this rule, calculated for each local taxing authority, after making adjustments for:

(A) The items defined in subsection (2)(t) of this rule; and

(B) A reduction equal to the local tax effect of the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility; and

(C) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(j)(A) of this rule;

(k) The amount of local income taxes collected from Oregon customers, calculated for each local taxing authority;

(l) The amount of the difference between the amounts in subsection (4)(j) and (4)(k) of this rule, calculated for each local taxing authority;

(m) The proposed surcharge or surcredit rate adjustments for each customer rate schedule to charge or refund customers the amount of the differences in subsections (4)(f) and (4)(l) of this rule;

(n) If the utility claims the minimum taxes paid amount set by subsections (3)(b) and (3)(d) of this rule, the total federal and state income tax losses in the utility's affiliated and unitary groups associated with the imputed negative tax claimed; and

(o) Any adjustments, in addition to the adjustments required in section (3) and subsections (4)(a) through (4)(n) of this rule, that the utility proposes to avoid probable violations of federal tax normalization requirements.

(5) In calculating the amount of taxes paid under sections (3) and (4) of this rule:

(a) "Taxes paid" must be allocated to each tax year employed by the utility for reporting its tax liability in the following manner:

(A) For any tax return prepared for the preceding tax year and filed on or before the date the tax report is due for such tax year, the utility must allocate each reported tax liability to the tax year for which such return is filed;

(B) For each tax liability or tax adjustment shown on an amended tax return or made as a result of a tax audit, that is filed, paid or received after the date the tax report is due for the applicable tax year, the utility must allocate the tax liability or tax adjustment to the tax year that is recognized by the utility for accounting purposes;

(C) Taxes paid must include any interest paid to or interest received from units of government with respect to tax liabilities;

(b) When a utility's fiscal year or parent changes, and a partial year consolidated federal income tax return is filed during the year, taxes paid must be calculated in the manner defined by ORS 314.355 and OAR 150-314.355. For purposes of this rule, the amount of taxes paid must reflect a weighted average of the months in effect related to each tax return filing.

(6) The utility must explain the method used for calculating the amounts in this rule and provide copies of all workpapers and documents supporting the calculations.

(7) The Commission will establish an ongoing docket for each of the October 15 tax report filings. Upon signing a protective order

prepared by the Commission, any intervenor may have access to all such tax report filings, subject to the terms of the protective order;

(a) Within 20 days following the tax report filings, an Administrative Law Judge will conduct a conference and adopt a schedule;

(b) Within 180 days of the tax report filings, the Commission will issue an order that contains the following findings:

(A) Whether the taxes authorized to be collected in rates for any of the three preceding fiscal years differs by \$100,000 or more from the amount of taxes paid to units of government that is properly attributed to the regulated operations of the utility;

(B) For the preceding fiscal year, the difference between the amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of taxes authorized to be collected in rates;

(C) For the preceding fiscal year, the difference between the amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of local taxes collected in rates; and

(c) Any other finding or determination necessary to implement the automatic adjustment clause.

(8) Upon entry of an order finding a difference of \$100,000 or more in section (7) of this rule, the utility must file an amended tariff, to be effective each June 1 unless otherwise authorized by the Commission, to implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each fiscal year beginning on or after January 1, 2006;

(a) The utility must establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in paragraph (7)(b)(B) of this rule through a surcharge or surcredit rate adjustment;

(b) A utility that is assessed a local income tax must establish a separate balancing account and automatic adjustment clause tariff for each local taxing authority assessing such tax. The utility must apply a surcharge or surcredit on the bills of customers within the local taxing authority assessing the tax. The amount of the surcharge or surcredit must be calculated to recover or refund the difference determined by the Commission in paragraph (7)(b)(C) of this rule;

(c) Any rate adjustment must be calculated to amortize the difference determined by the Commission in paragraphs (7)(b)(B) and (7)(b)(C) of this rule over a period authorized by the Commission;

(d) Any rate adjustment must be allocated by customer rate schedule according to equal percentage of margin for natural gas utilities and equal cents per kilowatt-hour for electric utilities, unless otherwise authorized by the Commission;

(e) Each balancing account must accrue interest at the Commission-authorized rate for deferred accounts. For purposes of calculating interest, the amount of the difference calculated in this section of the rule will be deemed to be added to the balancing account on July 1 of the tax year;

(f) The automatic adjustment clause must not operate in a manner that allocates to customers any portion of the benefits of deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment or regulated affiliate investment required to ensure compliance with the normalization method of accounting or any other requirements of federal tax law;

(g) On or before December 31, 2006, each utility must seek a Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with ORS 757.268 or this rule would cause the utility to fail to comply with any provision of federal tax law, including normalization requirements. Each utility must file a draft of its Private Letter Ruling Request with the Commission on or before November 15, 2006. While a utility's request for a Private Letter Ruling is pending, or a related Revenue Ruling is pending, no rate adjustment will be implemented, but interest will accrue according to subsection (8)(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to paragraphs (7)(b)(B) and (7)(b)(C) of this rule.

(9) No later than 30 days following the Commission's findings in section (7) of this rule, any person may petition to terminate the automatic adjustment clause on the basis that it would result in a material adverse effect on customers. In the event of a filing under this section, the applicable rate adjustment will not be implemented until the Commission makes its determination. If the Commission denies the

request to terminate the rate adjustment, interest will accrue according to subsection (8)(e) of this rule on the final amount of the rate adjustment.

(10) At any time, a utility may file a claim that a rate adjustment under the automatic adjustment clause violates ORS 756.040 or other applicable law. In making a determination regarding a potential violation of ORS 756.040, the Commission will perform an earnings review using the utility's results of operations report for the applicable tax year.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.060, 757.267 & 757.268

Hist.: PUC 8-2006, f. & cert. ef. 9-18-06; PUC 11-2007, f. & cert. ef. 9-18-07

#### 860-022-0042

##### Relating to City Privilege Taxes, Fees, and Other Assessments Imposed Upon a Large Telecommunications Utility

(1) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a large telecommunications utility by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, whether applied to regulated revenues, net income, or other bases, shall be allowed as operating expenses of the large telecommunications utility for rate-making purposes, subject to sections (2) through (4) of this rule.

(2) As used in this rule:

(a) "Fees and other assessments" means business or occupation taxes or licenses; franchise or operating permit fees; sales, use, net income, gross receipts, and payroll taxes, levies, or charges; and other similar exactions imposed by cities, other than ad valorem taxes, upon revenues or income received from regulated telecommunications services by a large telecommunications utility;

(b) "Local access revenues" means those revenues derived from exchange access services within the city, as defined in ORS 401.710, less related net uncollectibles;

(c) "Privilege taxes" means taxes levied and collected by cities from a large telecommunications utility for use and occupancy of city streets, alleys, or highways, as provided under ORS 221.515;

(d) "Regulated revenues" means those revenues derived from regulated telecommunications services within the city less related net uncollectibles. Regulated revenues include, but are not limited to, local access revenues.

(3) Separate fees for street opening, installations, construction, and maintenance of fixtures or facilities to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in the exercise of its police powers shall be allowed as operating expenses of a large telecommunications utility for rate-making purposes. Such fees shall not be deducted in computing the percentage level set forth in section (4) of this rule.

(4) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a large telecommunications utility by a city, which does not exceed 4 percent of local access revenues, shall be allowed as operating expenses for rate-making purposes and shall not be itemized or billed separately. All privilege taxes and fees and other assessments in excess of 4 percent of local access revenues shall be charged pro rata to users of local access services within the city, and the aggregate excess amount shall be separately itemized on customers' bills or billed separately.

(5) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the large telecommunications utility.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.105

Hist.: PUC 14-1990, f. & cert. ef. 7-11-90 (Order No. 90-1031); PUC 7-1998, f. & cert. ef. 4-8-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 14-2003, f. & cert. ef. 7-24-03

#### 860-022-0045

##### Relating to Local Government Fees, Taxes, and Other Assessments Imposed Upon an Energy or Large Telecommunications Utility

(1) If any county in Oregon, other than a city-county, imposes upon an energy or large telecommunications utility any new taxes or license, franchise, or operating permit fees, or increases any such taxes or fees, the utility required to pay such taxes or fees shall collect from its customers within the county imposing such taxes or fees the amount of the taxes or fees, or the amount of increase in such taxes or fees. However, if the taxes or fees cover the operations of an energy or large telecommunications utility in only a portion of a county, then the affected utility shall recover the amount of the taxes or fees or increase

in the amount thereof from customers in the portion of the county which is subject to the taxes or fees. "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) The amount collected from each utility customer pursuant to section (1) of this rule shall be separately stated and identified in all customer billings.

(3) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date.

(4) If any county, energy or large telecommunications utility, or customer affected by this rule deems the rule's application in any instance to be unjust or unreasonable, it may apply for a waiver of this rule by petition to the Commission, setting forth the reasons why the rule should not apply.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.110 & 759.115

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 7-1998, f. & cert. ef. 4-8-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-022-0046

##### Forced Conversion of Electric and Communication Facilities

(1) As used in this rule:

(a) "Convert," "converting," or "conversion" means the removal of overhead electric or communication facilities and the replacement of those facilities with underground electric or communication facilities at the same or different locations;

(b) "Conversion cost" means the difference in cost between constructing an underground system and retaining the existing overhead system. This difference is generally equal to the cost of all necessary excavating, road crossings, trenching, backfilling, raceways, ducts, vaults, transformer pads, other devices peculiar to underground service, and "overhead retirement costs." However, if the conversion is required in conjunction with a public project which would necessitate the relocation of the electric company's or large telecommunications utility's facilities at the utility's expense, "conversion costs" shall not include any "overhead retirement costs;"

(c) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, cross-arms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances, and all related facilities required for the acceptance of electric or communication services. However:

(A) "Electric facilities" excludes any facilities used or intended to be used for the transmission of electric energy at nominal voltage in excess of 35,000 volts;

(B) "Communication facilities" excludes facilities used or intended to be used for the transmission of intelligence by microwave or radio apparatus cabinets or outdoor public telephones;

(C) "Electric or communication facilities" excludes any electric or communication facilities owned or used by or provided for a railroad or pipeline and located upon or above the right-of-way of the railroad or pipeline.

(d) "Local government" includes cities; counties; authorities and agencies created pursuant to ORS Chapters 456 and 457; special districts of the type described in ORS 198.010, 198.180; and all other political subdivisions of Oregon;

(e) "Overhead electric or communication facilities" means electric or communication facilities located above the surface of the ground;

(f) "Overhead retirement cost" means the original cost, less depreciation, less salvage value, plus removal costs, of existing overhead distribution facilities no longer used or useful by reason of the conversion;

(g) "Underground electric or communication facilities" means electric or communication facilities located below the surface of the ground exclusive of those facilities such as substations, transformers, pull boxes, service terminals, pedestal terminals, splice closures, apparatus cabinets, and similar facilities which normally are above the surface in areas where electric company or large telecommunications utility facilities are underground in accordance with standard underground practices.

(2) This rule does not apply if the total conversion cost incurred by the electric company or large telecommunications utility during one calendar year does not exceed five-one hundredths of 1 percent (.05 percent) of the utility's annual revenues derived from customers residing within the boundaries of the local government.

(3) When a local government requires an energy or large telecommunications utility to convert electric or telecommunications facilities at the utility's expense, the utility shall collect the conversion costs from customers located within the boundaries of the local government.

(4) The local government may direct the electric company or large telecommunications utility to collect conversion costs from only a portion of the customers located within the boundaries of the local government.

(5) Conversion costs incurred by the electric company or large telecommunications utility shall be accumulated in a separate account in the electric company or large telecommunications utility's books. Interest shall accrue from the date the electric company or large telecommunications utility incurs the cost. The rate of such interest shall be equal to the effective cost of the senior security issue which most recently preceded the incurrence of the cost.

(6) The electric company or large telecommunications utility shall collect the conversion costs and interest over a reasonable period of time subject to the Commission's approval. However, the pay-back period shall not exceed the depreciable life of the facilities. Collection shall begin as soon as practical after the end of the year in which the conversion costs are incurred.

(7) The conversion cost to be recovered from each customer shall be calculated by applying a uniform percentage to each customer's total monthly bill for service rendered within the boundaries of the local government. The amount collected shall be separately stated and identified on each bill.

(8) This rule applies to conversions upon which construction began on or after August 13, 1984.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 17-1984, f. & ef. 8-14-84 (Order No. 84-615); PUC 20-1984, f. & ef. 9-19-84 (Order No. 84-737); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-022-0065

##### Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities

Pole and conduit attachments shall comply with the rules set forth in OAR chapter 860, division 028.

Stat. Auth.: ORS 183, 756, 757, 758 & 759

Stats. Implemented: ORS 757.035, 757.542 - 757.562, 758.215, 759.045 & 759.650 - 759.675

Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-022-0070

##### Procedures and Standards for Reviewing Gas Utility Rates in the Context of the Purchased Gas Adjustment Mechanism

(1) The purpose of sections (1) through (7) of this rule is to ensure that earnings of a natural gas utility local distribution company ("gas utility" or "LDC") with a purchased gas adjustment ("PGA") mechanism are not excessive prior to passing through prudently incurred base gas cost changes in rates through a mechanism which is fair to all parties and efficient to administer. For purposes of this rule, earnings are excessive only if a gas utility does not share with its customers past revenues related to earnings that exceed an earnings threshold determined by the Commission.

(2) Prudently incurred base gas cost changes will be included in rates through tracking filings, subject to the Commission's review of gas cost purchasing practices at the time of those filings.

(3) A separate, simplified earnings review will be conducted on an annual basis independent of and in advance of the PGA filings. The purpose of such an earnings review is to determine whether the gas utility's earnings are above an earnings threshold so as to require some sharing of revenue with customers before passing through base gas cost changes. The purpose is not to make a forward-looking, permanent change in rates.

(4) In an earnings review conducted under this rule, it is reasonable for PGA base gas cost changes to be passed through into rates if, in circumstances when the gas utility's earnings in the prior year were above an earnings threshold determined in section (5) of this rule, revenue

representing a percentage of earnings in that year above that earnings threshold is shared with customers.

(5) The standards to be applied in an earnings review under this rule for each LDC are as follows:

(a) Test year: The test year for the earnings review will be the calendar year immediately prior to the year in which the PGA filing is made, unless otherwise specified by the Commission.

(b) Normalization and adjustments: The test year results will be adjusted with a predetermined list of rate-making adjustments equivalent to those applied in the gas utility's most recent general rate proceeding.

(c) Earnings threshold: There will be no revenue sharing required for years when a gas utility's return on equity from utility operations in Oregon is lower than the earnings threshold determined by the Commission for each LDC. Neither this value nor any of the components implied in establishing it will be precedential in a general rate case involving any Oregon public utility. The Commission will update the value for the earnings threshold annually for each LDC, pursuant to a mechanism established by order of the Commission for each LDC, to reflect changes in conditions in the capital markets. Upon a showing of good cause, the Commission may consider other relevant factors in addition to changes in conditions in the capital markets.

(d) Sharing percentage: The amount of revenue in a test year representing a specified percentage of the earnings above the earnings threshold will be shared with customers. The Commission by order will determine the sharing percentage for each LDC.

(e) Deferral and amortization: Any revenue determined for the gas utility for a test year under section 5(d) of this rule will be deferred as of December 31 of the test year. The balance in the deferred account will accrue interest from that date at the LDC's rate of return on rate base determined in its last general rate case. Interest will continue to accrue at this rate during the amortization period, which will begin on the date of the next PGA rate change and extend for twelve months. The Commission by order will determine the method for allocating amounts to be amortized among customer classes.

(6) Each LDC will file test year results of operations by May 1. Any person may request to be placed on a list to receive all such earnings review filings at the time they are submitted to the Commission or may request a copy of individual filings. Any person wishing to participate as a party shall so notify the Commission and other parties via letter. Commission staff will complete its review and distribute summary conclusions by June 10 to all parties. Staff will present the results of the earnings review at the first regular public meeting in July; alternatively, if issues are unresolved among all parties, a settlement conference including all parties will be conducted. By August 1, the parties will file position statements with the Commission on unresolved issues, if needed. The Commission will issue its decision on unresolved issues, if any, by August 15. Unless otherwise directed by the Commission, each LDC will file its annual gas cost tracking filing by August 31, including amortization of credit amounts in the deferred account, if any, resulting from the earnings review.

(7) The earnings review mechanism established under the terms of this rule will be effective for two years, with earnings reviews conducted in 2007 counting as the first year. The mechanism will be reviewed for potential extension after the second year.

(8) Application of earnings reviews conducted under this rule to amortization of deferred gas costs: The results of the earnings review conducted under this rule will be applicable to amortization of deferred gas costs if the LDC has a risk sharing mechanism for variations in commodity gas costs, as defined in the PGA tariff, that allocates less than 33 percent of the risk to the LDC. An earnings review will not be applicable to amortization of deferred gas costs if the LDC assumes at least 33 percent of the responsibility for commodity cost differences in the risk sharing mechanism. The Commission may modify this requirement if it authorizes an alternative incentive mechanism relating to variations in gas costs for an LDC.

Stat. Auth.: ORS 183 & 757

Stats. Implemented: ORS 757.210 & 757.259

Hist.: PUC 1-1999, f. & cert. ef. 4-21-99; PUC 5-2003, f. & cert. ef. 4-14-03; PUC 1-2007, f. & cert. ef. 1-23-07

**860-022-0075****Ownership of Non-Energy Attributes of Generation from Renewable Energy Facilities**

(1) This rule applies to non-energy attributes associated with energy generated and sold under an applicable contract, as identified in section (2) of this rule, that is executed on or after the effective date of this rule.

(2) Unless otherwise agreed to by separate contract, the owner of the renewable energy facility retains ownership of the non-energy attributes associated with electricity the facility generates and sells to an electric company pursuant to:

(a) The provisions of a net metering tariff;

(b) An Oregon contract with the electric company entered into pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978; or

(c) Another retail power production tariff.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.205, 757.210

Hist.: PUC 7-2005, f. & cert. ef. 11-30-05

**DIVISION 23****SERVICE STANDARDS****860-023-0000****Applicability of Division 023**

The rules contained in this division apply to energy utilities, large telecommunications utilities, telecommunications carriers, and intrastate toll service providers, as defined in OAR 860-023-0001.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 11-2001, f. & cert. ef. 4-18-01; PUC 9-2005, f. & cert. ef. 12-23-05

**860-023-0001****Definitions for Service Standards**

For purposes of this division, except when a different scope is explicitly stated:

(1) "Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, or other legal entity that has applied for, been accepted for, or is currently receiving service from an energy utility, large telecommunications utility, or intrastate toll service provider.

(2) "Energy utility" means a public utility as defined in ORS 757.005 except a water utility or wastewater utility. An energy utility can be an "electric utility," "gas utility," or "steam heat utility."

(3) "Intrastate" means telecommunications service that originates and terminates in Oregon.

(4) "Intrastate toll service provider" means a telecommunications carrier that provides intrastate toll services to retail customers.

(5) "Large telecommunications utility" means any telecommunications utility, as defined in ORS 759.005, that is not partially exempt from regulation under ORS 759.040.

(6) "Local exchange service" has the meaning given to "local exchange telecommunications service" in ORS 759.005(1)(c).

(7) "Telecommunications carrier" has the meaning provided in ORS 759.400(3).

(8) "Toll" has the meaning provided in ORS 759.005(h).

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040 & 759.005

Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 9-2005, f. & cert. ef. 12-23-05

**860-023-0005****Maintenance of Plant and Equipment by Energy Utilities, Large Telecommunications Utilities, and Intrastate Toll Service Providers**

Each energy utility, large telecommunications utility, and intrastate toll service provider must have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service. Each energy utility, large telecommunications utility, and intrastate toll service provider must inspect its plant distribution system and facilities in such manner, and with such frequency, as may be needed to ensure a reasonably complete knowl-

edge about its condition and adequacy at all times. Each energy utility, large telecommunications utility, and intrastate toll service provider must keep such records of the conditions found as the utility considers necessary to properly maintain its system, unless in special cases the Commission specifies a more complete record.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.020 & 759.035

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 13-2002, f. & cert. ef. 3-26-02; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 9-2005, f. & cert. ef. 12-23-05

**860-023-0010****Use of Gas and Electric Meters**

(1) Electrical energy sold by a utility shall be charged for by meter measurements, unless otherwise authorized by the Commission. All meter measurements for gas service shall be converted to a therm basis for billing purposes.

(2) Unless otherwise authorized by the Commission, each energy utility shall continue to own, maintain, and operate all equipment needed to regulate and measure electricity and gas to its customers. When the energy utility furnishes additional meters or relocates meters for the customer's convenience, the energy utility may make a reasonable charge for such meters in accordance with a schedule approved by the Commission.

(3) No energy utility shall charge for furnishing, installing, or maintaining any meter or other appliance for measurement purposes except by the Commission's permission, or as provided in OARs 860-021-0050(1) and 860-021-0055. The amount so paid shall be refunded to the customer by allowing him/her a credit of one-half of the monthly bill until the amount has been paid, provided such refund payments do not run for more than three years from the date when the refund began.

(4) No rental shall be charged by any energy utility for any meter or appliance installed by it, which the energy utility uses as a basis for the rendering of bills, except when an additional meter or appliance may be requested by the customer for his/her convenience.

(5) The energy utility shall have the right to set meters or other devices for detecting and preventing fraud or waste, without notifying the customer.

(6) No energy utility shall use prepayment meters except in special cases or for clearly defined special classes of service authorized by the Commission.

(7) If damage results to the meter from molesting or willful neglect by the customer, the energy utility shall repair or replace the meter and it may bill the customer for the cost.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.250

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 9-1998, f. & cert. ef. 4-28-98

**860-023-0015****Testing Gas and Electric Meters**

(1) All meters shall be tested before installation, or within 30 days thereafter. No meter will be placed in service or be allowed to remain in service which has an error in registration in excess of two percent under conditions of normal operation. These requirements may be waived by written agreement if the energy utility provides an approved random sampling technique for testing new meters.

(2) New meters, repaired meters, and meters that have been removed from service shall be correct to within two percent fast or slow before being installed or reinstalled.

(3) Each energy utility shall adopt schedules for periodic tests and repairs of meters. The length of time meters shall be allowed to remain in service before receiving periodic tests and repairs is to be determined from periodic analysis of the accuracy of meters tested. The schedules adopted shall be subject to the Commission's approval.

(4) Whenever any meter is tested, the energy utility shall prepare a test record, including the information needed for identifying the meter, the reason for making the test, the reading of the meter, the result of the test, and all data taken at the time of the test in sufficiently complete form to permit the convenient checking of methods employed. The energy utility shall retain the current and immediately prior test records for all meters tested.

(5) Each energy utility shall, unless specifically excluded by the Commission, provide such laboratory meter-testing equipment and other equipment and facilities as needed to make the tests required of

it by these rules or other orders of the Commission. The apparatus and equipment so provided shall be subject to the Commission's approval.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.250  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 9-1998, f. & cert. ef. 4-28-98

### Electric Service Standards

#### 860-023-0020

##### Quality of Electric Service

(1) Every electric company shall adopt a set of normal standard voltages at the point of delivery for the different classes of service in its service areas. The nominal standard voltages applicable to residential and commercial customers shall be specified in the tariffs filed by the electric company. Except as may be caused by the customer's operation of apparatus in violation of the electric company's rules, or by conditions beyond the electric company's control, every electric company shall maintain the adopted standard secondary voltages so the same shall not normally vary more than plus or minus 5 percent of the standard at the service entrance.

(2) Each electric company shall make a sufficient number of voltage surveys to indicate the service furnished is in compliance with the standard as indicated under section (1) of this rule.

(3) Each electric company shall keep a complete record of each test of voltage and service conditions, as made under these rules, and this record shall be accessible to the Commission or its authorized representatives. Each record of tests of voltage or service conditions so kept shall contain complete information concerning the test, including such items as the Commission may from time to time require.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.020  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 7-2005, f. & cert. ef. 11-30-05

### Gas Service Standards

#### 860-023-0025

##### Purity of Gas

(1) All gas supplied to customers shall contain no more than .25 of one grain of hydrogen sulfide in each 100 cubic feet; 20 grains of sulphur in each 100 cubic feet (30 grains of sulphur in 100 cubic feet may be permitted if the gas utility shall show cause for such an exception in advance or immediately upon the discovery of exceptional conditions that warrant it); five grains of ammonia in each 100 cubic feet. No gas shall contain impurities which may cause excessive corrosion of mains or piping or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.

(2) Tests:

(a) Each utility distributing manufactured gas, or a mixture of manufactured and other gas, shall test the gas for the presence of hydrogen sulfide at least once each day. Each utility distributing natural gas shall make hydrogen sulfide tests at such intervals as needed.

(b) Records of all tests shall be properly filed and shall be reported to the Commission for such periods and at such times as the Commission shall request.

(3) Manufactured and mixed gas shall be tested at least once each month for the presence of total sulphur and ammonia. Approved methods of testing shall be used. Record of all tests shall be preserved as specified by the Commission.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.020  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 9-1998, f. & cert. ef. 4-28-98

#### 860-023-0030

##### Change in Character of Service

(1) Any change in the heating value or the characteristics of the gas service which may impair the safe, efficient use of the gas in the customer's appliances shall not be made without the Commission's approval and without adequate notice to the customers. In such event, the gas utility shall make any necessary adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customers.

(2) No changes of standard shall take effect and no expenditure shall be incurred to alter plant or equipment for the purpose of supplying gas under the proposed standard until the Commission has approved the change of standard or until 30 days after notification, data, and schedules required by this rule have been transmitted to the Commission. The provisions of this rule shall not be interpreted as forbidding expenditure for engineering services or experimental or development work needed to determine the character and cost of the proposed changes.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.020  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 9-1998, f. & cert. ef. 4-28-98

#### 860-023-0035

##### Pressure Testing and Maintenance

(1) Each gas utility shall make every reasonable effort needed to maintain adequate gas pressure. Each gas utility shall make such determinations and keep such records of pressures as will enable it to have at all times a substantially accurate knowledge of the pressure existing in every part of its distributing system. The pressure records shall be properly identified, dated and filed.

(2) All recording pressure gauges shall be tested periodically and maintained in an accurate condition.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.020  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 9-1998, f. & cert. ef. 4-28-98

#### 860-023-0040

##### Testing Equipment and Facilities

(1) Each gas utility shall own and maintain or have access to all testing equipment needed to make all tests of the gas required by the Commission. The Commission may approve arrangements for the gas utility to have any part of its testing done by another utility or competent party.

(2) All testing equipment shall be of an approved type, properly maintained, and subject to the Commission's inspection and approval. All equipment shall be open to use of qualified representatives of the Commission at any time for testing the gas distributed by the utility.

(3) Testing equipment shall be so located and used that the sample of gas tested shall typify the gas being distributed in the system.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.250  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 9-1998, f. & cert. ef. 4-28-98

#### 860-023-0045

##### Heating Value

(1) Each gas utility shall file with the Commission, as part of its schedules of rates or rules and regulations, the average total heating value of the gas and the indicated maximum expected fluctuation above and below the average total heating value which may be expected of a gas supplied by it in each district, division, or community served.

(2) In maintaining the established heating value, the chemical composition, and specific gravity shall be such as to attain satisfactory combustion in the customer's appliances at all times without repeated readjustment of the burners.

(3) When supplemental or substitute gas is distributed by a utility, the gas quality shall be such that the usage performance will be satisfactory, regardless of the heating value of the gas.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.020  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 9-1998, f. & cert. ef. 4-28-98

#### 860-023-0050

##### Heating Value Tests — Records and Reports

(1) Each gas utility shall test the heating value of manufactured or mixed gas being furnished to the distribution system at least once a day except Sundays and holidays. Original test data shall be recorded on the gas utility's standard forms and preserved for at least three years.

(2) Each gas utility supplying natural gas shall make sufficient tests, or have access to such tests made by its suppliers, to maintain the established heating value.

(3) These tests shall be made at a location, or locations, which will ensure a representative sampling of gas being sent out to the distribution systems. A monthly summary shall be made from these tests.

(4) The variation permitted from the established total heating value shall not exceed an amount consistent with normal satisfactory appliance operation.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.020

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 9-1998, f. & cert. ef. 4-28-98

## Telecommunications Service Standards

### 860-023-0054

#### Retail Intrastate Toll Service Provider Service Standards

Every intrastate toll service provider must adhere to the following standards:

(1) Measurement and Reporting Requirement. Each intrastate toll service provider must take the measurements required by this rule and report them to the Commission as specified.

(2) Additional Reporting Requirements. The Commission may require a telecommunications carrier to provide additional reports on any item covered by this rule.

(3) Blocked Calls. An intrastate toll service provider must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of all properly dialed calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of the Commission-approved service levels listed in subsection (b) of this section, or alternatively, provide the level of service specified by the intrastate toll service provider in accordance with ORS 759.020(6).

(a) Measurement:

(A) An intrastate toll service provider must collect traffic data; that is, peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups;

(B) System blockage will be determined by special testing at the wire center. Commission Staff or a carrier technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percent of completion of the calls shall be calculated.

(b) Commission-Approved Service Level:

(A) An intrastate toll service provider must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P01 grade of service);

(B) An intrastate toll service provider must maintain its network operation so that 99 percent of the calls do not experience blockage during any normal busy hour. If a final trunk group provisioned by an intrastate toll service provider exceeds the blockage standard specified herein for four consecutive months, the trunk group will be considered in violation of this standard.

(c) Reporting Requirement: In accordance with ORS 759.020(6), each intrastate toll service provider must inform customers of the service level furnished by the carrier. Each provider must also identify the service level it plans to furnish in its annual report filed with the Commission. An intrastate toll service provider must file a switching system blockage report after a Commission-directed switching-system blockage test is completed.

(d) Retention Requirement: Each intrastate toll service provider must maintain records for one year.

(4) Special Service Lines. All special service access lines must meet the performance requirements specified in applicable intrastate toll service provider tariffs or contracts.

(5) An intrastate toll service provider connected to the facilities of other telecommunications carriers as defined in ORS 759.400(3) shall operate its system in a manner that will not impede a telecommunications carrier's or intrastate toll service provider's ability to meet required standards of service. A telecommunications carrier or intrastate toll service provider shall report interconnection operational problems promptly to the Commission.

(6) Alternatives to These Telecommunications Standards. An intrastate toll service provider whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules, if it specifically

indicates the alternative standards to be applied, or indicates which standards would be waived.

(7) Remedies for Violation of This Standard:

(a) If a telecommunications carrier subject to this rule violates one or more of its service standards, the Commission must require the intrastate toll service provider to submit a plan for improving performance as provided in ORS 759.450(5). If an intrastate toll carrier does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, penalties may be assessed in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that an intrastate toll service provider subject to this rule has violated one or more of its service standards, the Commission shall give the intrastate toll service provider notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the intrastate toll service provider to provide the following relief to the affected customers:

(A) Customer billing credits equal to the associated nonrecurring and recurring charges of the intrastate toll service provider for the affected service for the period of the violation; or

(B) Other relief authorized by Oregon law.

(8) Exemption from these rules:

(a) An intrastate toll service provider may petition the Commission for an exemption, in whole or in part, from these rules.

(b) The Commission may grant an exemption including, but not limited to, the following circumstance: If the Commission determines that effective competition exists in one or more exchange, it may exempt all telecommunications carriers providing telecommunications services in those exchanges from the requirements of this rule, in whole or in part. In making this determination, the Commission must consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Price to cost ratios;

(F) Number of suppliers;

(G) Price demand side substitutability (for example, customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(c) When a telecommunications carrier or intrastate toll service provider petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications carriers providing the applicable service(s) in the exchange(s) in question. Such notified telecommunications carriers will be provided an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in Section 8(b)(A) through (H), the commenting telecommunications carrier be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) For purposes of this rule, if a final trunk group provisioned by an intrastate toll provider exceeds the blockage standard specified by the provider for four consecutive months, that trunk group will be considered in violation of the provider's service standard.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.030, 759.050 & 759.450

Hist.: PUC 9-2005, f. & cert. ef. 12-23-05; PUC 10-2006, f. & cert. ef. 10-12-06

### 860-023-0055

#### Retail Telecommunications Service Standards for Large Telecommunications Utilities

Every large telecommunications utility must adhere to the following standards:

(1) Definitions.

(a) "Access Line" — A facility engineered with dialing capability to provide retail telecommunications service that connects a customer's service location to the Public Switched Telephone Network;

(b) "Average Busy Season Busy Hour" — The hour that has the highest average traffic for the three highest months, not necessarily consecutive, in a 12-month period. The busy hour traffic averaged

across the busy season is termed the average busy season busy hour traffic;

(c) “Average Speed of Answer” — The average time that elapses between the time the call is directed to a representative and the time it is answered;

(d) “Blocked Call” — A properly dialed call that fails to complete to its intended destination except for a normal busy (60 interruptions per minute);

(e) “Customer” — Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity that has applied for, been accepted, and is currently receiving local exchange telecommunications service;

(f) “Exchange” — Geographic area defined by maps filed with and approved by the Commission for the provision of local exchange telecommunications service;

(g) “Final Trunk Group” — A last-choice trunk group that receives overflow traffic and that may receive first-route traffic for which there is no alternative route;

(h) “Force Majeure” — Circumstances beyond the reasonable control of a large telecommunications utility, including but not limited to, delays caused by:

(A) A vendor in the delivery of equipment, where the large telecommunications utility has made a timely order of equipment;

(B) Local, state, federal, or tribal government authorities in approving easements or access to rights of way, where the large telecommunications utility has made a timely application for such approval;

(C) The customer, including but not limited to, the customer’s construction project or lack of facilities, or failure to provide access to the customer’s premises;

(D) Uncontrollable events, such as explosion, fire, floods, frozen ground, tornadoes, severe weather, epidemics, injunctions, wars, acts of terrorism, strikes or work stoppages, and negligent or willful misconduct by customers or third parties, including but not limited to, outages originating from introduction of a virus onto the provider’s network;

(i) “Held Order for Lack of Facilities” — Request for access line service delayed beyond the initial commitment date due to lack of facilities. An access line service order includes an order for new service, transferred service, additional lines, or change of service;

(j) “Initial Commitment Date” — The initial date pledged by the large telecommunications utility to provide a service, facility, or repair action. This date is within the minimum time set forth in these rules or a date determined by good faith negotiations between the customer and the large telecommunications utility;

(k) “Network Interface” — The point of interconnection between the large telecommunications utility’s communications facilities and customer terminal equipment, protective apparatus, or wiring at a customer’s premises. The network interface must be located on the customer’s side of the large telecommunications utility’s protector;

(l) “Retail Telecommunications Service” — A telecommunications service provided for a fee to customers. Retail telecommunications service does not include a service provided by a large telecommunications utility to another telecommunications utility or competitive telecommunications provider, unless the telecommunications utility or competitive telecommunications provider receiving the service is the end user of the service;

(m) “Tariff” — A schedule showing rates, tolls, and charges that the large telecommunications utility has established for a retail service;

(n) “Trouble Report” — A report of a malfunction that affects the functionality and reliability of retail telecommunications service on existing access lines, switching equipment, circuits, or features made up to and including the network interface, to a large telecommunications utility by or on behalf of that large telecommunications utility’s customer;

(o) “Wire Center” — A facility where local telephone subscribers’ access lines converge and are connected to switching equipment that provides access to the Public Switched Telephone Network, including remote switching units and host switching units. A wire center does not include collocation arrangements in a connecting large telecommunications utility’s wire center or broadband hubs that have no switching equipment.

(2) Measurement and Reporting Requirements. A large telecommunications utility must take the measurements required by this rule and report them to the Commission as specified. Reported measurements must be reported to the first significant digit (i.e., one number should be reported to the right of the decimal point). The service quality objective service levels set forth in sections 4 through 8 of this rule apply only to normal operating conditions and do not establish a level of performance to be achieved during force majeure events.

(3) Additional Reporting Requirements. The Commission may require a large telecommunications utility to submit additional reports on any item covered by this rule.

(4) Provisioning and Held Orders for Lack of Facilities. The representative of the large telecommunications utility must give a retail customer an initial commitment date of not more than six business days after a request for access line service, unless a later date is determined through good faith negotiations between the customer and the large telecommunications utility. The large telecommunications utility may change the initial commitment date only if requested by the customer. When establishing the initial commitment date, the large telecommunications utility may take into account the actual time required for the customer to meet prerequisites; e.g., line extension charges or trench and conduit requirements. If a request for service becomes a held order for lack of facilities, the serving large telecommunications utility must, within five business days, send or otherwise provide the customer a written commitment to fill the order.

(a) Measurement:

(A) Commitments Met — A large telecommunications utility must calculate the monthly percentage of commitments met for service, based on the initial commitment date, across its Oregon service territory. Commitments missed for reasons solely attributed to customers, another telecommunications utility or a competitive telecommunications provider may be excluded from the calculation of the “commitments met” results;

(B) Held Orders for Lack of Facilities — A large telecommunications utility must determine the total monthly number of held orders, due to lack of facilities, not completed by the initial commitment date during the reporting month and the number of primary (initial access line) held orders, due to lack of facilities, over 30 days past the initial commitment date.

(b) Objective Service Level:

(A) Commitments Met — Each large telecommunications utility must meet at least 90 percent of its commitments for service;

(B) Held Orders:

(i) The number of held orders for the lack of facilities for each large telecommunications utility must not exceed the larger of two per wire center per month averaged over the large telecommunications utility’s Oregon service territory, or five held orders for lack of facilities per 1,000 inward orders;

(ii) The total number of primary held orders for lack of facilities in excess of 30 days past the initial commitment date must not exceed 10 percent of the total monthly held orders for lack of facilities within the large telecommunications utility’s Oregon service territory.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission the percentage of commitments met for service, total number of held orders for lack of facilities, and the total number of primary held orders for lack of facilities over 30 days past the initial commitment date.

(d) Retention Requirement: Each large telecommunications utility must maintain records about held orders for lack of facilities for one year. The record must explain why each order is held and the initial commitment date.

(5) Trouble Reports. Each large telecommunications utility must maintain an accurate record of all reports of malfunction made by its customers.

(a) Measurement: A large telecommunications utility must determine the number of customer trouble reports that were received during the month. The large telecommunications utility must relate the count to the total working access lines within a reporting wire center. A large telecommunications utility need not report those trouble reports that were caused by circumstances beyond its control. The approved trouble report exclusions are:

(A) Cable Cuts: A large telecommunications utility may take an exclusion if the “buried cable location” (locate) was either not requested or was requested and was accurate. If a large telecommunications

utility or the utility's contractor caused the cut, the exclusion can only be used if the locate was accurate and all general industry practices were followed;

(B) Internet Service Provider (ISP) Blockage: If an ISP does not have enough access trunks to handle peak traffic;

(C) Modem Speed Complaints: An exclusion may be taken if the copper cable loop is tested at the subscriber location and the objective service levels in section 10 of this rule were met;

(D) No Trouble Found: Where no trouble is found, one exemption may be taken. If a repeat report of the same trouble is received within a 30-day period, the repeat report and subsequent reports must be counted;

(E) New Feature or Service: Trouble reports related to a customer's unfamiliarity with the use or operation of a new (within 30 days) feature or service;

(F) No Access: An exclusion may be taken if a repair appointment was kept and the copper based access line at the nearest accessible terminal met the objective service levels in section 10 of this rule. If a repeat trouble report is received within the following 30-day period, the repeat report and subsequent reports must be counted;

(G) Subsequent Tickets/Same Trouble/Same Access Line: Only one trouble report for a specific complaint for the same access line should be counted within a 48-hour period. All repeat trouble reports after the 48-hour period must be counted;

(H) Non-Regulated or Deregulated Equipment: Trouble associated with such equipment should not be counted;

(I) Trouble with Other Telecommunications Utilities or Competitive Telecommunications Providers: A trouble report caused solely by another telecommunications utility or competitive telecommunications provider;

(J) Lightning Strikes: Trouble reports received for damage caused by lightning strikes can be excluded if all accepted grounding, bonding, and shielding practices were followed by the large telecommunications utility at the damaged location; and

(K) Other exclusions: As approved by the Commission.

(b) Objective Service Level: A large telecommunications utility must maintain service so that the monthly trouble report rate, after approved trouble report exclusions, does not exceed:

(A) For wire centers with more than 1,000 access lines: two per 100 working access lines per wire center more than three times during a sliding 12-month period.

(B) For wire centers with 1,000 or less access lines: three per 100 working access lines per wire center more than three times during a sliding 12-month period.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission:

(A) The trouble report rate by wire center;

(B) The reason(s) a wire center meeting the standard (did not exceed the trouble report rate threshold for more than three of the last 12 months) exceeded a trouble report rate of 3.0 per 100 working access lines during the reporting month;

(C) The reason(s) a wire center not meeting the standard, after the exclusion adjustment, exceeded the trouble report rate threshold per 100 access lines during the reporting month; and

(D) The access line count for each wire center.

(d) Retention Requirement: Each large telecommunications utility must maintain a record of reported trouble in such a manner that it can be forwarded to the Commission upon the Commission's request. The large telecommunications utility must keep all records for a period of one year. The record of reported trouble must contain as a minimum the:

(A) Telephone number;

(B) Date and time received;

(C) Time cleared;

(D) Type of trouble reported;

(E) Location of trouble; and

(F) Whether or not the present trouble was within 30 days of a previous trouble report.

(6) Repair Clearing Time. This standard establishes the clearing time for all trouble reports from the time the customer reports the trouble to the large telecommunications utility until the trouble is resolved. The large telecommunications utility must provide each customer making a network trouble report with a commitment time when the large telecommunications utility will repair or resolve the problem.

(a) Measurement: A large telecommunications utility must calculate the percentage of trouble reports cleared within 48 hours for each repair center.

(b) Objective Service Level: A large telecommunications utility must monthly clear at least 95 percent of all trouble reports within 48 hours of receiving a report.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission the percentage of trouble reports cleared within 48 hours by each repair center.

(d) Retention Requirement: None.

(7) Blocked Calls. A large telecommunications utility must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of levels listed in subsection (7)(b) of this rule.

(a) Measurement:

(A) A large telecommunications utility must collect traffic data; i.e., peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups;

(B) System blockage is determined by special testing at the wire center. Commission Staff or a telecommunications utility technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percentage of calls completed must be calculated.

(b) Objective Service Level:

(A) A large telecommunications utility must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P.01 grade of service);

(B) A large telecommunications utility must maintain its switch operation so that 99 percent of the calls do not experience blockage during the normal busy hour.

(C) When a large telecommunications utility fails to maintain the interoffice final trunk group P.01 grade of service for four or more consecutive months, it will be considered out-of-standard until the condition is resolved. A single repeat blockage within two months of restoring the P.01 grade of service will be considered a continuation of the original blockage.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission:

(A) Local and extended area service (EAS) final trunk groups that do not meet the objective service level for trunk group blockage, measured from each of its switches, regardless of the ownership of the terminating switch;

(B) Its tandem switch final trunk group blockages associated with EAS traffic;

(C) Any known cause for the blockage and actions to bring the trunks into standard; and

(D) Identity of the telecommunications utility or competitive telecommunications provider, if other than the reporting large telecommunications utility, responsible for maintaining those final trunk groups not meeting the standard.

(d) Retention Requirement: Each large telecommunications utility must maintain records for one year.

(8) Access to Large Telecommunications Utility Representatives. This rule sets the allowed time for large telecommunications utility business office or repair service center representatives to answer customer calls.

(a) Measurement:

(A) Direct Representative Answering: A large telecommunications utility must measure the answer time from the first ring at the large telecommunications utility business office or repair service center;

(B) Driven, Automated, or Interactive Answering System: The option of transferring to the large telecommunications utility representative must be included in the initial local service-screening message. The large telecommunications utility must measure the answering time from the point a call is directed to its representatives; e.g., when the call leaves the Voice Response Unit;

(C) Each large telecommunications utility must calculate:

(i) The monthly percentage of the total calls placed to the business office and repair service center and the number of calls answered by representatives within 20 seconds; or

(ii) The average speed of answer time for the total calls received by the business office and repair service center.

(b) Objective Service Level:

(A) No more than 1 percent of calls to the large telecommunications utility business office or repair service center may encounter a busy signal; and

(B) The large telecommunications utility representatives must answer at least 80 percent of calls within 20 seconds or have an average speed of answer time of 50 seconds or less.

(c) Reporting Requirement:

(A) Each large telecommunications utility must report monthly to the Commission an exception report if busy signals were encountered in excess of 1 percent for either the business office or repair service center; and

(B) Each large telecommunications utility must report monthly to the Commission the percentage of calls answered within 20 seconds or the average speed of answer time for both the business office and repair service center. Once a method of measurement is reported by the provider, that method can only be changed with permission of the Commission.

(d) Retention Requirement: None.

(9) Interruption of Service Notification. A large telecommunications utility must report significant outages that affect customer service. These interruptions could be caused by switch outage, electronic outage, cable cut, or construction.

(a) Measurement: A large telecommunications utility must notify the Commission when an interruption occurs that exceeds the following thresholds:

(A) Cable cuts, excluding service wires and wires placed in lieu of cable, or electronic outages lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(B) Toll or Extended Area Service isolation lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(C) Isolation of a central office (host or remote) from the E 9-1-1 emergency dialing code or isolation of a Public Safety Answering Position (PSAP).

(D) Isolation of a wire center for more than 15 minutes.

(E) Outage of the business office or repair center access system lasting longer than 15 minutes in those instances where the traffic cannot be re-routed to a different center.

(b) Objective Service Level: Not applicable.

(c) Reporting Requirement: A large telecommunications utility must report service interruptions to the Commission engineering staff by telephone, by facsimile, by electronic mail, or personally within two hours during normal work hours of the business day after the company becomes aware of such interruption of service. Interim reports will be given to the Commission as significant information changes (e.g., estimated time to restore, estimated impact to customers, cause of the interruption, etc.) until it is reported that the affected service is restored.

(d) Retention Requirement: None.

(10) Customer Access Line Testing. All customer access lines must be designed, installed, and maintained to meet the levels in subsection (b) of this section.

(a) Measurement: Each large telecommunications utility must make all loop parameter measurements at the network interface, or as close as access allows.

(b) Objective Service Level: Each access line must meet the following levels:

(A) Loop Current: The serving wire center loop current, when terminated into a 400-ohm load, must be at least 20 milliamperes;

(B) Loop Loss: The maximum loop loss, as measured with a 1004-hertz tone from the serving wire center, must not exceed 8.5 decibels (dB);

(C) Metallic Noise: The maximum metallic noise level, as measured on a quiet line from the serving wire center, must not exceed 20 decibels above referenced noise level — C message weighting (dBrnC);

(D) Power Influence: As a goal, power influence, as measured on a quiet line from the serving wire center, must not exceed 80 dBrnC.

(c) Reporting Requirement: A large telecommunications utility must report measurement readings as directed by the Commission.

(d) Retention Requirement: None.

(11) Customer Access Lines and Wire Center Switching Equipment. All combinations of access lines and wire center switching equipment must be capable of accepting and correctly processing at least the following network control signals from the customer premises equipment. The wire center must provide dial tone and maintain an actual measured loss between interoffice and access trunk groups.

(a) Measurement: Each large telecommunications utility must make measurements at or to the serving wire center.

(b) Objective Service Level:

(A) Dial Tone Speed. Ninety-eight percent of originating average busy hour call attempts must receive dial tone within three seconds;

(B) A large telecommunications utility must maintain all interoffice and access trunk groups so that the actual measured loss (AML) in no more than 30 percent of the trunks deviates from the expected measured loss (EML) by more than 0.7 dB and no more than 4.5 percent of the trunks deviates from EML by more than 1.7 dB.

(c) Reporting Requirement: None.

(d) Retention Requirement: None.

(12) Special Service Access Lines. All special service access lines must meet the performance requirements specified in applicable large telecommunications utility tariffs or contracts.

(13) Large Telecommunications Utility Interconnectivity. A large telecommunications utility connected to the facilities of another telecommunications utility or competitive telecommunications provider must operate its system in a manner that will not impede either company's ability to meet required standards of service. A large telecommunications utility must report interconnection operational problems promptly to the Commission.

(14) Alternatives to These Telecommunications Standards. A large telecommunications utility whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules if it specifically indicates the alternative standards to be applied or indicates which standards would be waived.

(15) Remedies for Violation of This Standard.

(a) If a large telecommunications utility subject to this rule fails to meet a minimum service quality standard, the Commission must require the large telecommunications utility to submit a plan for improving performance as provided in ORS 759.450(5). If a large telecommunications utility does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, the Commission may assess penalties in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that a large telecommunications utility subject to this rule has violated one or more of its service standards, the Commission must give the large telecommunications utility notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the large telecommunications utility to provide the following relief to the affected customers:

(A) An alternative means of telecommunications service for violations of paragraph (4)(b)(B) of this rule;

(B) Customer billing credits equal to the associated non-recurring and recurring charges of the large telecommunications utility for the affected service for the period of the violation; and

(C) Other relief authorized by Oregon law.

(16) Exemption From These Rules.

(a) A large telecommunications utility may petition the Commission for an exemption, in whole or in part, from these rules.

(b) The Commission may grant an exemption, including but not limited to, the following circumstance: If the Commission determines that effective competition exists in one or more exchange(s), it may exempt all telecommunications utilities and competitive telecommunications providers providing telecommunications services in the exchange(s) from the requirements of this rule, in whole or in part. In making this determination, the Commission will consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Number of suppliers;

(F) Price to cost ratios;

(G) Demand side substitutability (e.g., customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(c) When a large telecommunications utility petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications utilities and competitive telecommunications providers providing the applicable service(s) in the exchange(s) in question. The Commission will provide such notified telecommunications utilities and competitive telecommunications providers an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in paragraphs (16)(b)(A) through (H), the commenting telecommunications utilities and competitive telecommunications providers be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) The Commission may grant a large telecommunications utility's petition for an exemption from service quality reporting requirements if the large telecommunications utility meets all service quality objective service levels set forth in sections (4) through (8) of this rule for the 12 months prior to the month in which the petition is filed.

[Publications: Publications referenced are available from the agency]

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.030 & 759.050

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 23-1985, f. & ef. 12-11-85 (Order No. 85-1171); PUC 1-1997, f. & ef. 1-7-97 (Order No. 96-332); PUC 13-2000, f. & cert. ef. 6-9-00; PUC 13-2001, f. & cert. ef. 5-25-01; PUC 7-2002, f. & cert. ef. 2-26-02; PUC 10-2005, f. & cert. ef. 12-27-05

### Electric Service Reliability

#### 860-023-0080

##### Definitions for Electric Service Reliability

The following terms apply to OAR 860-023-0090 through 860-023-0160:

(1) "Electric company" means a public utility, as defined in ORS 757.005, that supplies electricity.

(2) "Interruption duration" means the period (measured in seconds, minutes, or hours) from the initiation of an interruption to a metering point until service has been restored to that metering point.

(3) "Interruption, momentary" means a single interruption with a duration limited to five minutes.

(4) "Interruption event, momentary" means:

(a) A momentary interruption; or

(b) A series of momentary interruptions that is restored by an automatic interruption device, is limited to a single relay sequence, and does not exceed five minutes, such as when an auto-reclose breaker operates two or more times in a single relay sequence and then holds.

(5) "Interruption, sustained" means an interruption with a duration greater than five minutes.

(6) "Interruption" means the loss of service to one or more metering points.

(7) "Loss of service" means a complete loss of voltage to one or more metering points, but does not include power quality issues such as transients, sags, swells, flickers, harmonics, and other waveform distortions.

(8) "MAIFE" means momentary average interruption event frequency index. This index is the number of times that a metering point experiences momentary interruption events during a year. It is determined by dividing the total annual number of metering point momentary interruption events by the total number of metering points. Note that this index does not include the events immediately preceding a sustained interruption.

(9) "Major event" means a catastrophic event that:

(a) Exceeds the design limits of the electric power system;

(b) Causes extensive damage to the electric power system; and

(c) Results in a simultaneous sustained interruption to more than 10 percent of the metering points in an operating area.

(10) "Metering point" means an electric point of service to a customer where there is a meter and for which an electric company renders a bill.

(11) "Metering points, total number of" means the number of metering points as of the last day of the calendar year.

(12) "Operating area" means a geographic subdivision of an electric company's Oregon service territory that functions under the direction of an electric company office and as a separate entity used for reliability reporting. These areas may also be referred to as regions, divisions, or districts.

(13) "Reliability" means the degree that electric service is supplied without interruptions.

(14) "SAIDI" means system average interruption duration index. This is the sustained interruption duration time (in hours) that an average metering point experiences during the year. It is determined by dividing the annual sum of all metering point sustained interruption durations by the total number of metering points.

(15) "SAIFI" means system average sustained interruption frequency index. This index is the number of times that an average metering point receives sustained interruptions during a year. It is determined by dividing the total annual number of sustained interruptions by the total number of metering points.

(16) "System-wide" means pertaining to and limited to the electric company's metering points in Oregon.

(17) "Threshold" means a performance level, excluding major events, that requires appropriate electric company action.

(18) "Underperforming circuit" means a circuit characterized by substandard performance. A circuit has this designation if it has a SAIDI, SAIFI, or MAIFE index that exceeds its designated threshold level.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-023-0090

##### Electric Service Continuity

(1) An electric company shall use reasonable means in design, operations, and maintenance to ensure reliable service to each customer. Such means shall include, but not be limited to, programs to prevent service interruptions.

(2) An electric company shall have a program with written standards and written schedules to maintain appropriate reliability levels.

(3) When interruptions occur, each electric company shall reestablish service with the shortest possible delay consistent with the safety of its employees, customers, and the general public.

(4) An electric company shall have a program for analyzing, and where appropriate, for correcting underperforming circuits.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-023-0100

##### Electric Interruption Records

(1) Except as provided in section (3) of this rule, an electric company shall keep an accurate record of each interruption of service that affects one or more customers. Each record shall contain at least the following information:

(a) The operating area where the interruption occurred;

(b) The name of the substation involved;

(c) The name of the circuit involved;

(d) The date and time the interruption occurred (if the exact time is unknown, the beginning of an interruption is recorded as the earlier of an automatic alarm or the reported initiation time);

(e) The date and time service was restored;

(f) The duration of the interruption;

(g) The number of metering points affected by the interruption;

(h) The cause of the interruption;

(i) The weather conditions at the time of the interruption;

(j) Whether the interruption was planned or unplanned;

(k) The protective device that made the interruption; and

(l) The component involved (e.g., transmission line, substation, overhead primary main, underground primary main, transformer, etc.).

(2) For interruptions where customers are not simultaneously restored, an electric company shall keep records that document the step-restoration operations.

(3) For major events where an electric company cannot obtain accurate data, the electric company shall make reasonable estimates.

(4) An electric company shall retain for ten years the records associated with sections (1) and (2) of this rule.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-023-0110

##### Electric Reliability Calculations

(1) Except as provided in section (3) of this rule, an electric company at year-end shall calculate SAIDI, SAIFI, and MAIFIE indices, with and without major events:

- (a) On a system-wide basis;
- (b) For each operating area; and
- (c) For each circuit.

(2) Data included in the above calculations shall include all interruptions associated with or related to high voltage components (above 600 volts).

(3) For each circuit an electric company shall be required to calculate only indices with major events excluded.

(4) If an electric company estimates MAIFIE, it shall specify the method that it used for making the estimate.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-023-0120

##### Electric Threshold Levels

(1) An electric company shall establish threshold levels for SAIDI, SAIFI, and MAIFIE for system-wide operations, each operating area, and each circuit. The Commission recommends that the following factors be used to guide the setting of the levels:

- (a) Past reliability information;
- (b) Demographic, geographic, and electrical characteristics; and
- (c) The relative performance of the circuits to each other.

(2) An electric company shall file with the Commission its threshold values and any revision to the values.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-023-0130

##### Customer Inquiries about Electric Reliability

(1) A customer may request a report from an electric company about the service reliability of the circuit supplying the customer's own meter. Within 20 working days, the electric company shall supply the report to the customer at no cost. However, if a customer requests an additional reliability report for the same meter within one year of the date of the first request, the electric company may require a deposit from the customer to recover the cost of the report. The electric company shall return the deposit if the additional report indicates that the circuit has become an underperforming circuit, with major events excluded.

(2) The report shall include:

- (a) The name of the customer;
- (b) The date of the request;
- (c) The address where the meter is installed;
- (d) The meter number involved;
- (e) The circuit involved; and
- (f) A chronological listing, covering at least 36 months up to the date of the request, of all interruption data as required by OAR 860-023-0100 affecting the customer's meter, stating the beginning time, date, duration, and cause for each interruption.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-023-0140

##### Public Inquiries about Electric Reliability

Any person may request from an electric company a report about the service reliability for any circuit. The report shall be supplied to the person within 20 working days. A reasonable fee may be charged for each report.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-023-0150

##### Annual Report on Electric Reliability

(1) On or before May 1 of each year, an electric company shall file with the Commission a report that includes reliability information pertaining to the previous calendar year. The electric company shall make copies available to the public upon request.

(2) In accordance with sections (3) and (4) of this rule, the report shall contain:

(a) SAIDI, SAIFI, and MAIFIE indices and thresholds compared to the most recent four years, both with and without major events:

- (A) On a system-wide basis; and
- (B) For each operating area.

(b) SAIDI, SAIFI, and MAIFIE indices and thresholds for each circuit, with major events excluded.

(c) A summary of the system-wide interruption causes compared to the previous four-year performance. Categories to be evaluated shall include:

- (A) Adverse environment;
- (B) Adverse weather;
- (C) Customer equipment;
- (D) Equipment failure;
- (E) Foreign interference;
- (F) Human element;
- (G) Lightning;
- (H) Loss of supply;
- (I) Major events;
- (J) Scheduled outages;
- (K) Tree contacts;
- (L) Unknown; and
- (M) Other (if used, the electric company shall be specific as to the cause involved).

(d) A listing of the major events to impact the electric company along with the major event filings to the Commission as required in OAR 860-023-0160.

(3) An electric company shall present the SAIDI, SAIFI, and MAIFIE indices and thresholds in both a tabular and a graphical format. For the graphical format for circuits, an electric company shall compare the SAIDI, SAIFI, and MAIFIE indices for each circuit with other circuits in descending order of performance:

- (a) On a system-wide basis; and
- (b) On an operating-area basis.

(4) For historical information prior to January 1, 1998, the electric company shall provide the best information available.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-023-0160

##### Major Event Filing by Electric Utilities

Within 20 working days after a major event, an electric company shall submit a report to the Commission that includes:

- (1) A description of the event;
- (2) A discussion of why the electric company considers it to be a major event;

(3) The total number of metering points affected, the number of metering points without service at periodic intervals, and the longest service interruption;

(4) The number of crews assigned to restore service at periodic intervals;

(5) The estimated SAIDI and SAIFI impact to metering points on a system-wide and an operating-area basis;

(6) The damage cost estimates to the electric company's facilities;

(7) The reason timely restoration was beyond the electric company's control; and

(8) A listing of circuits that were affected with sustained interruptions lasting more than four hours.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

## DIVISION 24

## SAFETY STANDARDS

## General

**860-024-0000****Applicability of Division 024**

Unless otherwise noted, the rules in this Division apply to every operator, as defined in OAR 860-024-0001.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.039, 757.649, 759.030, 759.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 23-2001, f. & cert. ef. 10-11-01

**860-024-0001****Definitions for Safety Standards**

For purposes of this Division, except when a different scope is explicitly stated:

(1) "Commission Safety Rules," as used in this section, mean the National Electric Safety Code (NESC), as modified or supplemented by the rules in OAR chapter 860, division 024.

(2) "Facility" means any of the following lines or pipelines including associated plant, systems, supporting and containing structures, equipment, apparatus, or appurtenances:

(a) A gas pipeline subject to ORS 757.039;

(b) A power line or electric supply line subject to ORS 757.035;

or

(c) A telegraph, telephone, signal, or communication line subject to ORS 757.035.

(3) "Government entity" means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(4) "Material violation" means a violation that:

(a) Is reasonably expected to endanger life or property; or

(b) Poses a significant safety risk to any operator's employees or a potential risk to the general public.

(5) "Operator" means every person as defined in ORS 756.010, public utility as defined in ORS 757.005, electricity service supplier as defined in OAR 860-038-0005, telecommunications utility as defined in ORS 759.005, telecommunications carrier as defined in ORS 759.400, telecommunications provider as defined in OAR 860-032-0001, consumer-owned utility as defined in ORS 757.270, cable operator as defined in ORS 30.192, association, cooperative, or government entity and their agents, lessees, or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership, or control of any facility within Oregon.

(6) "Pattern of non-compliance" means a course of behavior that results in frequent, material violations of the Commission Safety Rules.

(7) "Reporting operator" means an operator that:

(a) Serves 20 customers or more within Oregon; or

(b) Is an electricity service supplier as defined in OAR 860-038-0005 and serves more than one retail electricity customer.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.039, 757.649, 758.215, 759.005 & 759.045

Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 23-2001, f. & cert. ef. 10-11-01; PUC 9-2006, f. & cert. ef. 9-28-06

**860-024-0005****Maps and Records**

(1) Each utility shall keep on file current maps and records of the entire plant showing size, location, character, and date of installation of major plant items.

(2) Upon request, each utility shall file with the Commission an adequate description or maps to define the territory served. All maps and records which the Commission may require the utility to file shall be in a form satisfactory to the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.020

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98

**860-024-0007****Location of Underground Facilities**

An operator and its customers shall comply with requirements of OAR chapter 952 regarding the prevention of damage to underground facilities.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.542 - 757.562, 757.649 & 759.045

Hist.: PUC 5-1988, f. & cert. ef. 3-8-88 (Order No. 88-244); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 23-2001, f. & cert. ef. 10-11-01

**Electric and Communication****860-024-0010****Construction, Operation, and Maintenance of Electrical Supply and Communication Lines**

Every operator shall construct, operate, and maintain electrical supply and communication lines in compliance with the standards prescribed by the **2007 Edition of the National Electrical Safety Code** approved June 16, 2006, by the American National Standards Institute.

[Publications: Publications referenced are available from the Commission.]

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.035

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 173, f. & ef. 1-14-76 (Order No. 76-037); PUC 1-1978, f. 1-13-78, ef. 2-13-78 (Order No. 78-076); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 6-1990, f. & cert. ef. 5-25-90 (Order No. 90-833); PUC 11-1993, f. & cert. ef. 6-23-93 (Order No. 93-809); PUC 13-1994, f. & cert. ef. 8-31-94 (Order No. 94-1243); PUC 7-1997, f. & cert. ef. 2-6-97; PUC 9-2002, f. & cert. ef. 2-26-02; PUC 6-2007, f. & cert. ef. 5-14-07

**860-024-0011****Inspections of Electric Supply and Communication Facilities**

(1) An operator of electric supply facilities or an operator of communication facilities must:

(a) Construct, operate, and maintain its facilities in compliance with the Commission Safety Rules; and

(b) Conduct detailed inspections of its overhead facilities to identify violations of the Commission Safety Rules.

(A) The maximum interval between detailed inspections is ten years, with a recommended inspection rate of ten percent of overhead facilities per year. During the fifth year of the inspection cycle, the operator must:

(i) Report to the Commission that 50 percent or more of its total facilities have been inspected pursuant to this rule; or

(ii) Report to the Commission that less than 50 percent of its total facilities have been inspected pursuant to this rule and provide a plan for Commission approval to inspect the remaining percentage within the next five years. The Commission may modify the plan or impose conditions to ensure sufficient inspection for safety purposes.

(B) Detailed inspections include, but are not limited to, visual checks or practical tests of all facilities, to the extent required to identify violations of Commission Safety Rules. Where facilities are exposed to extraordinary conditions or when an operator has demonstrated a pattern of non-compliance with Commission Safety Rules, the Commission may require a shorter interval between inspections.

(c) Conduct detailed facility inspections of its underground facilities on a ten-year maximum cycle, with a recommended inspection rate of 10 percent of underground facilities per year.

(d) Maintain adequate written records of policies, plans and schedules to show that inspections and corrections are being carried out in compliance with this rule and OAR 860-024-0012. Each operator must make these records available to the Commission upon its request.

(2) Each operator of electric supply facilities must:

(a) Designate an annual geographic area to be inspected pursuant to subsection (1)(b) of this rule within its service territory;

(b) Provide timely notice of the designation of the annual geographic area to all owners and occupants. The annual coverage areas for the entire program must be made available in advance and in sufficient detail to allow all operators with facilities in that service territory to plan needed inspection and correction tasks. Unless the parties otherwise agree, operators must be notified of any changes to the established annual geographic area designation no later than 12 months before the start of the next year's inspection; and

(c) Perform routine safety patrols of overhead electric supply lines and accessible facilities for hazards to the public. The maximum

interval between safety patrols is two years, with a recommended rate of 50 percent of lines and facilities per year.

(d) Inspect electric supply stations on a 45 day maximum schedule.

(3) Effective Dates

(a) Subsection (2)(a) of this rule is effective January 1, 2007;

(b) Subsection (1)(b) of this rule is effective January 1, 2008.

Stat. Auth.: ORS 183, 756, 757 & 759

Stat. Implemented: ORS 757.035

Hist.: PUC 9-2006, f. & cert. ef. 9-28-06

#### 860-024-0012

##### Prioritization of Repairs by Operators of Electric Supply Facilities and Operators of Communication Facilities

(1) A violation of the Commission Safety Rules that poses an imminent danger to life or property must be repaired, disconnected, or isolated by the operator immediately after discovery.

(2) Except as otherwise provided by this rule, the operator must correct violations of Commission Safety Rules no later than two years after discovery.

(3) An operator may elect to defer correction of violations of the Commission Safety Rules that pose little or no foreseeable risk of danger to life or property to correction during the next major work activity.

(a) In no event shall a deferral under this section extend for more than ten years after discovery.

(b) The operator must develop a plan detailing how it will remedy each such violation.

(c) If more than one operator is affected by the deferral, all affected operators must agree to the plan. If any affected operators do not agree to the plan, the correction of violation(s) may not be deferred.

(4) For good cause shown, or where equivalent safety can be achieved, unless otherwise prohibited by law, the Commission may for a specific installation waive the requirements of OAR 860-024-0012.

Stat. Auth.: ORS 183, 756, 757 & 759

Stat. Implemented: ORS 757.035

Hist.: PUC 9-2006, f. & cert. ef. 9-28-06

#### 860-024-0015

##### Ground Return

Every operator with either alternating or direct current power lines or equipment within Oregon may use a connection to ground only for protection purposes. A ground connection shall not be used for the purpose of providing a return conductor for power purposes.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.035, 757.649 & 759.045

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-024-0016

##### Minimum Vegetation Clearance Requirements

(1) For purposes of this rule:

(a) "Readily climbable" means vegetation having both of the following characteristics:

(A) Low limbs, accessible from the ground and sufficiently close together so that the vegetation can be climbed by a child or average person without using a ladder or other special equipment; and

(B) A main stem or major branch that would support a child or average person either within arms' reach of an uninsulated energized electric line or within such proximity to the electric line that the climber could be injured by direct or indirect contact with the line.

(b) "Vegetation" means trees, shrubs, and any other woody plants.

(c) "Volts" means nominal voltage levels, measured phase-to-phase.

(2) The requirements in this rule provide the minimum standards for conductor clearances from vegetation to provide safety for the public and utility workers, reasonable service continuity, and fire prevention. Each operator of electric supply facilities must have a vegetation management program and keep appropriate records to ensure that timely trimming is accomplished to keep the designated minimum clearances. These records must be made available to the Commission upon request.

(3) Each operator of electric supply facilities must trim or remove vegetation to maintain clearances from electric supply conductors.

(4) Each operator of electric supply facilities must trim or remove readily climbable vegetation as specified in section (5) of this rule to minimize the likelihood of direct or indirect access to a high voltage conductor by a member of the public or any unauthorized person.

(5) Under reasonably anticipated operational conditions, an operator of electric supply facilities must maintain the following minimum clearances of vegetation from conductors:

(a) Ten feet for conductors energized above 200,000 volts.

(b) Seven and one-half feet for conductors energized at 50,001 through 200,000 volts.

(c) Five feet for conductors energized at 600 through 50,000 volts.

(A) Clearances may be reduced to three feet if the vegetation is not readily climbable.

(B) Intrusion of limited small branches and new tree growth into this minimum clearance area is acceptable provided the vegetation does not come closer than six inches to the conductor.

(6) For conductors energized below 600 volts, an operator of electric supply facilities must trim vegetation to prevent it from causing strain or abrasion on electric conductors. Where trimming or removal of vegetation is not practical, the operator of electric supply facilities must install suitable material or devices to avoid insulation damage by abrasion.

(7) In determining the extent of trimming required to maintain the clearances required in section (5) of this rule, the operator of electric supply facilities must consider at minimum the following factors for each conductor:

(a) Voltage;

(b) Location;

(c) Configuration;

(d) Sag of conductors at elevated temperatures and under wind and ice loading; and

(e) Growth habit, strength, and health of vegetation growing adjacent to the conductor, with the combined displacement of the vegetation, supporting structures, and conductors under adverse weather or routine wind conditions.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 757.035 & 758.280 - 758.286

Hist.: PUC 9-2006, f. & cert. ef. 9-28-06; PUC 5-2007, f. & cert. ef. 5-14-07

#### 860-024-0017

##### Vegetation Pruning Standards

An operator that is an electric utility as defined in ORS 758.505 shall perform tree and vegetation work associated with line clearance in compliance with the American National Standard for Tree Care Operations, ANSI A300 (Part 1)-2001 Pruning, approved May 22, 2001, by the American National Standards Institute.

[Publications: Publications referenced are available from the Commission.]

Stat. Auth.: ORS 756, 757 & 758

Stat. Implemented: HB 2493 & ORS 757.035

Hist.: PUC 16-2002, f. & cert. ef. 6-14-02

#### Gas

#### 860-024-0020

##### Gas Pipeline Safety

Every gas operator shall construct, operate, and maintain natural gas and other gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 14 — Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 13, 1998.

(2) 49 CFR, Part 192, and amendments through No. 103 — Transportation of Natural and Other Gas by Pipeline; Minimum Safety Standards in effect on July 10, 2006.

(3) 49 CFR, Part 199, and amendments through No. 23 — Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on March 8, 2005.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.039

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 172, f. & ef. 1-14-76 (Order No. 76-036); PUC 180, f. 4-8-77, ef. 5-1-77 (Order No. 77-232); PUC 2-1978, f. & ef. 3-16-78 (Order No. 78-158); PUC 6-1980, f. & ef. 10-22-80 (Order No. 80-777); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 4-1986, f. & ef. 5-5-86 (Order No. 86-456); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 16-1989, f. & cert. ef. 11-22-89 (Order No. 89-1529); PUC 8-1992, f. & cert. ef. 5-13-

92 (Order No. 92-618 & 92-677); PUC 14-1994, f. & cert. ef. 10-20-94 (Order No. 94-1533); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 19-1998, f. & cert. ef. 11-18-98; PUC 22-2003, f. & cert. ef. 11-28-03; PUC 3-2005, f. & cert. ef. 6-3-05; PUC 9-2007, f. & cert. ef. 9-10-07

#### 860-024-0021

##### Liquefied Natural Gas Safety

Every gas operator shall construct, operate, and maintain liquefied natural gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 14 — Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 13, 1998.

(2) 49 CFR, Part 193, and amendments through No. 19 — Liquefied Natural Gas Facilities; Minimum Safety Standards in effect on July 10, 2006.

(3) 49 CFR, Part 199, and amendments through No. 23 — Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on March 8, 2005.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS Ch. 183, 756 & 757

Stat. Implemented: ORS 757.039

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.039

Hist.: PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 4-1986, f. & ef. 5-5-86 (Order No. 86-456); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 16-1989, f. & cert. ef. 11-22-89 (Order No. 89-1529); PUC 8-1992, f. & cert. ef. 5-13-92 (Order No. 92-618 & 92-677); PUC 14-1994, f. & cert. ef. 10-20-94 (Order No. 94-1533); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 19-1998, f. & cert. ef. 11-18-98; PUC 22-2003, f. & cert. ef. 11-28-03; PUC 3-2005, f. & cert. ef. 6-3-05; PUC 9-2007, f. & cert. ef. 9-10-07

#### Steam and Hot Water

#### 860-024-0025

##### Steam Heat — Construction, Operation, and Maintenance of Steam and Hot Water Transmission and Distribution Systems

A steam heat public utility shall construct, operate, and maintain steam and hot water transmission and distribution systems in accordance with the American Society of Mechanical Engineers Code for Pressure Piping, Section B31.1, 1989 Edition, an American National Standard.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 10-1991, f. & cert. ef. 12-5-91 (Order No. 91-1603); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-024-0050

##### Incident Reports

(1) As used in this rule:

(a) “Serious injury to person” means, in the case of an employee, an injury which results in hospitalization. In the case of a non-employee, “serious injury” means any contact with an energized high-voltage line, or any incident which results in hospitalization. Treatment in an emergency room is not hospitalization.

(b) “Serious injury to property” means:

(A) Damage to operator and non-operator property exceeding \$100,000; or

(B) In the case of a gas operator, damage to property exceeding \$5,000; or

(C) In the case of an electricity service supplier (ESS) as defined in OAR 860-038-0005, damage to ESS and non-ESS property exceeding \$100,000 or failure of ESS facilities that causes or contributes to a loss of energy to consumers; or

(D) Damage to property which causes a loss of service to over 500 customers (50 customers in the case of a gas operator) for over two hours (five hours for an electric operator serving less than 15,000 customers) except for electric service loss that is restricted to a single feeder line and results in an outage of less than four hours.

(2) Except as provided in section (5) of this rule, every reporting operator must give immediate notice by telephone, by facsimile, by electronic mail, or personally to the Commission, of incidents attended by loss of life or limb, or serious injury to person or property, occurring in Oregon upon the premises of or directly or indirectly arising from or connected with the maintenance or operation of a facility.

(3) Except as provided in section (5) of this rule, every reporting operator must, in addition to the notice given in section (2) of this rule for an incident described in section (2), report in writing to the Commission within 20 days of the occurrence. In the case of injuries to employees, a copy of the incident report form that is submitted to Oregon OSHA, Department of Consumer and Business Services, for reporting incident injuries, will normally suffice for a written report. In the case of a gas operator, copies of incident or leak reports submitted under 49 CFR Part 191 will normally suffice.

(4) An incident report filed by a public or telecommunications utility in accordance with ORS 654.715 cannot be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.

(5) A Peoples Utility District (PUD) is exempt from this rule if the PUD agrees, by signing an agreement, to comply voluntarily with the filing requirements set forth in sections (2) and (3).

(6) Gas operators have additional incident and condition reporting requirements set forth in OARs 860-024-0020 and 860-024-0021.

Stat. Auth.: ORS 183, 654, 756, 757 & 759

Stats. Implemented: ORS 654.715, 756.040, 756.105, 757.035, 757.039, 757.649, 759.030, 759.040 & 759.045

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 21-1985, f. & ef. 11-25-85 (Order No. 85-1130); PUC 12-1989, f. & cert. ef. 8-11-89 (Order No. 89-946); PUC 4-1992, f. & ef. 2-14-92 (Order No. 92-234); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-028-0005 & 860-034-0570; PUC 9-2006, f. & cert. ef. 9-28-06

#### DIVISION 25

##### REGULATIONS TO PREVENT DUPLICATION OF FACILITIES

#### 860-025-0000

##### Applicability of Division 025

The rules contained in this Division apply to electric utilities, gas utilities, and large telecommunications utilities, as defined in OAR 860-025-0001.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.500 - 595

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 13-2002, f. & cert. ef. 3-26-02

#### 860-025-0001

##### Definitions for Territory Allocated to Electric Utilities, Gas Utilities, and Large Telecommunications Utilities

For purposes of this Division, except when a different scope is explicitly stated:

(1) “Electric utility” means an electric utility as defined in ORS 757.600(13).

(2) “Gas utility” means a public utility as defined in ORS 757.005 that supplies natural gas.

(3) “Large telecommunications utility” means any telecommunications utility as defined in ORS 759.005 that is not partially exempt from regulation under ORS 759.040.

(4) “Utility service” means utility service as defined for electric and gas utilities in ORS 758.400(3) and telecommunications utility service as defined in ORS 759.500(3).

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.005, 758.400, 759.005 & 759.500

Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 13-2002, f. & cert. ef. 3-26-02; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-025-0005

##### Applicability and Formal Requirements

All applications or petitions filed under the rules contained in this division must also comply with all other applicable Commission rules.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035)

**860-025-0010**

**Applications for Approval of Contracts to Avoid or Eliminate Duplicate Utility Service for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities**

An application for a Commission order under ORS 758.410 or 759.510 shall contain the following:

- (1) A copy of the contract.
- (2) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the applicant's service area.
- (3) A map or maps, drawn to appropriate scale, showing the location of customers who are being served by either or both of the parties, or who could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto, who are covered by the contract.
- (4) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, designating the boundaries of the territory to be served by each party to the contract. Such legal description of boundary lines may be drawn and described:

(a) To eliminate minor irregularities in the boundary of each party when to do so will include within each party's territory only that unserved area which may be economically served by the then existing facilities of the respective parties or by reasonable and economic extensions thereto; and

(b) In the case of persons providing telecommunications utility service who entered into exchange boundary agreements before May 31, 1961, to define mutually exclusive exchange service areas, the area affected by such agreement may be described by reference to the exchange area map in that agreement. However, the applicant shall not be relieved by such reference from showing that it can economically serve the unserved areas within the exchange area map with its existing facilities or by a reasonable and economic extension thereto.

(5) A description of the equipment and facilities of each party, which are the subject of sale, exchange, transfer, or lease pursuant to the contract and the consideration to be paid therefore.

(6) Facts showing that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility service systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby.

Stat. Auth.: ORS 183, 756, 758 & 759  
Stats. Implemented: ORS 758.400 - 758.475 & 759.500 - 759.595  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 13-2002, f. & cert. ef. 3-26-02

**860-025-0015**

**Applications for Approval of Amendments to Contracts to Avoid or Eliminate Duplicate Utility Service**

Applications under ORS 758.430 for a Commission order approving an amendment to a contract approved pursuant to ORS 758.410 to 758.420 or 759.510 through 759.520 shall contain:

- (1) The amendatory contract;
- (2) Reference to the Commission order approving the initial contract; and
- (3) Such information required by OAR 860-025-0010 as may assist the Commission in reviewing the application.

Stat. Auth.: ORS 183, 756 & 758  
Stats. Implemented: ORS 758.400 - 758.475  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1998, f. & cert. ef. 4-28-98

**860-025-0020**

**Applications for Allocation of Exclusively Served Territory for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities**

An application under ORS 758.435 or 759.535 for an order of the Commission to allocate territory to a person providing exclusive utility service in a territory shall contain the following information:

- (1) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the applicant's service area.
- (2) A map or maps, drawn to appropriate scale, showing the location of applicant's customers and facilities in the vicinity of the boundaries of the territory applied for in sufficient detail to enable the Com-

mission to determine the boundaries of that territory served exclusively by applicant.

(3) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, of the boundaries of applicant's exclusive service area. Such map and legal description of boundary lines may be drawn and described to eliminate minor irregularities in the boundary.

(4) Facts showing that applicant is lawfully and in good faith providing exclusive utility service within the area described in the application and that no other person is providing a similar utility service within such territory.

(5) Such additional information as needed for a full understanding of the situation.

Stat. Auth.: ORS 183, 756, 758 & 759  
Stats. Implemented: ORS 758.400 - 758.475 & 759.500 - 759.595  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 13-2002, f. & cert. ef. 3-26-02

**860-025-0025**

**Applications for Allocation of Exclusively Served Territory and Adjacent Unserved Territory for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities**

An application under ORS 758.435 or 759.535, for an order of the Commission to allocate territory to a person providing exclusive utility service in a territory and adjacent unserved territory shall contain the following information:

- (1) The information required under OAR 860-025-0020.
- (2) A map or maps similar to that required by OAR 860-025-0020(2) and description comparable to that required by OAR 860-025-0020(3), showing and describing the boundary of the adjacent unserved territory covered by the application.

(3) The names and addresses of all persons providing similar utility service in proximity to the unserved area applied for who may have an interest in or be affected by an approval or disapproval of the application.

(4) Facts showing that it is more economical and feasible to serve the adjacent unserved territory by an extension of the applicant's existing facilities than by an extension of the facilities of another person, including but not limited to the following:

(a) A map or maps, drawn to appropriate scale, showing location and capability of equipment, plant, or facilities including the capability, location, and route of proposed facilities, if any, which relate to the applicant's ability to extend utility service into the adjacent unserved area.

(b) Copies of such franchises or permits as the appropriate public authorities may require for extending service into the adjacent unserved area, or a statement that they will be filed at the hearing or a statement that no such authority is required by said public authorities.

(c) The kind or nature and extent of the need or demand, or reasonable anticipated need or demand, for utility service within the unserved area.

(d) The estimated construction, operating and related costs of and revenues from providing the proposed utility service within the unserved area.

(5) Such additional information as needed for a full understanding of the situation.

Stat. Auth.: ORS 183, 756, 758 & 759  
Stats. Implemented: ORS 758.400 - 758.475 & 759.500 - 759.595  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 13-2002, f. & cert. ef. 3-26-02

**860-025-0027**

**Application to Transfer Rights to Allocated Territory for Electric Utilities, Gas Utilities, and Large Telecommunications Utilities**

(1) An application under ORS 758.460 or 759.560 for an order of the Commission to approve the transfer of rights acquired by an allocation of territory shall contain the following information:

(a) A statement of the purposes for the transfer, the supporting reasons therefore, and a detailed explanation thereof justifying why the transfer will not be contrary to public interest.

(b) Copies of all written evidence and a statement of all oral understandings comprising the agreement between the transferor and

transferee covering the transfer of the territory described in the application and sought to be transferred.

(c) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the allocated territory sought to be transferred and the transferor's and transferee's adjacent service areas.

(d) A map or maps, drawn to appropriate scale, showing:

(A) The number and, as practicable, the location of customers and equipment or facilities of the transferor with a detailed description of such equipment or facilities within the territory sought to be transferred; and

(B) The location of equipment or facilities of the transferor and transferee, with a detailed description of the same, which are in the territory immediately adjacent to that sought to be transferred and which are or will be interconnected therewith.

(e) A legal description, comparable to that required in OAR 860-025-0020(3), of the boundaries of the territory sought to be transferred.

(f) A legal description, comparable to that required in OAR 860-025-0020(3), of the resulting boundaries of the remaining allocated portion of the parcel of the transferor's territory where the territory sought to be transferred is only part of a parcel of transferor's allocated territory and a similar description of the resulting boundaries of the transferee's allocated territory where the territory sought to be transferred will be contiguous to a parcel of transferee's allocated territory.

(g) Copies of such franchises or permits, as the appropriate public authorities may require, authorizing the transferee to serve in the territory sought to be transferred, or evidence of the approval of the appropriate public authorities of the transfer to the transferee of the transferor's franchise or permit to serve the territory sought to be transferred.

(2) Applications under ORS 758.460 by an electric or gas utility for a Commission order approving the transfer of rights acquired by an allocation of territory, which would otherwise be subject to ORS 757.480, shall comply with OAR 860-027-0025.

(3) Applications under ORS 759.560 by a large telecommunications utility for a Commission order approving the transfer of rights acquired by an allocation of territory, which would otherwise be subject to ORS 759.375, shall comply with OAR 860-027-0025.

Stat. Auth.: ORS 183, 756, 758 & 759

Stats. Implemented: ORS 758.400 - 758.475 & 759.500 - 759.595

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 9-1998, f. & cert. ef. 4-28-98; PUC 13-2002, f. & cert. ef. 3-26-02

### 860-025-0030

#### Petitions for Certificate of Public Convenience and Necessity for Construction of Overhead Transmission Lines

(1) Petitions under ORS 758.015, for a certificate of public convenience and necessity to construct an overhead transmission line, which will necessitate a condemnation of land or an interest therein, shall contain the following information:

(a) The information required under OAR 860-025-0005.

(b) A detailed description and the purpose of the proposed transmission line which shall include but not be limited to a general description of the proposed route, voltage and capacity of the line. The project description should be in sufficient detail to enable a full understanding of the public convenience, necessity and justification in the public interest for the proposed transmission line and the benefits to be derived therefrom, and to enable a determination of its safety and practicability.

(c) A map or maps drawn to appropriate scale showing the general location and boundaries of petitioner's service area to be connected or served by the proposed transmission line and showing, by appropriate distinguishing colors and symbols, but not limited to, the following information:

(A) Proposed route, voltage and capacity of the proposed transmission line.

(B) Available alternate routes.

(C) Other transmission lines and substations of petitioner connecting or serving or capable of being adopted to connect or serve the areas covered by the proposed transmission line.

(D) The terminals, substations, sources of energy, and load centers related to the proposed project.

(E) Land to be condemned.

(d) An estimate of the cost of developing the project including:

(A) Land and land rights to be condemned.

(B) Other land and land rights acquired or to be acquired.

(C) Transmission facilities.

(D) Substation, accessory and miscellaneous labor, plant and equipment.

(E) Indirect and overhead costs including engineering, legal expense, taxes, interest during construction, and itemized administrative and general expenses.

(F) Any other costs, direct or indirect, relating to the project.

(G) Such explanation of the various cost estimates as needed to enable a full understanding of their basis and derivation.

(e) An explanation of the financial feasibility of the proposed project, including the kind, nature, extent and estimated growth of the energy requirements or reasonably anticipated need, load or demand, for the proposed transmission line.

(f) A description of the property and interest to be condemned, a full explanation of the intended use, and the specific necessity and convenience for the taking of said property:

(A) A map must be included whereon the land to be condemned is clearly marked, and the general contour, culture and improvements along that portion of the route are clearly shown.

(B) The names and addresses of all persons who have interests, known or of record, in the land to be affected or traversed by the proposed route from whom applicant has not acquired the necessary rights of way or option therefor.

(g) A statement and explanation with supporting data comparable to that described in sections (4) and (5) of this rule for possible alternative routes.

(h) Such additional information as may be needed for a full understanding of the situation.

(i) Such information and supporting data needed for the Commission to satisfy the land use findings requirement described in sections (2), (3), and (4) of this rule.

(2) The Commission, as part of its approval of a Certificate of Public Convenience and Necessity, shall adopt findings which assure the proposed transmission project complies with the Statewide Planning Goals and is compatible with the acknowledged comprehensive plan(s) and land use regulations of each local government where the project is to be located. The Commission's findings shall be developed under the rules and procedures in the Commission's state agency coordination program pursuant to ORS 197.180.

(3) The Commission's land use findings assuring the proposed project's goal compliance and plan compatibility shall be based on the hearing record, which shall include at least one of the following:

(a) A copy of the local land use permit from each affected city or county planning agency, building department, or governing body stating that the proposed transmission project has received the jurisdiction's approval; or

(b) A copy of a letter from each affected local planning agency, building department, or governing body stating that the proposed transmission project is permitted under the jurisdiction's comprehensive plan, land use regulations, and development codes, but does not require specific approval by the jurisdiction; or

(c) Other written or oral land use information and documentation equivalent to OAR 860-025-0030(3)(a) or (b) above properly presented to the Commission from an authorized representative from each affected city or county; or

(d) Commission goal compliance findings adopted pursuant to OAR 860-030-0065(3) in situations when the Commission is unable to assure goal compliance by acting compatibly with one or more of the affected comprehensive plans.

(4) If a proposed transmission line is subject to the jurisdiction of the Energy Facility Siting Council (EFSC), the Commission shall adopt findings which assure the project and route have been certified by EFSC, and the requirements of OAR 860-025-0030(2) and (3) shall not apply.

Stat. Auth.: ORS 183, 756 & 758

Stats. Implemented: ORS 758.015

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 8-1991, f. & cert. ef. 5-30-91 (Order No. 91-700); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1998, f. & cert. ef. 4-28-98

**860-025-0050****Application by an Unserved Person for Service from a Large Telecommunications Utility**

An application under ORS 759.590 for an order of the Commission directing another telecommunications utility to provide local exchange service to an unserved person shall comply with OAR 860-032-0220.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.580, 759.585, 759.590 & 759.595

Hist.: ; PUC 13-2002, f. & cert. ef. 3-26-02

**DIVISION 26****SALES PROMOTION****860-026-0000****Applicability of Division 026**

The rules contained in this division apply to energy utilities and large telecommunications utilities, as defined in OAR 860-026-0005.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045

Hist.: PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 11-2001, f. & cert. ef. 4-18-01

**860-026-0005****Definitions for Utility Sales Promotion**

As used in OAR 860-026-0005 through 860-026-0045, unless the context requires otherwise:

(1) "Affiliate" means "affiliated interest," as defined in ORS 757.015 and ORS 759.010.

(2) "Appliance or equipment" includes any device which consumes electric and/or gas energy and any ancillary device required for its operation.

(3) "Consideration" includes any cash, donation, gift, allowance, rebate, bonus, merchandise (new or used), property (real or personal), labor, service, conveyance, commitment, right, or other thing of more than token value.

(4) "Energy efficiency" means any installation or action intended to reduce the amount of energy required to achieve a given purpose or to shift the timing of the use of energy to achieve greater efficiency in the use of a public utility system.

(5) "Energy utility" means a public utility as defined in ORS 757.005 except a water utility or wastewater utility. An energy utility can be an "electric company," "gas utility," or "steam heat utility."

(6) "Financing" includes acquisition of equity or debt interests, loans, advances, sale and repurchase agreements, sale and leaseback agreements, sales on open account, conditional or installment sales contracts, or other investments or extensions of credit.

(7) "Large telecommunications utility" means a telecommunications utility, as defined in ORS 759.005, that is not partially exempt from regulation under ORS 759.040.

(8) "Person" includes any individual, group, firm, partnership, corporation, association, organization, or public or private entity.

(9) "Utility" means all energy and large telecommunications utilities, as defined in sections (5) and (7) of this rule.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.005 & 757.015

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1995, f. & cert. ef. 8-30-95 (Order No. 95-861); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

**860-026-0010****"Promotional Activity" Defined**

"Promotional activity" means action by an energy or large telecommunications utility or its affiliate with the objective of increasing or preventing a decrease in the quantity of the energy or large telecommunications utility's service used by present and prospective customers; inducing any person to use an energy utility's service rather than a competing form of energy, the cost of which is properly chargeable to account number 911, 912, 913, or 916 of the Uniform System of Accounts as adopted by OARs 860-027-0045 and 860-027-0055; or inducing any person to use a large telecommunications utility's service rather than a competitive provider's service.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.267

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

**860-026-0015****"Promotional Concession" Defined**

(1) "Promotional concession" means any consideration offered or granted by an energy or large telecommunications utility or its affiliate to any person with the object, express or implied, of inducing such person to select or use the service or additional service of such utility, or to select or install any appliance or equipment designed to use such utility service.

(2) For purposes of illustration, and without limiting the definition in section (1) of this rule, "promotional concession" includes:

(a) Financing real property, including the construction of any building thereon, when such property is not owned or otherwise possessed by and not intended for the immediate use of the energy or large telecommunications utility or its affiliate;

(b) Furnishing consideration to any architect, builder, engineer, subdivider, developer, or other person for work done or to be done on property not owned or otherwise possessed by and not intended for the immediate use of the energy or large telecommunications utility or its affiliate; except for studies to determine comparative capital cost and expenses to show the desirability or feasibility of selecting one form of energy over another;

(c) Acquisition from any builder, subdivider, developer, or other person of any easement, right-of-way, license, lease or other property for consideration in excess of the reasonable cost or value thereof;

(d) Furnishing consideration to any dealer, architect, builder, engineer, subdivider, developer, or other person for the sale, installation or use of any appliance or equipment;

(e) Providing free, or at less than cost or value, any wiring, piping, appliance, or equipment to any other person; but an energy or large telecommunications utility, engaged in an appliance merchandising sales program, is not precluded from conducting legitimate close-outs of appliances, clearance sales and sales of damage or returned appliances;

(f) Providing free, or at less than cost or value, any installation, operation, repair, modification, or maintenance of any appliance, equipment, wiring or piping of any other person;

(g) Granting a trade-in allowance on the purchase of any appliance or equipment in excess of the fair market value of the trade-in; or the granting of an allowance for such appliance or equipment when such allowance varies by reason of the type of energy consumed in such appliance or equipment;

(h) Financing the acquisition of any appliance or equipment at a rate of interest or on terms more favorable than those generally applicable to sales by nonutility dealers in such appliances or equipment;

(i) Furnishing consideration to any person for any advertising or publicity purpose of such person; and

(j) Guaranteeing the maximum cost of electric or gas utility service.

(3) "Promotional concession" excludes:

(a) Making any temporary emergency repairs to appliances or equipment of a customer, or performing any other repairs or maintenance for which the customer is charged at least at cost;

(b) Inspecting and adjusting appliances or equipment which consumes electric or gas energy;

(c) Providing appliances or equipment incidental to their demonstration for 60 days or less;

(d) Providing light bulbs, street or outdoor lighting service, service pipe or other service equipment or appliances, in accordance with tariffs filed with and approved by the Commission;

(e) Providing appliances or equipment to an educational institution for the purpose of instructing students in the use of such appliances or equipment;

(f) Rebates, low interest loans, and other considerations for Commission-approved energy efficiency programs; and

(g) Testing of new products and equipment that are expected to result in their inclusion in a Commission-approved energy efficiency program.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.267

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

**860-026-0020****Standards Governing Promotional Activities and Concessions**

(1) All promotional activities and concessions shall be just and reasonable, prudent as a business practice, economically feasible and compensatory, and reasonably beneficial both to the energy or large telecommunications utility and its customers. The cost of promotional activities and concessions must not be so large as to impose an undue burden on the energy or large telecommunications utility's customers in general and must be recoverable through related sales stimulation within a reasonable time.

(2) No energy or large telecommunications utility or its affiliate shall:

(a) Directly or indirectly, in any manner or by any device whatsoever, offer or grant any promotional concession except such as is uniformly and contemporaneously extended to all persons in a reasonably defined class;

(b) Engage in any promotional concession that creates an undue preference or advantage to any person or subjects any person to any undue prejudice or disadvantage;

(c) Engage in any promotional concession that establishes or maintains any unreasonable difference between localities or as between classes of customer; or

(d) Insert, or seek to enforce, any covenant or other provisions in any deed, mortgage, lease, or any other instrument related to realty that restricts the form of energy which may be used upon such realty.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.267

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

**860-026-0022****Presumptions of Reasonableness of Advertising Expenses in Utility Rate Cases**

(1) As used in this rule:

(a) "Advertising Expenses" means expenses for communications which inform, influence, and/or educate customers. Such communication may be by means of, but is not limited to, print, radio, television, billboards, direct mail, videos, banners, telephone listings, and displays;

(b) "Conservation Advertising Expenses" means advertising expenses, the primary purpose of which is to decrease the total consumption of utility services;

(c) "Institutional Advertising Expenses" means advertising expenses, the primary purpose of which is not to convey information, but to enhance the credibility, reputation, character, or image of an entity or institution;

(d) "Legally Mandated Advertising Expenses" means advertising expenses, the primary purpose of which is to comply with:

(A) Local, state, or federal statutes, ordinances, rules, or regulations; and

(B) Court or Commission's orders.

(e) "Political Advertising Expenses" means advertising expenses, the primary purpose of which is to state or imply that persons should take a specific political action;

(f) "Promotional Advertising Expenses" means advertising expenses, the primary purpose of which is to communicate with respect to an energy or large telecommunications utility's promotional activities or promotional concessions, as defined in OARs 860-026-0010 and 860-026-0015;

(g) "Utility Information Advertising Expenses" means advertising expenses, the primary purpose of which is to increase customer understanding of utility systems and the function of those systems, and to discuss generation and transmission methods, utility expenses, rate structures, rate increases, load forecasting, environmental considerations, and other contemporary items of customer interest;

(h) "Utility Service Advertising Expenses" means advertising expenses, the primary purpose of which is to supply timely customer information about utility services such as changes in office hours, planned service repair interruptions, the closing or opening of new pay stations, or to encourage efficient and safe use of utility services and similar service-related subjects;

(i) "Nonutility Advertising Expenses" means advertising expenses, the primary purpose of which is to provide information about or encourage purchase of products or services whose revenues fall out-

side the scope of rate of return regulation by a state or federal regulatory body;

(j) "Energy Efficiency Advertising Expenses" means advertising expenses, the primary purpose of which is to promote energy efficiency, as defined in OAR 860-026-0005(7).

(2) For the purposes of this rule, advertising expenses are categorized as follows:

(a) Category "A" — Energy efficiency or conservation advertising expenses that do not relate to a Commission-approved program, utility service advertising expenses, and utility information advertising expenses;

(b) Category "B" — Legally mandated advertising expenses;

(c) Category "C" — Institutional advertising expenses, promotional advertising expenses and any other advertising expenses not fitting into Category "A," "B," or "D";

(d) Category "D" — Political advertising expenses and nonutility advertising expenses; and

(e) Category "E" — Energy efficiency or conservation advertising expenses that relate to a Commission-approved program.

(3) For rate-making purposes:

(a) Advertising expenses in Category "A" are presumed to be just and reasonable in a rate proceeding to the extent that expenses are twelve and one-half hundredths of 1 percent (0.125 percent) or less of the gross retail operating revenues determined in that proceeding;

(b) Advertising expenses in Category "B" are presumed to be just and reasonable for rate-making purposes;

(c) The energy or large telecommunications utility shall carry the burden of showing that any advertising expenses in Category "C" are just and reasonable for rate-making purposes. In any rate filing under ORS 757.210 and 759.180, the utility shall separately state the amount of advertising expenses in Category "C";

(d) Advertising expenses in Category "D" are presumed to be not just and reasonable for rate-making purposes; and

(e) With Commission approval, advertising expenses in Category "E" may be capitalized. The Commission will review the prudence of such expenses in a general rate proceeding pursuant to ORS 756.500, 757.210, or 759.180.

(4) The presumptions in section (3) of this rule are rebuttable. An energy or large telecommunications utility seeking to include expenditures in excess of amounts in section (3) of this rule shall have the burden of showing that the expenditures are just and reasonable. Parties challenging expenditures which are equal to or less than the amounts in section (3) of this rule have the burden of showing that the expenditures are not just and reasonable.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 1-1975, f. & ef. 7-20-76 (Order No. 76-467); PUC 7-1981, f. & ef. 8-12-81 (Order No. 81-515); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0071; PUC 22-1985, f. 12-11-85, ef. 1-1-86 (Order No. 85-1170); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); Renumbered from 860-021-0605; PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1995, f. & cert. ef. 8-30-95 (Order No. 95-861); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

**860-026-0025****Filing of Proposed Promotional Concessions**

(1) An energy utility or its affiliate shall not offer, grant, or vary any promotional concession directly or indirectly, or in concert with others, or by any means whatsoever, unless the energy utility has filed a description of such concession with the Commission. The energy utility shall furnish a copy of the filing to each other energy utility providing service in any portion of the service area of the filing utility.

(2) A large telecommunications utility shall not:

(a) Offer, grant, or vary any promotional concession for a regulated service directly or indirectly, or in concert with others, or by any means whatsoever, unless the large telecommunications utility has filed a description of such concession with the Commission; and

(b) Promote any regulated service, directly or indirectly, for more than a total of 180 days in any 12-month period.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.105

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 10-2002, f. & cert. ef. 2-26-02

**860-026-0030**

**Notice and Effective Date of Promotional Concessions for Energy Utilities**

All filings required from energy utilities by OAR 860-026-0025 shall be effective upon 30 days' notice to the Commission, subject to suspension and cancellation by the Commission. However, the Commission may allow changes without requiring the 30 days' notice by entering an order specifying the changes to be made and the time when they shall take effect.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 757.007 & 757.220

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 16-2001, f. & cert. ef. 6-21-01; PUC 10-2002, f. & cert. ef. 2-26-02

**860-026-0035**

**Reports of Promotional Activities and Concessions for Energy Utilities**

(1) Each energy utility shall file, concurrently with the annual report required by law, a report of each promotional activity and concession of the utility and its affiliates during the preceding calendar year. The report shall show the amounts expended with respect to each promotional activity and concession and a statement of the benefits achieved from each.

(2) In reporting on each promotional activity or concession under this rule, an energy utility shall employ the lowest practicable subprogram for budget and accounting purposes.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.105

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 17-1998, f. & cert. ef. 10-12-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 1-2002, f. & cert. ef. 1-3-02

**860-026-0040**

**Investigations of Promotional Activities and Concessions**

Nothing in OAR 860-026-0005 through 860-026-0040 is intended to prevent the Commission from investigating, either formally or informally, any promotional activity or concession, or the costs thereof, of any energy or large telecommunications utility.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040 & 756.070 - 756.115

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 16-2001, f. & cert. ef. 6-21-01

**860-026-0045**

**Promotional Concessions Offered or Granted on the Effective Date of These Rules**

(1) Notwithstanding OARs 860-026-0025 and 860-026-0030, any promotional concession offered or granted by an energy or large telecommunications utility or its affiliate before July 1, 1971, may remain in force, subject to suspension and cancellation, if:

(a) A description of such concession was filed with the Commission not later than 5 p.m., June 30, 1971;

(b) Such filing includes a statement signed by the responsible officer of the energy or large telecommunications utility that any such promotional concession is in compliance with OAR 860-026-0020; and

(c) A copy of the description of such concession has been furnished to each other utility providing service in any portion of the service area of the filing utility.

(2) No other promotional concession shall be offered or granted on or after July 1, 1971, except in compliance with OAR 860-025-0005 through 860-026-0040.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.105

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

**DIVISION 27**

**BUDGETS, FINANCE, ACCOUNTING  
AND ANNUAL REPORTS**

**Budget Filings**

**860-027-0000**

**Applicability of Division 027**

The rules contained in this division apply to energy utilities and large telecommunications utilities, as defined in OAR 860-027-0001.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 3-1995, f. & cert. ef. 6-19-95 (Order No. 95-516); PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 11-2001, f. & cert. ef. 4-18-01

**860-027-0001**

**Definitions for Utility Budgets, Finance, Accounting, and Annual Reports**

For purposes of this division, except when a different scope is explicitly stated:

(1) "Energy utility" means a public utility as defined in ORS 757.005 except a water utility or wastewater utility. An energy utility can be an "electric company," "gas utility," or "steam heat utility."

(2) "Large telecommunications utility" means any telecommunications utility, as defined in ORS 759.005, that is not partially exempt from regulation under ORS 759.040.

(3) "Utility" means all energy utilities and telecommunications utilities, as defined in sections (1) and (2) of this rule.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 759.005

Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

**860-027-0005**

**Utilities Required to File Reports**

Each energy utility operating within Oregon and having gross operating revenues of \$50,000 or more per annum is required to file with the Commission on or before the first day of November of each year, a copy of its proposed Budget of Expenditures, on forms approved by the Commission.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.105, 757.105

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 12-2007, f. & cert. ef. 10-31-07

**860-027-0015**

**New Construction Budget**

Each energy and large telecommunications utility operating within Oregon is required to file annually on or before December 31 on forms approved by the Commission information on new construction, extensions, and additions to the utility's property.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.105, 757.105 & 759.100

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 12-2002, f. & cert. ef. 3-12-02

**860-027-0016**

**Accounting for Director's Fees**

Directors' fees paid by an energy or large telecommunications utility to members of its board of directors, who are also paid as officers of the energy or large telecommunications utility, shall not be recognized as a charge to operating expenses in Oregon.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.110 & 759.115

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

**Finance**

**Formal Applications for Authority to Sell, Lease,  
Merge, Assign, and Mortgage Public Utility Property;  
Issue Securities, Guarantee Indebtedness,  
Purchase Securities and Property of Utilities and  
Enter into Transactions with Affiliated Interests**

**860-027-0020**

**Form and Filing of Applications**

(1) The Commission will furnish such information from the records on file as will assist in a full presentation of material facts for the following application forms.

(2) When any document required to be filed under these rules has heretofore been filed with the Commission, it shall be sufficient if the application makes reference to such filing and the capacity in which it was filed.

(3) Where the words "none" or "not applicable" truly and completely state the fact, they should be used in answering the requirement of any particular section of this rule.

(4) The Commission may require additional information when it appears to be pertinent in a particular case.

(5) Whenever these rules require the energy or large telecommunications utility to file financial statements, they shall be prepared as of the latest date available. The Income Statement shall be for the most recent 12-month period.

[ED. NOTE: Forms referenced are available from the Agency.]

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.105

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-027-0025

#### Applications for Authority to Sell, Lease, Assign, Mortgage, Merge, Consolidate or Otherwise Dispose of or Encumber its Property, or to Acquire Stock, Bonds, or Property of Another Utility

(1) The requirements of this rule will apply to any energy or large telecommunications utility seeking authority under ORS 757.480, 757.485, 759.375, and 759.380. Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information, which should, to the extent possible, be furnished for each person, firm, or corporation involved.

(a) The exact name and address of the utility's principal business office;

(b) The state in which incorporated, the date of incorporation, and the other states in which authorized to transact utility operations;

(c) Name and address of the person on behalf of applicant authorized to receive notices and communications in respect to the applications;

(d) The names, titles, and addresses of the principal officers;

(e) A description of the general character of the business done and to be done, and a designation of the territories served, by counties and states;

(f) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of capital stock: brief description; the amount authorized (face value and number of shares); the amount outstanding (exclusive of any amount held in the treasury); amount held as reacquired securities; amount pledged; amount owned by affiliated interests; and amount held in any fund;

(g) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of long-term debt and notes: brief description (amount, interest rate and maturity); amount authorized; amount outstanding (exclusive of any amount held in the treasury); amount held as reacquired securities; amount pledged; amount held by affiliated interests; and amount in sinking and other funds;

(h) Whether the application is for disposition of facilities by sale, lease, or otherwise, a merger or consolidation of facilities, or for mortgaging or encumbering its property, or for the acquisition of stock, bonds, or property of another utility, also a description of the consideration, if any, and the method of arriving at the amount thereof;

(i) A statement and general description of facilities to be disposed of, consolidated, merged, or acquired from another utility, giving a description of their present use and of their proposed use after disposition, consolidation, merger, or acquisition. State whether the proposed disposition of facilities or plan for consolidation, merger, or acquisition includes all the operating facilities of the parties to the transaction;

(j) A statement by primary account of the cost of the facilities and applicable depreciation reserve involved in the sale, lease, or other disposition, merger or consolidation, or acquisition of property of another utility. If original cost is not known, an estimate of original cost based, to the extent possible, upon records or data of the applicant or its predecessors must be furnished, a full explanation of the manner in which such estimate has been made, and a statement indicating where all existing data and records may be found;

(k) A statement as to whether or not any application with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body;

(l) The facts relied upon by applicants to show that the proposed sale, lease, assignment, or consolidation of facilities, mortgage or encumbrance of property, or acquisition of stock, bonds, or property of another utility will be consistent with the public interest;

(m) The reasons, in detail, relied upon by each applicant, or party to the application, for entering into the proposed sale, lease, assignment, merger, or consolidation of facilities, mortgage or encumbrance of property, acquisition of stock, bonds, or property of another utility, and the benefits, if any, to be derived by the customers of the applicants and the public;

(n) The amount of stock, bonds, or other securities, now owned, held or controlled by applicant, of the utility from which stock or bonds are proposed to be acquired; and

(o) A brief statement of franchises held, showing date of expiration if not perpetual, or, in case of transfer, that transferee has the necessary franchises.

(2) Required Exhibits. There shall be filed with the application as part thereof the following exhibits:

(a) EXHIBIT A. A copy of the charter or articles of incorporation with amendments to date;

(b) EXHIBIT B. A copy of the bylaws with amendments to date;

(c) EXHIBIT C. Copies of all resolutions of directors authorizing the proposed disposition, merger, or consolidation of facilities, mortgage or encumbrance of property, acquisition of stock, bonds, or property of another utility, in respect to which the application is made and, if approval of stockholders has been obtained, copies of the resolutions of the stockholders should also be furnished;

(d) EXHIBIT D. Copies of all mortgages, trust, deeds, or indentures, securing any obligation of each party to the transaction;

(e) EXHIBIT E. Balance sheets showing booked amounts, adjustments to record the proposed transaction and pro forma, with supporting fixed capital or plant schedules in conformity with the forms in the annual report, which applicant(s) is required, or will be required, to file with the Commission;

(f) EXHIBIT F. A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts, as of the date of the application;

(g) EXHIBIT G. Comparative income statements showing recorded results of operations, adjustments to record the proposed transaction and pro forma, in conformity with the form in the annual report which applicant(s) is required, or will be required, to file with the Commission;

(h) EXHIBIT H. An analysis of surplus for the period covered by the income statements referred to in Exhibit G;

(i) EXHIBIT I. A copy of each contract in respect to the sale, lease or other proposed disposition, merger or consolidation of facilities, acquisition of stock, bonds, or property of another utility, as the case may be, with copies of all other written instruments entered into or proposed to be entered into by the parties to the transaction pertaining thereto;

(j) EXHIBIT J. A copy of each proposed journal entry to be used to record the transaction upon each applicant's books; and

(k) EXHIBIT K. A copy of each supporting schedule showing the benefits, if any, which each applicant relies upon to support the facts as required by subsection (1)(l) of this rule and the reasons as required by subsection (1)(m) of this rule.

(3) Utilities may use the following form in lieu of filing under sections (1) and (2) of this rule when permitted to do so by the Commission: [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.105, 757.480, 757.485, 759.375 & 759.380

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 8-1995, f. & cert. ef. 8-30-95 (Order No. 95-858); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-027-0030

#### Application by an Energy or Large Telecommunications Utility for Authority to Issue Stocks, Bonds, Notes, or Other Securities

(1) The requirements of this rule will apply to any energy or large telecommunications utility seeking authority under ORS 757.495, 757.405 through 757.435, 757.445, 757.450, 759.390, 759.305 through 759.345, 759.355, and 759.360. Every applicant shall set forth in this application to the Commission, in the manner and form and in the order indicated, the following information:

(a) The applicant's exact name and the address of its principal business office;

(b) The state in which incorporated, the date of incorporation, and the other states in which authorized to transact utility business;

(c) Name and address of person authorized, on behalf of applicant, to receive notices and communications in respect to application;

(d) The names, titles and addresses of the principal officers of the applicant;

(e) A description of the general character of the business done and to be done, and a designation of the territories served. A map showing the territories served is desirable;

(f) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of capital stock: brief description; the amount authorized (face value and number of shares); the amount outstanding (exclusive of any amount held in the treasury), held amount as reacquired securities; amount pledged by applicant; amount owned by affiliated interests, and amount held in any fund;

(g) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of long-term debt or notes: brief description (amount, interest rate and maturity); amount authorized; amount outstanding (exclusive of any amount held in the treasury); amount held as reacquired securities; amount pledged by applicant; amount held by affiliated interests; and amount in sinking and other funds;

(h) A full description of the securities proposed to be issued, showing: kind and nature of securities or liabilities; amount (face value and number of shares); interest or dividend rate, if any; date of issue and date of maturity; and voting privileges, if any;

(i) A reasonably detailed and precise description of the proposed transaction, including a statement of the reasons why it is desired to consummate the transaction and the anticipated effect thereof. If the transaction is part of a general program, describe the program and its relation to the proposed transaction. Such description shall include, but is not limited to, the following:

(A) A description of the proposed method of issuing and selling the securities;

(B) A statement of whether such securities are to be issued pro rata to existing holders of the applicant's securities or issued pursuant to any preemptive right or in connection with any liquidation or reorganization;

(C) A statement showing why it is in applicant's interest to issue securities in the manner proposed and the reason(s) why it selected the proposed method of sale; and

(D) A statement that exemption from the competitive bidding requirements of any federal or other state regulatory body has or has not been requested or obtained, and a copy of the action taken thereon when available.

(j) The name and address of any person receiving or entitled to a fee for service (other than attorneys, accountants and similar technical services) in connection with the negotiation or consummation of the issuance or sale of securities, or for services in securing underwriters, sellers or purchasers of securities, other than fees included in any competitive bid; the amount of each such fee, and facts showing the necessity for the services and that the fee does not exceed the customary fee for such services in arm's-length transactions and is reasonable in the light of the cost of rendering the service and any other relevant factors;

(k) A statement showing both in total amount and per unit the price to the public, underwriting commissions and net proceeds to the applicant. Supply also the information (estimated if necessary) required in section (4) of this rule. If the securities are to be issued directly for property, then a full description of the property to be acquired, its location, its original cost (if known) by accounts, with the identification of the person from whom the property is to be acquired, must be furnished. If original cost is not known, an estimate of original cost based, to the extent possible, upon records or data of the seller and applicant or their predecessors must be furnished, with a full explanation of how such estimate has been made, and a description and statement of the present custody of all existing pertinent data and records. A statement showing the cost of all additions and betterments and retirements, from the date of the original cost, should also be furnished;

(l) Purposes for which the securities are to be issued. Specific information will be submitted with each filing for the issuance of bonds, stocks or securities:

(A) Construction, completion, extension or improvement of facilities. A description of such facilities and the cost thereof;

(B) Reimbursement of the applicant's treasury for expenditures against which securities have not been issued. A statement giving a general description of such expenditures, the amounts and accounts to which charged, the associated credits, if any, and the periods during which the expenditures were made;

(C) Refunding or discharging of obligations. A description of the obligations to be refunded or discharged, including the character, principal amounts discount or premium applicable thereto, date of issue and date of maturity, purposes to which the proceeds were applied and all other material facts concerning such obligations; and

(D) Improvement or maintenance of service. A description of the type of expenditure and the estimated cost in reasonable detail;

(m) A statement as to whether or not any application, registration statement, etc., with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body;

(n) The facts relied upon by the applicant to show that the issue: (A) Is for some lawful object within the corporate purposes of the applicant;

(B) Is compatible with the public interest;

(C) Is necessary or appropriate for or consistent with the proper performance by the applicant of service as a utility;

(D) Will not impair its ability to perform that service;

(E) Is reasonably necessary or appropriate for such purposes; and

(F) If filed under ORS 757.495, is fair and reasonable and not contrary to public interest;

(o) A brief statement of all rights to be a corporation, franchises, permits and contracts for consolidation, merger or lease included as assets of the applicant or any predecessor thereof, the amounts actually paid as consideration therefore, respectively, and the facts relied upon to show the issuance of the securities for which approval is requested will not result in the capitalization of the right to be a corporation or of any franchise, permit or contract for consolidation, merger or lease in excess of the amount (exclusive of any tax or annual charge) actually paid as the consideration for such right, franchise, permit or contract; and

(p) If filed under ORS 757.490, 757.495, 759.385, or 759.390:

(A) A statement describing the relationship between the utility and the affiliated interest as defined in ORS 757.015, 757.490, 759.010, or 759.385;

(i) Set forth the amount, kind and ratio to total voting securities held, if applicable;

(ii) A list of all officers and directors of the affiliated interest who are also officers and/or directors of the applicant; and

(iii) State the pecuniary interest of any officer or director in compliance with ORS 757.490(1) or 759.385(1).

(B) The reasons, in detail, relied upon by the utility for entering into the proposed transaction and the benefits, if any customers of the utility and the general public will derive from the transaction.

(2) Required Exhibits. There shall be filed with the application as part thereof the following exhibits:

(a) EXHIBIT A. A copy of the applicant's charter or articles of incorporation with amendments to date;

(b) EXHIBIT B. A copy of the bylaws with amendments to date;

(c) EXHIBIT C. A copy of each resolution of directors authorizing the issue in respect to which the application is made and, if approval of stockholders has been obtained, copies of the stockholder resolutions should also be furnished;

(d) EXHIBIT D. A copy of mortgage, indenture, or other agreement under which it is proposed to issue the securities, also a copy of any mortgage, indenture, or other agreement securing other funded obligations of the applicant;

(e) EXHIBIT E. Balance sheets showing booked amounts, adjustments to record the proposed transaction and pro forma, with supporting fixed capital or plant schedules in conformity with the form in the annual report which applicant is required to file with the Commission;

(f) EXHIBIT F. A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts, as of the date of the application;

(g) EXHIBIT G. Comparative income statements showing recorded results of operations, adjustments to record the proposed transaction and pro forma in conformity with the form in the annual report which applicant is required to file with the Commission;

(h) EXHIBIT H. An analysis of surplus for the period covered by the income statements referred to in Exhibit G;

(i) EXHIBIT I. A copy of registration statement proper, if any, and financial exhibits made a part thereof, filed with the Securities and Exchange Commission;

(j) EXHIBIT J. A copy of the proposed and of the published invitation of proposals for the purchase of underwriting of the securities to be issued; of each proposal received; and of each contract, underwriting, and other arrangement entered into for the sale or marketing of the securities. When a contract or underwriting is not in final form so as to permit filing, a preliminary draft or a summary identifying parties thereto and setting forth the principal terms thereof, may be filed pending filing of conformed copy in the form executed by final amendment to the application;

(k) EXHIBIT K. Copies of the stock certificates, notes, or other evidences of indebtedness proposed to be issued;

(l) Application for a utility to loan its funds to an affiliated interest, in addition to Exhibits A through K, shall also include the following:

(A) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction;

(B) EXHIBIT M. The amount of money which the applicant desires to loan to the affiliated interest, the terms of said loan, rate of interest, method of repayment, security given, if any, and if said loan is to be an open account or evidenced by a promissory note; and

(C) EXHIBIT N. The use to which funds derived from this loan are to be put by the affiliated interest; and

(m) An application for a utility to give credit on its books or otherwise by:

(A) Advancing cash through an open or loan account, in addition to EXHIBITS A through K, shall also include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction;

(ii) EXHIBIT M. The amount of cash which the applicant proposes to receive, the rate of interest it will pay, the date and method of repayment; and

(iii) EXHIBIT N. A definite statement of purpose for which the advance will be used.

(B) Payments by the affiliated interest of amounts owed, in addition to EXHIBITS A through K, shall include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction; and

(ii) EXHIBIT M. The amount which the affiliated interest proposes to pay on the utility's behalf, with a description of the obligation, how the funds will be used and how incurred.

(C) Credits or open accounts a utility proposes to give to an affiliated interest, in addition to EXHIBITS A through K, shall include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction; and

(ii) EXHIBIT M. The amount and a description of each item for which the utility proposes to give credit through its loan or open account.

(3) The following form of application may be filed by all utilities with annual revenues of less than \$100,000 seeking authority to issue promissory notes maturing more than one year after date of issue or renewal and unsecured notes on motor vehicles in the principal amount of less than \$10,000. In the instances when this provision is proper, the requirements of sections (1) and (2) of this rule do not apply. The Commission may require compliance with sections (1) and (2) of this rule if the Commission deems it necessary in a particular case. [Form not included. See ED. NOTE.]

[ED. NOTE: Forms & exhibits referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.105, 757.405 - 757.435, 757.445, 757.450, 759.305 - 759.320, 759.360 & 759.375

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 21-1990, f. & cert. ef. 12-31-90 (Order No. 90-1904); PUC 8-1995, f. & cert. ef. 8-30-95 (Order No. 95-858); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-027-0031

#### When the Commission May Reregulate Financings of Exempt Telecommunications Utilities

If any bond rating made by Standard and Poor's, Moody's, or Fitch for a large telecommunications utility exempt under ORS 759.315(5) from the requirements of ORS 759.310 and 759.315(2) falls below "A," the Commission may find that reregulation of the

large telecommunications utility under ORS 759.310 and 759.315(2) is necessary to prevent the impairment of service to customers.

Stat. Auth.: ORS 183.335, 756.060 & 759

Stats. Implemented: ORS 759.040 & 759.045

Hist.: PUC 8-1994, f. & cert. ef. 4-15-94 (Order No. 94-555); PUC 16-2001, f. & cert. ef. 6-21-01; PUC 27-2001, f. & cert. ef. 12-28-01

#### 860-027-0032

#### Information Required Concerning Financings of Exempt Large Telecommunications Utilities

(1) Any large telecommunications utility exempt under ORS 759.315(5) from the requirements of ORS 759.310 and 759.315(2) shall, within 30 days of issuing securities, provide to the Commission, in writing, the following information:

(a) The type of security involved in the issuance;

(b) The amount of securities involved in the issuance; and

(c) A description of the terms of the issuance.

(2) Any large telecommunications utility exempt under ORS 759.315(5) from the requirements of ORS 759.310 and 759.315(2) shall, within 90 days of issuing securities, provide to the Commission, in writing, the information required by OAR 860-027-0030(4).

(3) Any large telecommunications utility exempt under ORS 759.315(5) from the requirements of ORS 759.310 and 759.315(2) shall maintain its records in a manner which allows the Commission to determine whether the terms of any issuance of securities are reasonable.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045, 759.310 & 759.315

Hist.: PUC 8-1994, f. & cert. ef. 4-15-94 (Order No. 94-555); PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-027-0035

#### Applications by a Utility for Authority to Guarantee Indebtedness

(1) The requirements of this rule will apply to any energy or large telecommunications utility seeking authority under ORS 757.440 and 759.350. Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information which should, to the extent possible, be furnished for each person, firm, or corporation involved:

(a) The information required by OAR 860-027-0030(1)(a) to (g) inclusive;

(b) A full description of the securities for which applicant proposes to assume obligation or liability as guarantor, endorser, surety or otherwise;

(c) The amount of other securities of said person, firm or corporation now held, owned or controlled by the applicant;

(d) A statement as to whether or not any application with respect to the transaction or any part thereof is required to be filed with any federal or other state regulatory body;

(e) The reasons, in detail, why it is in applicant's interest to guarantee such securities;

(f) The reasons, in detail, why it is necessary for applicant to guarantee such securities; and

(g) The facts relied upon by the applicant to show the assumption is:

(A) For some lawful object within the applicant's corporate purposes and compatible with the public interest;

(B) Necessary or appropriate for or consistent with the applicant's proper performance of service as a public or telecommunications utility;

(C) Will not impair its ability to perform that service; and

(D) Reasonably necessary or required for such purposes.

(2) Required Exhibits. There shall be filed with the application as part thereof the following exhibits:

(a) EXHIBIT A. A copy of the applicant's charter or articles of incorporation with amendments to date;

(b) EXHIBIT B. A copy of the bylaws with amendments to date;

(c) EXHIBIT C. Copies of all resolutions of directors authorizing the assumption in respect to which the application is made and, if stockholders' approval has been obtained, a copy of the stockholders' resolution should also be furnished;

(d) EXHIBIT D. A copy of any mortgage, indenture, or other agreement securing any security which it proposes to guarantee; also, a copy of any mortgage, indenture, or other agreement securing applicant's funded obligations;

(e) EXHIBIT E. Balance sheets with supporting fixed capital or plant schedules in conformity with the form set forth in the annual report which applicant is required to file with the Commission;

(f) EXHIBIT F. A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts at the date of the application;

(g) EXHIBIT G. Comparative income statements in conformity with the form set forth in the annual report which applicant is required to file with the Commission;

(h) EXHIBIT H. An analysis of surplus for the period covered by the income statements referred to in Exhibit G; and

(i) EXHIBIT I. A statement showing the present market value or other basis of determining the value of the securities to be guaranteed.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.440 & 759.335

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-027-0040

##### Applications for Approval of Transactions Between Affiliated Interests

(1) Except as provided in sections (3) and (4) of this rule, the requirements of this rule will apply to any energy or large telecommunications utility seeking authority under ORS 757.490, 757.495, 759.385, and 759.390. An application for financing to an affiliated interest shall be made under OAR 860-027-0030.

(2) Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information:

(a) The applicant's exact name and the address of its principal business office;

(b) The name and address of the person authorized, on the utility's behalf, to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the utility and the contracting entity as defined by ORS 757.015, 757.490, 759.010, or 759.385;

(d) The amount, kind, and ratio to total voting securities held, if applicable;

(e) A list of all officers and directors of the affiliated interest who are also officers or directors of the applicant;

(f) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(g) A description of the goods or services to be provided, the cost incurred in providing each of the goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(h) An estimate of the amount the utility will pay annually for the goods or services and the accounts in which it will record the charges;

(i) The reasons, in detail, relied upon by the utility for procuring the proposed goods or services from the affiliate and benefits, if any, utility customers and the general public will derive from the provision of goods or services;

(j) A description of the procurement process and the reasons, in pertinent detail appropriate to the complexity of the procurement, relied upon by the utility for procuring the proposed goods or services without a competitive procurement process, if such a process is not used;

(k) Transfer prices in contracts or agreements for the procurement of goods or services under competitive procurement shall be presumed to be the market value, subject to evaluation of the procurement process;

(l) A copy of the proposed contract or agreement between the utility and the contracting entity; and

(m) Copies of all resolutions of directors authorizing the proposed transactions and, if stockholders' approval has been obtained, copies of the resolutions approved by the stockholders.

(3) This rule shall not apply to utilities seeking to purchase or contracting to purchase, directly or indirectly, from any person or corporation having an affiliated interest as defined in ORS 757.015 or 759.010 or any corporation defined in ORS 757.490(1) or 759.385(1):

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210 or 759.180; or

(b) Any service provided under a rate or schedule of rates which:

(A) Has been filed with an agency charged with the regulation of utilities,

(B) Has been approved as just and reasonable or in compliance with another comparable standard, and

(C) Is available to a broad class of customers.

(4) This rule shall not apply to telecommunications utilities electing price cap regulation under ORS 759.405 and 759.410.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.005, 757.015, 757.490, 757.495, 759.005, 759.010, 759.385 & 759.390

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 21-1990, f. & cert. ef. 12-31-90 (Order No. 90-1904); PUC 21-1990-A, f. 10-11-91, cert. ef. 12-31-90 (Order No. 90-1904); PUC 15-1994, f. & cert. ef. 12-28-94 (Order No. 94-1953); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 8-2001, f. & cert. ef. 3-21-01; PUC 18-2001, f. & cert. ef. 6-21-01

#### 860-027-0041

##### Information Required for Utility Goods or Services Provided to Affiliated Interests

(1) Except as provided in section (4) of this rule, this rule applies to any energy or large telecommunications seeking to provide or contracting to provide, directly or indirectly, to any person or corporation having an affiliated interest as defined in ORS 757.015 or 759.010 or any corporation defined in ORS 757.490(1) or 759.385(1), service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal, or other services, or enter revenues or credits therefore on its books. This rule does not apply to transactions subject to ORS 757.490, 757.495, 759.385, or 759.390 and OAR 860-027-0040.

(2) An energy or large telecommunications utility's failure to submit this required information shall not limit the Commission's authority to recognize or impute revenues to the utility pursuant to such contract in any rate valuation or other hearing or proceeding.

(3) For transactions provided in section (1) of this rule, every energy or large telecommunications utility shall submit to the Commission, in the manner and form indicated, the following information:

(a) Its exact name and the address of its principal business office;

(b) The name of the person authorized on the energy or large telecommunications utility's behalf to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the energy or large telecommunications utility and the other contracting entity as defined by ORS 757.015, 757.490, 759.010, or 759.385;

(d) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(e) A description of the goods or services to be provided, the costs incurred in providing those goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(f) An estimate of the amount the energy or large telecommunications utility will receive annually for the goods or services and the accounts in which it will record the payments;

(g) The reasons relied upon by the energy or large telecommunications utility for providing the proposed goods or services and the benefits, if any, utility customers and the general public will derive from the provision of goods or services;

(h) A copy of the contract or agreement between the energy or large telecommunications utility and the contracting entity that is the subject of this filing; and

(i) Copies of all resolutions of directors of the energy or large telecommunications utility authorizing the proposed transactions and, if approval of the utility's stockholders was obtained, copies of the resolutions approved by the stockholders.

(4) This rule shall not apply to energy or large telecommunications utilities seeking to provide or contracting to provide, directly or indirectly, to any person or corporation having an affiliated interest as defined in ORS 757.015 or 759.010 or any corporation defined in ORS 757.490(1) or 759.385(1):

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210 or 759.180; or

(b) Any service provided under a rate or schedule of rates which:

(A) Has been filed with an agency charged with the regulation of energy or large telecommunications utilities;

(B) Has been approved as just and reasonable or in compliance with another comparable standard; and

(C) Is available to a broad class of customers.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.005, 757.015, 757.490, 759.005 & 759.385

Hist.: PUC 21-1990, f. & cert. ef. 12-31-90 (Order No. 90-1904); PUC 21-1990-A, f. 10-11-91, cert. ef. 12-31-90 (Order No. 90-1904); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 18-2001, f. & cert. ef. 6-21-01

#### 860-027-0042

##### **Timeliness of Application Made Under OAR 860-027-0040 and Filings Made Under OAR 860-027-0041**

Applications made under OAR 860-027-0040 and filings made under OAR 860-027-0041 shall occur no later than 90 days after the execution of the contract giving rise to the application or filing. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.005, 757.015, 757.490, 757.495, 759.005, 759.010, 759.385 & 759.390

Hist.: PUC 21-1990, f. & cert. ef. 12-31-90 (Order No. 90-1904); PUC 9-1998, f. & cert. ef. 4-28-98

#### 860-027-0043

##### **Application for Waiver of Requirements Under OARs 860-027-0040 and 860-027-0041**

Upon petition by a utility and approval by the Commission for good cause, the requirements of OARs 860-027-0040 and 860-027-0041 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of circumstances demonstrating in advance that the transaction or transactions will be fair and reasonable and not contrary to the public interest, transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for waiver.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.015, 757.490 & 757.495

Hist.: PUC 21-1990, f. & cert. ef. 12-31-90 (Order No. 90-1904); PUC 21-1990-A, f. 10-11-91, cert. ef. 12-31-90 (Order No. 90-1904); PUC 12-1992, f. & cert. ef. 7-8-92 (Order No. 92-963); PUC 9-1998, f. & cert. ef. 4-28-98

#### 860-027-0044

##### **Application for Waiver Requirements by Large Telecommunications Utilities Under OARs 860-027-0040 and 860-027-0041**

(1) This rule does not apply to transactions subject to ORS 759.385(4), 759.390(7), or 759.394.

(2) Upon petition by a large telecommunications utility and approval by the Commission for good cause, the requirements of OARs 860-027-0040 and 860-027-0041 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of circumstances demonstrating in advance that the transaction or transactions will be fair and reasonable and not contrary to the public interest, transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for waiver.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.005, 759.010, 759.385 & 759.390

Hist.: PUC 12-1992, f. & cert. ef. 7-8-92 (Order No. 92-963); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01

#### **Uniform System of Accounts**

#### 860-027-0045

##### **Uniform System of Accounts for Electric Utilities — Major and Nonmajor**

(1) The Uniform System of Accounts prescribed for Public Utilities and Licensees, Part 101, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each electric company.

(2) Each electric company having multistate operations shall maintain records in such detail that the cost of property located in and business done in Oregon in accordance with geographic boundaries can be readily ascertained.

(3) Each electric company having multistate operations shall file annually with the Commission, on or before April 1 of the ensuing year, its Oregon allocated results of operations for the calendar year reported, on the basis of allocation methods acceptable to the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.105, 757.120, 757.125 & 757.135

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1985, f. & ef. 4-24-85 (Order No. 85-355); PUC 3-1992, f. & cert. ef. 2-14-92 (Order No. 92-246); PUC

9-2001, f. & cert. ef. 3-21-01; PUC 19-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-027-0048

##### **Allocation of Costs by an Energy Utility**

(1) As used in this rule:

(a) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with an energy utility;

(b) "Approved rates" means rates established by the Commission or FERC;

(c) "Asset" means any tangible or intangible property of an energy utility or other right, entitlement, business opportunity, or other thing of value to which an energy utility holds claim that is recorded or should be recorded as a capital expenditure in the energy utility's financial statements. All energy utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered an asset, a service, or supplies;

(d) "Commission" means the Public Utility Commission of Oregon;

(e) "Cost" means fully distributed cost, including the energy utility's authorized rate of return and all overheads;

(f) "Energy utility" is that defined in OAR 860-027-0001(1);

(g) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a non-affiliated entity, as determined by commonly accepted valuation principles;

(h) "FERC" means the Federal Energy Regulatory Commission;

(i) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(j) "Net book value" means original cost less accumulated depreciation;

(k) "Nonregulated activity" means an activity that is not a regulated activity of the energy utility as defined in subsection (1)(l) of this rule;

(l) "Regulated activity" means a Commission regulated activity that is provided by an energy utility directly or indirectly relating to the general operations of the energy utility such as production, transmission, delivery, or furnishing of heat, light, or power unless the Commission has determined the activity to be exempt from regulation;

(m) "Services" means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All energy utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered an asset, a service, or supplies; and

(n) "Supplies" means any tangible or intangible property of an energy utility or other thing of value to which an energy utility holds claim that is recorded or should be recorded as an operating expense in the energy utility's financial statements. All energy utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered an asset, a service, or supplies.

(2) Regulated and nonregulated activities of an energy utility shall be accounted for in accordance with OARs 860-027-0045, 860-027-0055, or 860-027-0065, as appropriate.

(3) The energy utility shall use the following cost allocation methods when transferring assets or supplies, or providing or receiving services between regulated and nonregulated activities:

(a) When an asset is transferred to regulated accounts from non-regulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from regulated accounts to non-regulated accounts, the transfer shall be recorded in regulated accounts at the approved rate if an appropriate rate is on file with the Commission or with FERC. If no approved rate is applicable, proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from regulated accounts to non-regulated accounts at a fair market value that is greater than net book value, the difference shall be a gain to the regulated activity. The energy utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are transferred or provided by a regulated activity to a nonregulated activity, transfers shall be recorded in regulated revenue accounts at the approved rate if an applicable

rate is on file with the Commission or with FERC. If services or supplies are not transferred or provided pursuant to an approved rate, transfers shall be recorded in regulated accounts at the energy utility's cost or the market rate, whichever is higher. Approved rates shall be established as appropriate.

(e) When services or supplies (except for generation) are transferred or provided to a regulated activity by a nonregulated activity, transfers shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the energy utility's most recently authorized rate of return.

(f) For generation, when services or supplies are transferred or provided to a regulated activity by a nonregulated activity, transfers shall be recorded in regulated accounts at the market rate.

(g) Income taxes shall be calculated for the regulated activity on a standalone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the regulated activity shall record income tax expense as if it were determined for the regulated activity separately for all time periods.

(4) The energy utility shall use the following cost allocation methods when transferring assets or supplies or providing or receiving services involving its affiliates:

(a) When an asset is transferred to an energy utility from an affiliate, the transfer shall be recorded in the energy utility's accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from an energy utility to an affiliate, the transfer shall be recorded in the energy utility's accounts at the approved rate if an appropriate rate is on file with the Commission or with FERC. If no approved rate is applicable, proceeds from the transfer shall be recorded in the energy utility's accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from an energy utility's accounts to an affiliate at a fair market value that is greater than net book value, the difference shall be a gain to the energy utility. The energy utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by an energy utility to an affiliate, sales shall be recorded in the energy utility's revenue accounts at the approved rate if an applicable rate is on file with the Commission or with FERC. If services or supplies are not sold pursuant to an approved rate, sales shall be recorded in the energy utility's accounts at the energy utility's cost or the market rate, whichever is higher. Approved rates shall be established as appropriate.

(e) When services or supplies (except for generation) are sold to an energy utility by an affiliate, sales shall be recorded in the energy utility's accounts at the approved rate if an applicable rate is on file with the Commission or with FERC. If services or supplies (except for generation) are not sold pursuant to an approved rate, sales shall be recorded in the energy utility's accounts at the affiliate's cost or the market rate, whichever is lower.

(f) For generation, when services or supplies are sold to an energy utility by an affiliate, sales shall be recorded in regulated accounts at the market rate.

(g) When services or supplies are sold to an energy utility by an affiliate under contract, the transfer price shall be based upon the tariff or terms of the contract approved by the Commission Order under ORS 757.495.

(h) Income taxes shall be calculated for the energy utility on a standalone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the energy utility shall record income tax expense as if it were determined for the energy utility separately for all time periods.

(5) Each energy utility shall maintain a current cost allocation manual on file with the Commission. The cost allocation manual shall contain the following:

(a) A description of each of the energy utility's nonregulated activities and affiliates (or a referral to such a description already on file with the Commission);

(b) A chart showing the energy utility's nonregulated activities and affiliates (or a referral to such a chart already on file with the Commission); and

(c) A detailed description of the methods used by the energy utility to allocate costs to nonregulated activities and affiliates including the method used by the energy utility to calculate costs that are applied

to sales or transfers with nonregulated activities and transactions with affiliates.

(6) The energy utility must file its initial cost allocation manual within 180 days of the effective date of this rule. The cost allocation manual shall also be filed annually as an appendix to the Affiliated Interest Report required under OAR 860-027-0100.

(7) When an energy utility proposes any change to cost allocation methods in the cost allocation manual previously filed with the Commission, the utility shall file the proposed change with the Commission no less than 45 days before the effective date of the change. The changes shall go into effect unless rejected by the Commission before the effective date of the change.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.490 & 757.495

Hist.: PUC 25-2003, f. & cert. ef. 12-11-03

## 860-027-0050

### Uniform System of Accounts for Large Telecommunications Utilities

(1) The Uniform System of Accounts for Telecommunications Companies, Part 32, adopted by the Federal Communications Commission (FCC) on October 11, 2001, is hereby adopted and prescribed for all large telecommunications utilities except as modified for intrastate purposes in sections (2) through (5) of this rule.

(2) A large telecommunications utility may follow Class B accounting except when Class A accounting is needed to complete intrastate depreciation and jurisdictional separation studies, to provide the details requested in annual reports under OAR 860-027-0070, and to comply with other Oregon rules and statutes.

(3) The allocation rules in Part 32, Section 32.27, are replaced by OAR 860-027-0052(3).

(4) For construction work in progress and property held for future use, each large telecommunications utility shall maintain subsidiary records consistent with ORS 759.285.

(5) Each large telecommunications utility shall maintain subsidiary records sufficient to separately identify the following deferred taxes, revenues, and expenses:

(a) Federal and state net noncurrent deferred operating income taxes (Account 4340).

(b) Interstate and intrastate switched access revenue (Account 5082).

(c) Interstate and intrastate special access revenue (Account 5083).

(d) Miscellaneous Revenues (Account 5200):

(A) Directory revenues, including amounts derived from alphabetical and classified sections of directories and fees paid by other entities for the right to publish the large telecommunications utility's directories; the classified section of the directories; the sale of new telephone directories whether they are the large telecommunications utility's own directories or directories purchased from others; additional and boldface listings, marginal displays, inserts, and other advertisements in the alphabetical sections of the telephone directories; and unlisted and nonpublished telephone numbers;

(B) Interstate and intrastate carrier billing and collection revenues derived from the provision to other telecommunications providers for services such as message recording, billing, collection, billing analysis, and billing information services, whether rendered under tariff or contractual arrangements; and

(C) Miscellaneous revenue other than directory or carrier billing and collection revenues.

(e) Universal Service Fund (USF) revenues and expenses:

(A) Collections from customers for federal USF and Oregon USF;

(B) Contributions to the federal USF and Oregon USF; and

(C) Distributions from the federal USF and the Oregon USF.

(f) Depreciation expenses related to telecommunications plant in service, depreciation expense related to property held for future use, and amortization expense.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.105, 759.120, 759.125 & 759.130

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 8-1981, f. & ef. 9-8-81 (Order No. 81-626); PUC 5-1985, f. & ef. 4-24-85 (Order No. 85-355); PUC 13-1987, f. & ef. 11-16-87 (Order No. 87-1176); PUC 17-1989, f. & cert. ef. 12-14-89 (Order No. 89-1508/89-1672); PUC 6-1998, f. & cert. ef. 3-13-98; PUC 3-2000, f. & cert. ef. 2-9-00; PUC 9-2000, f. & cert. ef. 5-26-00; PUC 16-2000, f. & cert. ef. 9-12-

00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 14-2002, f. & cert. ef. 3-26-02

**860-027-0052**

**Allocation of Costs by a Large Telecommunications Utility**

(1) As used in this rule:

(a) "Affiliate Transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a large telecommunications utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the large telecommunications utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single large telecommunications utility;

(b) "Asset" means any tangible or intangible property of a large telecommunications utility or other right, entitlement, business opportunity, or other thing of value to which a large telecommunications utility holds claim;

(c) "Cost" means fully distributed cost, including the large telecommunications utility's authorized rate of return and all overheads;

(d) "Fair Market Value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a non-affiliated entity, as determined by commonly accepted valuation principles;

(e) "Market Rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(f) "Net Book Value" means original cost less accumulated depreciation; and

(g) "Nonregulated Service" means a service that is not a telecommunications service as defined by ORS 759.005(2)(g), or a service that the Commission has determined to be exempt from regulation.

(2) A large telecommunications utility that provides both regulated and nonregulated intrastate service shall:

(a) Allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements, which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule;

(b) Part 64, Subpart I, Allocation of Costs, adopted by the Federal Communications Commission on October 11, 2001, is hereby adopted and prescribed.

(3) A large telecommunications utility, which is subject to price caps under ORS 759.405, may account for its regulated and nonregulated intrastate activities in accordance with FCC Part 32, Section 32.27. For all other large telecommunications utilities, Section 32.27 is replaced as follows for intrastate purposes:

(a) When an asset is transferred to regulated accounts from non-regulated accounts:

(A) If the asset has an original cost of more than \$100,000, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value.

(B) If the asset has an original cost of \$100,000 or less, the transfer shall be recorded in compliance with Section 32.27.

(b) When an asset is transferred from regulated accounts to non-regulated accounts:

(A) If the asset has an original cost of more than \$100,000, the transfer shall be recorded in regulated accounts at the tariff or price-listed rate if an appropriate tariff or price list is on file with the Commission. If no tariff or price list is applicable, proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value.

(B) If the asset has an original cost of \$100,000 or less, the transfer shall be recorded in compliance with Section 32.27.

(c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The large telecommunications utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a regulated activity to a nonregulated activity:

(A) If the annual value exceeds \$100,000, sales shall be recorded in regulated revenue accounts at tariffed or price-listed rates if an applicable tariff or price list is on file with the Commission. Tariffed or price-listed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff or price list, sales shall be recorded in regulated revenue accounts at the large telecommunications utility's cost.

(B) If the annual value is \$100,000 or less, the sales shall be recorded in compliance with Section 32.27.

(e) When services or supplies are sold to a regulated activity by a nonregulated activity:

(A) If the annual value exceeds \$100,000, sales shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the large telecommunications utility's most recently authorized rate of return.

(B) If the annual value is \$100,000 or less, the sales shall be recorded in compliance with Section 32.27.

(f) Income taxes shall be allocated among the regulated activities of the large telecommunications utility, its nonregulated divisions, and members of an affiliated group. When income taxes are determined on a consolidated basis, the large telecommunications utility shall record income tax expense as if it were determined for the large telecommunications utility separately for all time periods.

(4) If a large telecommunications utility:

(a) Is subject to ORS 759.100 through 759.115 and provides both regulated and nonregulated intrastate service, the utility shall maintain a current intrastate cost allocation manual on file with the Commission. If the FCC requires the large telecommunications utility to file an interstate cost allocation manual, the utility shall also maintain a current copy of its interstate manual with the Commission.

(b) Is subject to price caps under ORS 759.405, the large telecommunications utility is not required to file an intrastate cost allocation manual with the Commission. A large telecommunications utility that is subject to price caps must file a copy of its annual 254(k) compliance filing and make information available to the Commission as needed to review the utility's intrastate cost allocations to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

(5) An intrastate cost allocation manual, if required under subsection (4) of this rule, shall contain the following:

(a) A description of each of the large telecommunications utility's nonregulated intrastate activities;

(b) A list of all intrastate activities to which the large telecommunications utility now accords incidental accounting treatment, and the justification for treating each as incidental;

(c) A chart showing the large telecommunications utility's affiliates;

(d) A statement identifying affiliates that engage in or will engage in transactions with the large telecommunications utility for the purpose of providing nonregulated intrastate service and describing the nature, terms, and frequency of such transactions; and

(e) A detailed specification of the cost categories to which amounts in each account and subaccount of Part 32 will be assigned, and a detailed specification of the basis on which each cost category will be apportioned between regulated and nonregulated activities.

(6) Unless specifically allowed by the Commission, a cost allocation manual cannot be used to satisfy any other reporting requirement established by the Commission.

(7) The initial cost allocation manual filed by a large telecommunications utility pursuant to this rule must be filed with the Commission no less than 90 days before the manual's effective date. The manual shall go into effect unless rejected by the Commission before the manual's effective date.

(8) When a large telecommunications utility proposes any change to a cost allocation manual previously filed with the Commission, the utility shall file the proposed change with the Commission no less than 45 days before the effective date of the change. The changes shall go into effect unless rejected by the Commission before the effective date of the change.

(9) After the Commission has issued an order to exempt from regulation a telecommunications service provided by a large telecommunications utility that is subject to ORS 759.100 through 759.115, the

affected utility shall file with the Commission either an initial cost allocation manual or a change to its previously filed manual.

(10) A large telecommunications utility that is required to file annual independent cost allocation audits with the FCC shall at the same time file copies of the annual audits with the Commission.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.105, 759.120, 759.125 & 759.130

Hist.: PUC 24-1985, f. & ef. 12-12-85 (Order No. 85-1172); PUC 15-1988, f. & cert. ef. 9-7-88 (Order No. 88-954); PUC 8-1995, f. & cert. ef. 8-30-95 (Order No. 95-858); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 10-2000, f. & cert. ef. 5-26-00; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 24-2002, f. & cert. ef. 12-20-02

#### 860-027-0055

##### Uniform System of Accounts for Gas Utilities — Major and Nonmajor

(1) The Uniform System of Accounts prescribed for Natural Gas Companies, Part 201, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each gas utility.

(2) Each gas utility having multistate operations shall maintain records in such detail that the cost of property located in and business done in Oregon can be readily ascertained.

(3) Each gas utility having multistate operations shall file annually with the Commission, on or before April 1 of the ensuing year, its Oregon allocated results of operations for the calendar year reported, on the basis of allocation methods acceptable to the Commission.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.105, 757.120, 757.125 & 757.135

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1985, f. & ef. 4-24-85 (Order No. 85-355); PUC 3-1992, f. & cert. ef. 2-14-92 (Order No. 92-246); PUC 9-2001, f. & cert. ef. 3-21-01; PUC 19-2001, f. & cert. ef. 6-21-01

#### 860-027-0065

##### Uniform System of Accounts for Steam Heat Utilities — Class A, B, and C

The Uniform System of Accounts for Public Utilities and Licensees, Part 101, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each steam heat utility.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.105, 757.120, 757.125 & 757.135

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-2001, f. & cert. ef. 3-21-01; PUC 19-2001, f. & cert. ef. 6-21-01

### Annual Reports

#### 860-027-0070

##### Annual Report Requirements for Electric, Large Telecommunications, Gas, and Steam Heat Utilities

(1) Annual Reports will be submitted by electric, gas, water, and steam heat utilities. The report shall be submitted on or before April 1, using the most current forms approved by the Commission.

(2) Annual Reports will be submitted by large telecommunications utilities. The report Form O for the previous calendar year shall be submitted on or before April 1, using the most current forms approved by the Commission. The report Form I for the previous calendar year shall be submitted on or before October 31 using the most current forms approved by the Commission.

[ED. NOTE: Forms referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.105, 757.120, 757.125, 757.135 & 759.225

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 9-1985, f. & ef. 6-25-85 (Order No. 85-574); PUC 3-1995, f. & cert. ef. 6-19-95 (Order No. 95-516); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 2-1998, f. & cert. ef. 2-24-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 19-2000, f. & cert. ef. 12-28-00; PUC 16-2001, f. & cert. ef. 6-21-01

#### 860-027-0100

##### Reporting of Affiliated Transactions

(1) On forms approved and provided by the Commission:

(a) By June 1, all energy utilities shall file with the Commission a report of all affiliated interest, intercompany, and intracompany transactions which occurred during the period from January 1 through December 31 of the immediately preceding year.

(b) By April 1, all large telecommunications utilities shall file with the Commission a report of all affiliated interest contracts executed during the period from January 1 through December 31 of the

immediately preceding year. The list shall consist of the names of the parties to the contracts, the dollar amounts of the contracts, and the dates of execution of the contracts.

(2) As used in this rule, "affiliated interest transactions" mean transactions between affiliated interests as defined by ORS 757.015 and 759.010.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.005, 757.015, 757.490, 757.495, 759.005, 759.010 & 759.385 - 759.393

Hist.: PUC 10-1987, f. & ef. 10-8-87 (Order No. 87-898); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 9-1998, f. & cert. ef. 4-28-98; PUC 8-2001, f. & cert. ef. 3-21-01; PUC 18-2001, f. & cert. ef. 6-21-01

#### 860-027-0120

##### Preservation and Destruction of Records

(1) Electric Companies. Preservation of Records of Public Utilities and Licensees, Part 125, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each electric company with the following exception: Corporate and General, Organizational documents — An electric company shall retain minute books of stockholders', directors', and directors' committee meetings for twenty-five years.

(2) Gas Utilities. The Preservation of Records of Public Utilities and Licensees, Part 225, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each gas utility with the following exception: Corporate and General, Organizational documents — A gas utility shall retain minute books of stockholders', directors', and directors' committee meetings for twenty-five years.

(3) Steam Heat Utilities. The Preservation of Records of Public Utilities and Licensees, Part 125, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each steam heat utility with the following exception: Corporate and General, Organizational documents — A steam heat utility shall retain minute books of stockholders', directors', and directors' committee meetings for twenty-five years.

(4) Large telecommunications Utilities. The Regulations to Govern the Preservation of Records of Communication Common Carriers, Part 42, 47 Code of Federal Regulations Chapter 1 (October 1, 2003, edition) is hereby adopted and prescribed by the Commission for each large telecommunications utility.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.105

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 12-1985, f. & ef. 8-20-85 (Order No. 85-751); PUC 15-1986, f. & ef. 11-10-86 (Order No. 86-1144); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 1-1998, f. & cert. ef. 1-12-98; PUC 8-2000, f. & cert. ef. 5-26-00; PUC-19-2001, f. & cert. ef. 6-21-01; Renumbered from 860-028-0010; PUC 15-2004, f. & cert. ef. 10-28-04; PUC 7-2005, f. & cert. ef. 11-30-05

#### 860-027-0200

##### Energy Utility Acquisition

In addition to the information required by ORS 757.511, any person filing an application pursuant to that statute, shall also provide:

(1) The information required by OAR 860-027-0030(1)(a) through (d), inclusive;

(2) A schedule detailing the existing capital structure of the energy utility to be acquired, as well as a pro forma utility capital structure as of 12 months after the acquisition is to be completed;

(3) An explanation of how the bond ratings and capital costs of the acquired utility will be affected by the acquisition;

(4) A description of existing and planned nonutility businesses which are or will become affiliated interests of the acquired utility under ORS 757.015, and a description of the organizational structure under which the applicant intends to operate its businesses;

(5) A description of the method by which management, personnel, property, income, losses, costs, and expenses will be allocated by the applicant between its utility and nonutility operations (if applicable);

(6) A description of any planned changes that may have a significant impact upon the policy, management, operations, or rates of the energy utility;

(7) A description of any plans to cause the energy utility to sell, exchange, pledge, or otherwise transfer its assets; and

(8) A copy of any existing or proposed agreement between the energy utility and any businesses which will become affiliated interests of the acquired utility under ORS 757.015.

Stat. Auth.: ORS 183, 756, 757 & 759  
 Stats. Implemented: ORS 756.105 & 757.511  
 Hist.: PUC 6-1986, f. & cf. 7-22-86 (Order No. 86-731); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 16-2001, f. & cert. ef. 6-21-01

**860-027-0300**

**Use of Deferred Accounting by Energy and Large Telecommunications Utilities**

(1) As used in this rule:

(a) "Amortization" means the inclusion in rates of an amount which has been deferred under ORS 757.259 or 759.200 and which is designed to eliminate, over time, the balance in an authorized deferred account. Amortization does not include the normal positive and negative fluctuations in a balancing account;

(b) "Deferred Accounting" means recording the following in a balance sheet account, with Commission authorization for later reflection in rates:

(A) Electric companies, gas utilities, and steam heat utilities: a current expense or revenue associated with current service, as allowed by ORS 757.259; or

(B) Large telecommunications utilities: an amount allowed by ORS 759.200.

(2) Expiration: Any authorization to use a deferred account shall expire 12 months from the date the deferral is authorized to begin. If a deferral under ORS 757.259 or 759.200 is reauthorized, the reauthorization shall expire 12 months from the date the reauthorization becomes effective.

(3) Contents of Application: Application for deferred accounting, by an energy or large telecommunications utility or a customer, shall include:

(a) A description of the utility expense or revenue for which deferred accounting is requested;

(b) The reason(s) deferred accounting is being requested and a reference to the section(s) of ORS 757.259 or 759.200 under which deferral may be authorized;

(c) The account proposed for recording of the amounts to be deferred and the account which would be used for recording the amounts in the absence of approval of deferred accounting;

(d) An estimate of the amounts to be recorded in the deferred account for the 12-month period subsequent to the application; and

(e) A copy of the notice of application for deferred accounting and list of persons served with the notice.

(4) Reauthorization: Application for reauthorization to use a deferred account shall be made not more than 60 days prior to the expiration of the previous authorization for the deferral. Application for reauthorization shall include the requirements set forth in subsections (3)(a) through (3)(e) of this rule and, in addition, the following information:

(a) A description and explanation of the entries in the deferred account to the date of the application for reauthorization; and

(b) The reason(s) for continuation of deferred accounting.

(5) Exceptions: Authorization under ORS 757.259 or 759.200 to use a deferred account is necessary only to add amounts to an account, not to retain an existing account balance and not to amortize amounts which have been entered in an account under an authorization by the Commission. Interest, once authorized to accrue on unamortized balances in an account, may be added to the account without further authorization by the Commission, even though authorization to add other amounts to an account has expired.

(6) Notice of Application: The applicant shall serve a notice of application upon all persons who were parties in the energy or large telecommunications utility's last general rate case. If the applicant is other than an energy or large telecommunications utility, the applicant shall serve a copy of the application upon the affected utility. A notice of application shall include:

(a) A statement that the applicant has applied to the Commission for authorization to use deferred accounting; or for an order requiring that deferred accounting be used by an energy or large telecommunications utility;

(b) A description of the utility expense or revenue for which deferred accounting is requested;

(c) The manner in which an interested person can obtain a copy of the application;

(d) A statement that any person may submit to the Commission written comment on the application by the date set forth in the notice,

which date may be no sooner than 25 days from the date of the application; and

(e) A statement that the granting of the application will not authorize a change in rates, but will permit the Commission to consider allowing such deferred amounts in rates in a subsequent proceeding.

(7) Public Meetings: Unless otherwise ordered by the Commission, applications for use of deferred accounting will be considered at the Commission's public meetings.

(8) Reply Comments: Within ten days of the due date for comments on the application from interested persons, the applicant, and the energy or large telecommunications utility if the utility is not the applicant, may file reply comments with the Commission, and shall serve those comments on persons who have filed the initial comments on the application.

(9) Amortization: Amortization in rates of a deferred amount shall only be allowed in a proceeding, whether initiated by the energy or large telecommunications utility or another party. The Commission may authorize amortization of such amounts only for utility expenses or revenues for which the Commission previously has authorized deferred accounting. Upon request for amortization of a deferred account, the energy or large telecommunications utility shall provide the Commission with its financial results for a 12-month period or for multiple 12-month periods to allow the Commission to perform an earnings review. The period selected for the earnings review will encompass all or part of the period during which the deferral took place or must be reasonably representative of the deferral period. Unless authorized by the Commission to do otherwise:

(a) An energy utility shall request that amortizations of deferred accounts commence no later than one year from the date that deferrals cease for that particular account; and

(b) In the case of ongoing balancing accounts, the energy utility shall request amortization at least annually, unless amortization of the balancing account is then in effect; or

(c) A large telecommunications utility shall request amortization of deferred accounts as soon as practical after the deferrals cease but no later than in its next rate proceeding.

(10) An electric company customer may prepay under ORS 757.259(11) all or a portion of its obligation of deferred power supply expense. The obligation must be calculated as the customer's pro rata share of the utility's total energy usage within the state of Oregon during 2001, multiplied by the unrecovered deferral balance at the time of prepayment. When such customer has prepaid its obligation in full, the customer may no longer be charged the power supply adjustment related to the deferral.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.105, 757.259 & 759.200

Hist.: PUC 11-1988, f. & cert. ef. 6-9-88 (Order No. 88-597); PUC 2-1990, f. & cert. ef. 3-2-90 (Order No. 90-235); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 4-1998, f. & cert. ef. 2-24-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 6-2004(Temp), f. & cert. ef. 3-24-04 thru 9-20-04; PUC 14-2004, f. & cert. ef. 9-7-04; PUC 7-2005, f. & cert. ef. 11-30-05

**860-027-0310**

**Cost-Effective Conservation Resources**

(1) As used in this rule:

(a) "Conservation" means any reduction in electric power or natural gas consumption as the result of increases in efficiency of energy use, production, or distribution. Conservation also includes cost-effective fuel switching;

(b) "Fuel switching" means any substitution of one type of energy or fuel for another; and

(c) "Cost-effective" has the meaning given that term in OAR 860-030-0010. However, the cost-effective level for fuel switching shall not include the 10 percent cost advantage specified in OAR 860-030-0010(6)(b).

(2) The Commission encourages energy utilities to acquire cost-effective conservation resources. Energy utilities may apply for Commission approval of programs designed to promote the acquisition of cost-effective conservation resources. Programs in this context consist of accounting and rate-making mechanisms designed to provide an energy utility with incentives, to remove disincentives, or to acquire such resources. The Commission adopts the following policies for evaluating programs proposed by energy utilities:

(a) Incentive:

(A) **Least-Cost Resources:** Acquisition of least-cost resources should be the energy utility's most profitable course of action. An energy utility should have an incentive to acquire all least-cost resources, but it should not have an incentive to pursue conservation past the point at which it is no longer cost-effective. An energy utility should not be expected to pursue a course of action that involves an identifiable and sustained loss of profits. The most important criterion for evaluating an incentive program is its effect on the energy utility's resource acquisition strategy. Incentive programs under which the energy utility can earn higher profits by acquiring resources which are not least-cost resources need not be considered, no matter how well they may suit the other criteria.

(B) **Cost Minimization:** An energy utility should have the incentive to acquire any resource at the minimum total cost. The set of incentives given the energy utility should not merely influence the choice of which resource to acquire, but the manner of its acquisition as well.

(C) **Strategic Manipulation:** An energy utility should not have incentives to manipulate the program strategically.

(b) **Predictability:** Program impacts should be predictable to all participants.

(c) **Simplicity:**

(A) **Administration:** The program should be as simple as possible to administer, consistent with the need to determine actual results.

(B) **Implementation:** The program should be understandable to affected parties.

(d) **Impact:**

(A) **Balance:** Risks and rewards should be distributed fairly between stockholders and customers. Fair treatment of these groups relative to each other may require a balancing of rewards with penalties; if shareholders are rewarded for good performance, they should also be penalized for poor performance.

(B) **Cross-subsidization:** Cross-subsidization of participants by nonparticipants should be minimized.

(C) **Rate pressure:** Incentive programs should be as consistent as possible with the Commission objective of promoting rate stability.

(e) **Tradeoffs:** In developing cost-effective conservation programs, energy utilities may balance the emphasis given to each policy listed above. Greater focus on one policy may come at the expense of another policy, if the whole proposal is reasonable.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.262

Hist.: PUC 14-1993(Temp), f. & cert. ef. 8-6-93 (Order No. 93-1105; PUC 2-1994, f. & cert. ef. 1-14-94 (Order No. 94-075); PUC 9-1998, f. & cert. ef. 4-28-98

## DIVISION 28

### POLE AND CONDUIT ATTACHMENTS

#### 860-028-0000

##### Applicability

The rules contained in this Division apply to every pole or conduit owner and every pole or conduit occupant, as defined in OAR 860-028-0020.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270, 759.045 & 759.650

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-028-0020

##### Definitions for Pole and Conduit Attachment Rules

For purposes of this Division:

(1) "Attachment" has the meaning given in ORS 757.270 and 759.650.

(2) "Authorized attachment space" means the usable space occupied by one or more attachments on a pole by an occupant with the pole owner's permission.

(3) "Carrying charge" means the costs incurred by the owner in owning and maintaining poles or conduits. The carrying charge is expressed as a percentage. The carrying charge is the sum of the percentages calculated for the following expense elements, using owner's data from the most recent calendar year and that are publicly available to the greatest extent possible:

(a) The administrative and general percentage is total general and administrative expense as a percent of net investment in total plant.

(b) The maintenance percentage is maintenance of overhead lines expense or conduit maintenance expense as a percent of net investment in overhead plant facilities or conduit plant facilities.

(c) The depreciation percentage is the depreciation rate for gross pole or conduit investment multiplied by the ratio of gross pole or conduit investment to net investment in poles or conduit.

(d) Taxes are total operating taxes, including, but not limited to, current, deferred, and "in lieu of" taxes, as a percent of net investment in total plant.

(e) The cost of money is calculated as follows:

(A) For a telecommunications utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding;

(B) For a public utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding; or

(C) For a consumer-owned utility, the cost of money is equal to the utility's embedded cost of long-term debt plus 100 basis points. Should a consumer-owned utility not have any long-term debt, then the cost of money will be equal to the 10-year treasury rate as of the last traded day for the relevant calendar year plus 200 basis points.

(4) "Commission pole attachment rules" mean the rules provided in OAR chapter 860, division 028.

(5) "Commission safety rules" has the meaning given in OAR 860-024-0001(1).

(6) "Conduit" means any structure, or section thereof, containing one or more ducts, manholes, or handholes, used for any telephone, cable television, electrical, or communications conductors or cables, owned or controlled, in whole or in part, by one or more public, telecommunications, or consumer-owned utilities.

(7) "Consumer-owned utility" has the meaning given in ORS 757.270.

(8) "Duct" means a single enclosed raceway for conductors or cables.

(9) "Government entity" means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(10) "Licensee" has the meaning given in ORS 757.270 or 759.650. "Licensee" does not include a government entity.

(11) "Make ready work" means engineering or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities. Make ready work costs are non-recurring costs and are not contained in carrying charges.

(12) "Net investment" means the gross investment, from which is first subtracted the accumulated depreciation, from which is next subtracted related accumulated deferred income taxes, if any.

(13) "Net linear cost of conduit" is equal to net investment in conduit divided by the total length of conduit in the system.

(14) "Notice" means written notification sent by mail, electronic mail, telephonic facsimile, or other means previously agreed to by the sender and the recipient.

(15) "Occupant" means any licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles or within conduits.

(16) "Owner" means a public utility, telecommunications utility, or consumer-owned utility that owns or controls poles, ducts, conduits, rights-of-way, manholes, handholes, or other similar facilities.

(17) "Pattern" means a course of behavior that results in a material breach of a contract, or permits, or in frequent violations of OAR 860-028-0120.

(18) "Percentage of conduit capacity occupied" means:

(a) When inner ducts are used, the product of the quotient of the number "one," divided by the number of inner ducts, multiplied by the quotient of the number "one," divided by the number of ducts in the conduit [i.e.,  $(1/\text{Number of Inner Ducts} \geq 2) \times (1/\text{Number of Ducts in Conduit})$ ]; or

(b) When no inner ducts are used, the quotient of the number "one," divided by the number of ducts in the conduit [i.e.,  $(1/\text{Number of Ducts in Conduit})$ ].

(19) "Periodic Inspection" means any inspection done at the option of the owner, including a required inspection pursuant to

division 024, the cost of which is recovered in the carrying charge. Periodic inspections do not include post construction inspections.

(20) "Permit" means the written or electronic record by which an owner authorizes an occupant to attach one or more attachments on a pole or poles, in a conduit, or on support equipment.

(21) "Pole" means any pole that carries distribution lines and that is owned or controlled by a public utility, telecommunications utility, or consumer-owned utility.

(22) "Pole cost" means the depreciated original installed cost of an average bare pole to include support equipment of the pole owner, from which is subtracted related accumulated deferred taxes, if any. There is a rebuttable presumption that the average bare pole is 40 feet and the ratio of bare pole to total pole for a public utility or consumer-owned utility is 85 percent, and 95 percent for a telecommunications utility.

(23) "Post construction inspection" means work performed to verify and ensure the construction complies with the permit, governing agreement, and Commission safety rules.

(24) "Preconstruction activity" means engineering, survey and estimating work required to prepare cost estimates for an attachment application.

(25) "Public utility" has the meaning given in ORS 757.005.

(26) "Serious injury" means "serious injury to person" or "serious injury to property" as defined in OAR 860-024-0050.

(27) "Service drop" means a connection from distribution facilities to the building or structure being served.

(28) "Special inspection" means an owner's field visit made at the request of the licensee for all nonperiodic inspections. A special inspection does not include preconstruction activity or post construction inspection.

(29) "Support equipment" means guy wires, anchors, anchor rods, and other accessories of the pole owner used to support the structural integrity of the pole to which the licensee is attached.

(30) "Surplus ducts" means ducts other than:

(a) Those occupied by the conduit owner or a licensee;

(b) An unoccupied duct held for emergency use; or

(c) Other unoccupied ducts that the owner reasonably expects to use within the next 60 months.

(31) "Telecommunications utility" has the meaning given in ORS 759.005.

(32) "Threshold number of poles" means 50 poles, or one-tenth of one percent (0.10 percent) of the owner's poles, whichever is less, over any 30 day period.

(33) "Unauthorized attachment" means an attachment that does not have a valid permit and a governing agreement subject to OAR 860-028-0120.

(34) "Usable space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between the communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0110 & 860-034-0810; PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0050

### General

(1) OAR chapter 860 division 028 governs access to utility poles, conduits, and support equipment by occupants in Oregon.

(2) OAR chapter 860, division 028 is intended to provide just and reasonable provisions when the parties are unable to agree on certain terms.

(3) With the exceptions of OARs 860-028-0060 through 860-028-0080, 860-028-0115, and 860-028-0120, parties may mutually agree on terms that differ from those in this division. In the event of disputes submitted for Commission resolution, the Commission will deem the terms and conditions specified in this division as presumptively reasonable. If a dispute is submitted to the Commission for resolution, the burden of proof is on any party advocating a deviation from the rules in this division to show the deviation is just, fair and reasonable.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0060

### Attachment Contracts

(1) Any entity requiring pole attachments to serve customers should be allowed to use utility poles, ducts, conduits, rights-of-way, manholes, handholes, or other similar facilities jointly, as much as practicable.

(2) To facilitate the joint use of poles, entities must execute contracts establishing the rates, terms, and conditions of pole use in accordance with OAR 860-028-0120. Government entities are not required to execute contracts.

(3) Parties must negotiate pole attachment contracts in good faith.

(4) Unless expressly prohibited by contract, the last effective contract between the parties will continue in effect until a new contract between the parties goes into effect.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0070

### Resolution of Disputes for Proposed New or Amended Contractual Provisions

(1) This rule applies to a complaint alleging a violation of ORS 757.273, 757.276, 757.279, 757.282, 759.655, 759.660, or 759.665.

(2) In addition to the generally applicable hearing procedures contained in OAR chapter 860, divisions 011 through 014, the procedures set forth in this rule shall apply to a complaint that an existing or proposed contract is unjust and unreasonable.

(3) The party filing a complaint under this rule is the "complainant." The other party to the contract, against whom the complaint is filed, is the "respondent."

(4) Before a complaint is filed with the Commission, one party must request, in writing, negotiations for a new or amended attachment agreement from the other party.

(5) Ninety (90) calendar days after one party receives a request for negotiation from another party, either party may file with the Commission for a proceeding under ORS 757.279 or 759.660.

(6) The complaint must contain each of the following:

(a) Proof that a request for negotiation was received at least 90 calendar days earlier. The complainant must specify the attempts at negotiation or other methods of dispute resolution undertaken since the date of receipt of the request and indicate that the parties have been unable to resolve the dispute.

(b) A statement of the specific attachment rates, terms and conditions that are claimed to be unjust or unreasonable.

(c) A description of the complainant's position on the unresolved provisions.

(d) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute.

(e) All information available as of the date the complaint is filed with the Commission that the complainant relied upon to support its claims:

(A) In cases in which the Commission's review of a rate is required, the complaint must provide all data and information in support of its allegations, in accordance with the administrative rules set forth to evaluate the disputed rental rate.

(B) If the licensee is the party submitting the complaint, the licensee must request the data and information required by this rule from the owner. The owner must supply the licensee the information required in this rule, as applicable, within 30 calendar days of the receipt of the request. The licensee must submit this information with its complaint.

(C) If the owner does not provide the data and information required by this rule after a request by the licensee, the licensee must include a statement indicating the steps taken to obtain the information from the owner, including the dates of all requests.

(D) No complaint by a licensee will be dismissed because the owner has failed to provide the applicable data and information required under paragraph (6)(e)(B) of this rule.

(7) Within 30 calendar days of receiving a copy of the complaint, the respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions.

(8) If the Commission determines after a hearing that a rate, term or condition that is the subject of the complaint is not just, fair, and

reasonable, it may reject the proposed rate, term or condition and may prescribe a just and reasonable rate, term or condition.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

#### 860-028-0080

##### Costs of Hearing in Attachment Contract Disputes

(1) When the Commission issues an order in an attachment contract dispute that applies to a consumer-owned utility, as defined by ORS 757.270, the order must also provide for payment by the parties of the cost of the hearing.

(2) The cost of the hearing includes, but is not limited to, the cost of Commission employee time, the use of facilities, and other costs incurred. The rates will be set at cost. Upon request of a party, and no more than once every 60 days, the Commission will provide to the parties the costs incurred to date in the proceeding.

(3) The Joint-Use Association is not considered a party for purposes of this rule when participating in a case as an advisor to the Commission.

(4) The Commission will allocate costs in a manner that it considers equitable. The following factors will be considered in allocating costs:

(a) Whether the party unreasonably burdened the record or delayed the proceeding;

(b) Merits of the party's positions throughout the course of the proceeding; and

(c) Other factors that the Commission deems relevant.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.279 & 759.660

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

#### 860-028-0100

##### Application Process for New or Modified Attachments

(1) As used in this rule, "applicant" does not include a government entity.

(2) An applicant requesting a new or modified attachment must submit an application providing the following information in writing or electronically to the owner:

(a) Information for contacting the applicant.

(b) The pole owner may require the applicant to provide the following technical information:

(A) Location of identifying pole or conduit for which the attachment is requested;

(B) The amount of space requested;

(C) The number and type of attachment for each pole or conduit;

(D) Physical characteristics of attachments;

(E) Attachment location on pole;

(F) Description of installation;

(G) Proposed route; and

(H) Proposed schedule for construction.

(3) The owner must provide written or electronic notice to the applicant within 15 days of the application receipt date confirming receipt and listing any deficiencies with the application, including missing information. If required information is missing, the owner may suspend processing the application until the missing information is provided.

(4) Upon receipt of a completed application, an owner must reply in writing or electronically to the applicant as quickly as possible and no later than 45 days from the date the completed application is received. The owner's reply must state whether the application is approved, approved with modifications or conditions, or denied.

(a) An approval will be valid for 180 calendar days unless extended by the owner.

(b) The owner may require the applicant to provide notice of completion within 45 calendar days of completion of construction.

(c) If the owner approves an application that requires make ready work, the owner must provide a detailed list of the make ready work needed to accommodate the applicant's facilities, an estimate for the time required for the make ready work, and the cost for such make ready work.

(d) If the owner denies the application, the owner must state in detail the reasons for its denial.

(e) If the owner does not provide the applicant with notice that the application is approved, denied, or conditioned within 45 days

from its receipt, the applicant may begin installation. Applicant must provide notice prior to beginning installation. Commencement of installation by the occupant will not be construed as completion of the permitting process or as final permit approval. Unpermitted attachments made under this section are not subject to sanction under OAR 860-028-0140.

(5) If the owner approves an application that requires make ready work, the owner will perform such work at the applicant's expense. This work must be completed in a timely manner and at a reasonable cost. Where this work requires more than 45 days to complete, the parties must negotiate a mutually satisfactory longer period to complete the make ready work.

(6) If an owner cannot meet the time frame for attachment established by this rule, preconstruction activity and make ready work may be performed by a mutually acceptable third party.

(7) If an application involves more than the threshold number of poles, the parties must negotiate a mutually satisfactory longer time frame to complete the approval process.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

#### Pole Attachments

#### 860-028-0110

##### Rental Rates and Charges for Attachments by Licensees to Poles Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through 757.290 or 759.650 through 759.675.

(2) The pole attachment rental rate per foot is computed by multiplying the pole cost by the carrying charge and then dividing the product by the usable space per pole. The rental rate per pole is computed as the rental rate per foot multiplied by the licensee's authorized attachment space.

(3) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, preconstruction activity, post construction inspection, make ready work, and the costs related to unauthorized attachments. Charges for activities not included in the rental rates will be based on actual costs, including administrative costs, and will be charged in addition to the rental rate.

(4) Authorized attachment space for rental rate determination must comply with the following:

(a) The initial authorized attachment space on a pole must not be less than 12 inches. The owner may authorize additional attachment space in increments of less than 12 inches.

(b) For each attachment permit, the owner must specify the authorized attachment space on the pole that is to be used for one or more attachments. This authorized attachment space will be specified in the owner's attachment permit.

(5) The owner may require prepayment from a licensee of the owner's estimated costs for any of the work allowed by OAR 860-028-0100. Upon completion of the work, the owner will issue an invoice reflecting the actual costs, less any prepayment. Any overpayment will be promptly refunded, and any extra payment will be promptly remitted.

(6) A communication operator has primary responsibility for trimming vegetation around its communication lines in compliance with OAR 860-028-0115(7) and 860-028-0120(7). If the communication operator so chooses, or if the communication operator is sanctioned or penalized for failure to trim vegetation in compliance with OAR 860-028-0115(7) or 860-028-0120(7), the electric supply operator may trim the vegetation around communication lines that poses a foreseeable danger to the pole and electric supply operator's lines. If the electric supply operator trims the vegetation around communication lines, it shall do so contemporaneously with trimming around its own facilities. If the electric supply operator is the pole owner, it may bill the communication operators for the actual cost of trimming around the communication lines. If the electric supply operator is the pole occupant, it may offset its pole rent by the vegetation trimming cost.

(7) The owner must provide notice to the occupant of any change in rental rate or fee schedule a minimum of 60 days prior to the effective date.

tive date of the change. This section will become effective on January 1, 2008.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.270 - 290, 759.045 & 759.650 - 675  
Hist.: PUC 9-1984, f. & cf. 4-18-84 (Order No. 84-278); PUC 16-1984, f. & cf. 8-14-84 (Order No. 84-608); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0055 & 860-034-0360; PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0115

### Duties of Structure Owners

(1) An owner must install, maintain, and operate its facilities in compliance with Commission Safety Rules.

(2) An owner must establish, maintain, and make available to occupants its joint use construction standards for attachments to its poles, towers, and for joint space in conduits. Standards for attachment must apply uniformly to attachments by all operators, including the owner.

(3) An owner must establish and maintain mutually agreeable protocols for communications between the owner and its occupants.

(4) An owner must immediately correct violations that pose imminent danger to life or property. In the event that a pole occupant performs the corrections, a pole owner must reimburse the pole occupant for the actual cost of corrections. Charges imposed under this section must not exceed the actual cost of corrections.

(5) An owner must respond to a pole occupant's request for assistance in making a correction within 45 days.

(6) An owner must ensure the accuracy of inspection data prior to transmitting information to the pole occupant.

(7) Vegetation around communications lines must not pose a foreseeable danger to the pole and electric supply operator's facilities.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675  
Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0120

### Duties of Pole Occupants

(1) Except as provided in sections (2) and (3) of this rule, a pole occupant attaching to one or more poles of a pole owner must:

(a) Have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;

(b) Have a permit issued by the pole owner for each pole on which the pole occupant has attachments;

(c) Install and maintain the attachments in compliance with the written contracts required under subsection (1)(a) of this rule and with the permits required under subsection (1)(b) of this rule; and

(d) Install and maintain the attachments in compliance with Commission safety rules.

(2) A pole occupant that is a government entity is not required to enter into a written contract required by subsection (1)(a) of this rule, but when obtaining a permit from a pole owner under subsection (1)(b) of this rule, the government entity must agree to comply with Commission safety rules.

(3) A pole occupant may install a service drop without the permit required under subsection (1)(b) of this rule, but the pole occupant must:

(a) Apply for a permit within seven days of installation;

(b) Except for a pole occupant that is a government entity, install the attachment in compliance with the written contract required under subsection (1)(a) of this rule; and

(c) Install the service drop in compliance with Commission safety rules.

(4) A pole occupant must repair, disconnect, isolate, or otherwise correct any violation that poses an imminent danger to life or property immediately after discovery. If the pole owner performs the corrections, a pole occupant must reimburse the pole owner for the actual cost of correction. Reimbursement charges imposed under this section must not exceed the actual cost of correction.

(5) Upon receipt of a pole owner's notification of violation, a pole occupant must respond either with submission of a plan of correction within 60 calendar days or with a correction of the violation within 180 calendar days.

(a) If a pole occupant fails to respond within these deadlines, the pole occupant is subject to sanction under OAR 860-028-0150(2).

(b) If a pole occupant fails to respond within these deadlines and if the pole owner performs the correction, the pole occupant must reimburse the pole owner for the actual cost of correction attributed to violations caused by the occupant's non-compliant attachments. Reimbursement charges imposed under this section must not exceed the actual cost of correction attributed to the occupant's attachments.

(6) A pole occupant must correct a violation in less than 180 days if the pole owner notifies an occupant that the violation must be corrected within that time to alleviate a significant safety risk to any operator's employees or a potential risk to the general public. A pole occupant must reimburse the pole owner for the actual cost of correction caused by the occupant's non-compliant attachments made under this section if:

(a) The owner provides reasonable notice of the violation; and

(b) The occupant fails to respond within timelines set forth in the notice.

(7) Vegetation around communications lines must not pose a foreseeable danger to the pole and electric supply operator's facilities.

Stat. Auth.: ORS 183, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0120 & 860-034-0820; PUC 2-2007, f. & cert. ef. 4-16-07

## 860-028-0130

### Sanctions for Having No Contract

(1) Except as provided in section (2) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0060(2). The sanction may not exceed \$500 per pole. This rule does not apply to:

(a) A pole occupant that is a government entity; or

(b) A pole occupant operating under an expired or terminated contract and participating in good faith efforts to negotiate a contract or engaged in formal dispute resolution, arbitration, or mediation regarding the contract; or

(c) A pole occupant operating under a contract that is expired if both pole owner and occupant are unaware that the contract expired and both carry on business relations as if the contract terms are mutually-agreeable and still applicable.

(3) Sanctions imposed pursuant to this rule will be imposed no more than once in a 365 day period.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0130 & 860-034-0830; PUC 2-2007, f. & cert. ef. 4-16-07

## 860-028-0140

### Sanctions for Having No Permit

(1) Except as provided in section (3) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(b), except as provided in OAR 860-028-0120(3).

(2) Sanctions imposed under this rule may not exceed:

(a) Five times the current annual rental fee per pole if the violation is reported by the occupant to the owner and is accompanied by a permit application or is discovered through a joint inspection between the owner and occupant and accompanied by a permit application; or

(b) \$100 per pole plus five times the current annual rental fee per pole if the violation is reported by the owner in an inspection in which the occupant has declined to participate.

(3) Sanctions imposed pursuant to this rule may be imposed no more than once in a 60 day period.

(4) A pole owner may not impose new sanctions for ongoing violations after the initial 60 day period if:

(a) The occupant filed a permit application in response to a notice of violation; or

(b) The notice of violation involves more than the threshold number of poles, as defined in OAR 860-028-0020(32), and the parties agree to a longer time frame to complete the permitting process.

(5) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0140 & 860-034-0840; PUC 2-2007, f. & cert. ef. 4-16-07

**860-028-0150****Sanctions for Violation of Other Duties**

(1) A pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(c), (1)(d), or (3). Sanctions imposed for these violations may not exceed \$200 per pole.

(2) A pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(5). Sanctions imposed under this section must not exceed 15 percent of the actual cost of corrections incurred under OAR 860-028-0120(5).

(3) Sanctions and charges imposed under sections (1) and (2) of this rule do not apply if:

(a) The occupant submits a plan of correction in compliance with OAR 860-028-0170 within 60 calendar days of receipt of notification of a violation; or

(b) The occupant corrects the violation and provides notification of the correction to the owner within 180 calendar days of receipt of notification of the violation.

(4) If a pole occupant submits a plan of correction in compliance with OAR 860-028-0170 and fails to adhere to all of the provisions and deadlines set forth in that plan, the pole owner may impose sanctions for the uncorrected violations documented within the plan.

(5) Notwithstanding the timelines provided for in section (3) of this rule, a pole owner must notify the occupant immediately of any violations occurring on attachments that are newly-constructed and newly-permitted by the occupant or are caused by the occupant's transfer of currently-permitted facilities to new poles. The occupant must immediately correct the noticed violation. If the violation is not corrected within five days of the notice, the pole owner may immediately impose sanctions.

(a) Sanctions may be imposed under this section only within 90 calendar days of the pole occupant providing the pole owner with a notice of completion.

(b) Sanctions under this section will not be charged to the pole occupant if the violation is discovered in a joint post-construction inspection between the pole owner and pole occupant, or their respective representatives, and is corrected by the pole occupant within 60 calendar days of the joint post-construction inspection or within a mutually-agreed upon time.

(c) If the pole occupant performs an inspection and requests a joint post construction inspection, the pole owner's consent to such inspection must not be unreasonably withheld.

(6) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0150 & 860-034-0850; PUC 2-2007, f. & cert. ef. 4-16-07

**860-028-0160****Choice of Sanctions**

(1) If a pole owner contends that an attachment of a pole occupant violates more than one rule that permits the pole owner to impose a sanction, then the pole owner may select only one such rule on which to base the sanction.

(2) If a pole owner has a contract with a pole occupant that imposes sanctions that differ from those set out in these rules, then the sanctions in the contract apply unless the pole owner and pole occupant agree otherwise.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0160 & 860-034-0860

**860-028-0170****Plans of Correction**

(1) A plan of correction must, at a minimum, set out:

(a) Any disagreement, as well as the facts on which it is based, that the pole occupant has with respect to the violations alleged by the pole owner in the notice;

(b) The pole occupant's suggested compliance date, as well as reasons to support the date, for each pole that the pole occupant agrees is not in compliance with OAR 860-028-0120.

(2) If a pole occupant suggests a compliance date of more than 180 days following receipt of a notice of violation, then the pole occupant must show good cause.

(3) Upon its receipt of a plan of correction that a pole occupant submits under OAR 860-028-0150(3)(a), a pole owner must give notice of its acceptance or rejection of the plan.

(a) If the pole owner rejects the plan, then it must set out all of its reasons for rejection and, for each reason, must state an alternative that is acceptable to it;

(b) The pole occupant's time for compliance set forth in the plan of correction begins when the plan of correction is mutually agreed upon by both the pole owner and the occupant.

(c) If a plan of correction is divisible and if the pole owner accepts part of it, then the pole occupant must carry out that part of the plan.

(d) If a pole occupant submits a plan, the pole occupant must carry out all provisions of that plan unless the pole owner consents to a submitted plan amendment.

(4) Pole occupants submitting a plan of correction must report to the pole owner all corrections completed within the timelines provided for within the plan.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0170 & 860-034-0870; PUC 2-2007, f. & cert. ef. 4-16-07

**860-028-0180****Removal of Occupant Pole Attachments**

(1) If the pole occupant fails to meet the time limitations set out in OARs 860-028-0120, 860-028-0130, 860-028-0140, or 860-028-0150 by 180 or more days, then the pole owner may request an order from the Commission authorizing removal of the pole occupant's attachments. Nothing in this section precludes a party from pursuing other legal remedies.

(2) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0180 & 860-034-0880; PUC 2-2007, f. & cert. ef. 4-16-07

**860-028-0190****Notice of Violation**

A pole owner that seeks, under these rules, any type of relief against a pole occupant for violation of OAR 860-028-0120 must provide the pole occupant notice of each attachment allegedly in violation of the rule, including the provision of the rule each attachment allegedly violates; an explanation of how the attachment violates the rule; and the pole number and location, including pole owner maps and GPS coordinates, if available.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0190 & 860-034-0890; PUC 2-2007, f. & cert. ef. 4-16-07

**860-028-0195****Time Frame for Final Action by Commission**

The Commission shall issue its final order within 360 days of the date a complaint is filed in accordance with these rules. This rule does not apply to a complaint involving the attachment(s) of an "incumbent local exchange carrier" (as that phrase is defined in 47 U.S.C. Section 251(h)(2002)).

Stat. Auth.: ORS 183, 756, 757 & 759, 47 USC § 224(c)(3)(B)(ii)

Stats. Implemented: ORS 756.040, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 9-2004, f. & cert. ef. 4-21-04

**860-028-0200****Joint-Use Association**

(1) Pole owners and pole occupants shall establish a Joint-Use Association (JUA). The Association shall elect a Board from the JUA, which shall include representatives of pole owners, pole occupants, and government entities. The Board shall act as an advisor to the Commission with respect to:

(a) Adoption, amendment, or repeal of administrative rules governing pole owners and pole occupants; and

(b) Settlement of disputes between a pole owner and a pole occupant that arise under administrative rules governing pole owners and pole occupants.

(2) In the event a representative is involved in a dispute under subsection (1)(b) of this rule, then the representative shall not participate in resolution of the dispute, and the JUA shall appoint a temporary representative with a similar interest.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0200 & 860-034-0900

#### 860-028-0210

##### Resolution of Disputes over Plans of Correction

(1) If a pole occupant and a pole owner have a dispute over the reasonableness of the plan of correction, then either party may request an order from the Commission to resolve the dispute. The party requesting resolution shall provide notice of its request to the Commission and to the other party:

(a) Upon receipt of a request, the Commission Staff shall, within 15 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 15 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission shall, within 15 days, issue an order.

(2) Notwithstanding section (1) of this rule, either the pole owner or pole occupant may request a settlement conference with the Joint-Use Association. The settlement conference shall be in addition to, not in lieu of, the process set forth in section (1).

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0210 & 860-034-0910

#### 860-028-0220

##### Resolution of Factual Disputes

(1) If a pole occupant and pole owner have a dispute over facts that the pole occupant and pole owner must resolve so that the pole owner can impose appropriate sanctions, or in the event that a pole occupant is alleging that a pole owner is unreasonably delaying the approval of a written contract or the issuance of a permit, then either the pole owner or the pole occupant may request a settlement conference before the Joint-Use Association (JUA). The party making the request shall provide notice to the other party and to the JUA.

(2) If the JUA does not settle a dispute described in section (1) of this rule within 90 days of the notice, then either the pole owner or the pole occupant may request a hearing before the Commission and an order from the Commission to resolve the dispute:

(a) Upon receipt of a request, the Commission Staff shall, within 30 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 30 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission shall, within 30 days, issue an order.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0220 & 860-034-0920

#### 860-028-0230

##### Pole Attachment Rental Reductions

(1) Except as provided in section (3), a licensee must receive a rental reduction.

(2) The rental reduction must be based on ORS 757.282(3) and applicable administrative rules.

(3) A pole owner or the Commission may deny the rental reduction to a licensee, if either the pole owner or the Commission can show that:

(a) The licensee caused serious injury to the pole owner, another pole joint-use entity, or the public resulting from non-compliance with Commission safety rules and Commission pole attachment rules or its contract or permits with the pole owner;

(b) The licensee does not have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;

(c) The licensee engaged in a pattern of failing to obtain permits issued by the pole owner for each pole on which the pole occupant has attachments;

(d) The licensee engaged in a pattern of non-compliance with its contract or permits with the pole owner, Commission safety rules, or Commission pole attachment rules;

(e) The licensee engaged in a pattern of failing to respond promptly to the pole owner, Commission Staff, or civil authorities in regard to emergencies, safety violations, or pole modification requests; or

(f) The licensee engaged in a pattern of delays, each delay greater than 45 days from the date of billing, in payment of fees and charges that were not disputed in good faith, that were filed in a timely manner, and are due the pole owner.

(4) A pole owner that contends that a licensee is not entitled to the rental reduction provided in section (1) of this rule must notify the licensee of the loss of reduction in writing. The written notice must:

(a) State how and when the licensee violated either the Commission's rules or the terms of the contract;

(b) Specify the amount of the loss of rental reduction that the pole owner contends the licensee should incur; and

(c) Specify the amount of any losses that the conduct of the licensee caused the pole owner to incur.

(5) If the licensee wishes to discuss the allegations of the written notice before the Joint-Use Association (JUA), the licensee may request a settlement conference. The licensee must provide notice of its request to the pole owner and to the JUA. The licensee may also seek resolution under section (6) of this rule.

(6) If the licensee wishes to contest the allegations of the written notice before the Commission, the licensee must send its response to the pole owner, with a copy to the Commission. The licensee must also attach a true copy of the written notice that it received from the pole owner.

(a) Upon receipt of a request, the Commission Staff must, within 30 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 30 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission must, within 30 days, issue an order.

(7) Except for the rental reduction amount in dispute, the licensee must not delay payment of the pole attachment rental fees due to the pole owner.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0230 & 860-034-0930; PUC 2-2007, f. & cert. ef. 4-16-07

#### Conduit Attachments

#### 860-028-0310

##### Rental Rates and Charges for Attachments by Licensees to Conduits Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through 757.290 or 759.650 through 759.675.

(2) The conduit rental rate per linear foot is computed by multiplying the percentage of conduit capacity occupied by the net linear cost of conduit and then multiplying that product by the carrying charge.

(3) A licensee occupying part of a duct is deemed to occupy the entire duct.

(4) Licensees must report all attachments to the conduit owner. A conduit owner may impose a penalty charge for failure to report or pay for all attachments. If a conduit owner and licensee do not agree on the penalty and submit the dispute to the Commission, the penalty amount will be five times the normal rental rate from the date the attachment was made until the penalty is paid. If the date the attachment was made cannot be clearly established, the penalty rate will apply from the date the conduit owner last inspected the conduit in dispute. The last inspection date is deemed to be no more than five years before the unauthorized attachment is discovered. The conduit owner

also may charge for any expenses it incurs as a result of the unauthorized attachment.

(5) The conduit owner must give a licensee 18 months' notice of its need to occupy licensed conduit and will propose that the licensee take the first feasible action listed:

(a) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the conduit owner's space needs;

(b) Pay revised conduit rent based on the cost of new conduit constructed to meet the conduit owner's space needs;

(c) Vacate ducts that are no longer surplus;

(d) Construct and maintain sufficient new conduit to meet the conduit owner's space needs.

(6) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, preconstruction activity, post construction inspection, make ready work, and the costs related to unauthorized attachments. Charges for activities not included in the rental rates must be based on actual costs, including administrative costs, and will be charged in addition to the rental rate.

(7) The owner may require prepayment from a licensee of the owner's estimated costs for any of the work allowed by OAR 860-028-0100. Upon completion of the work, the owner will issue an invoice reflecting the actual costs, less any prepayment. Any overpayment will be promptly refunded, and any extra payment will be promptly remitted.

(8) The owner must be able to demonstrate that charges under sections (6) and (7) of this rule have been excluded from the rental rate calculation.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.270 - 757.290, 759.045 & 759.650 - 759.675  
Hist.: PUC 2-1986, f. & ef. 2-7-86 (Order No. 86-107); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 12-1998, f. & cert. ef. 5-7-98; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01.  
Renumbered from 860-022-0060 & 860-034-0370; PUC 3-2007, f. & cert. ef. 4-16-07

## DIVISION 29

### ELECTRIC UTILITIES INTERCONNECTION WITH ELECTRIC COGENERATION AND SMALL POWER PRODUCTION FACILITIES

#### 860-029-0001

##### Purpose

The purpose of this division is to implement ORS 758.505 through 758.555 and to implement regulations relating to electric utilities and qualifying cogeneration and small power production facilities as provided under Section 210 of the federal Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95-617 (16 USC 824a-3). The rules contained in this division do not apply to public utilities that satisfy their public purpose obligations under ORS 757.612.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 757 & 758

Stats. Implemented: ORS 756.040, 757.612 & 758.505 - 758.555  
Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 2-2001, f. & cert. ef. 1-5-01

#### 860-029-0005

##### Applicability of Rules

(1) Except as otherwise provided, these rules shall apply to all interconnection arrangements between a "public utility" as defined by ORS 758.505 and facilities which are qualifying facilities as defined herein. Provisions of these rules shall not supersede contracts existing before the effective date of this rule. At the expiration of such an existing contract between a public utility and a cogenerator or small power producer, any contract extension or new contract shall comply with these rules.

(2) Nothing in these rules limits the authority of a public utility or a qualifying facility to agree to a rate, terms, or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be provided by these rules, provided such rate, terms, or conditions do not burden the public utility's customers.

(3) Within 30 days following the initial contact between a prospective qualifying facility and a public utility, the public utility

shall submit informational documents, approved by the Commission, to the qualifying facility which state:

(a) The public utility's internal procedural requirements and information needs;

(b) Any contract offered by the public utility is subject to negotiation;

(c) Avoided costs are subject to change pursuant to OAR 860-029-0080(3); and

(d) That the avoided costs actually paid to a qualifying facility will depend on the quality and quantity of power to be delivered to the public utility. The avoided costs may be recalculated to reflect stream flows, generating unit availability, loads, seasons, or other conditions.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 5-1986, f. & ef. 5-15-87 (Order No. 86-488); PUC 14-1987, f. & ef. 11-19-87 (Order No. 87-1154); PUC 8-1995, f. & cert. ef. 8-30-95 (Order No. 95-858); PUC 1-1998, f. & cert. ef. 1-12-98

#### 860-029-0010

##### Definitions for Electric Interconnection

(1) "Avoided costs" means the electric utility's incremental costs of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, the electric utility would generate itself or purchase from another source and shall include any costs of interconnection of such resource to the system.

(2) "Back-up power" and "stand-by power" mean electric energy or capacity supplied by a public utility to replace energy ordinarily generated by a qualifying facility's own generation equipment during an unscheduled outage of the facility.

(3) "Capacity" means the average output in kilowatts (kW) committed by a qualifying facility to an electric utility during a specific period.

(4) "Capacity costs" mean the costs associated with supplying capacity; they are an allocated component of the fixed costs associated with providing the capability to deliver energy.

(5) "Cogeneration" means the sequential generation of electric energy and useful heat from the same primary energy source or fuel for industrial, commercial, heating, or cooling purposes.

(6) "Cogeneration facility" means a facility which produces electric energy and steam or other forms of useful energy (such as heat) by cogeneration which are used for industrial, commercial, heating, or cooling purposes. Such a facility must be at least 50 percent owned by a person who is not an electric utility, an electric holding company, an affiliated interest, or any combination thereof.

(7) "Commission" means the Public Utility Commission of Oregon.

(8) "Costs of interconnection" means the reasonable costs of connection, switching, dispatching, metering, transmission, distribution, equipment necessary for system protection, safety provisions, and administrative costs incurred by an electric utility directly related to installing and maintaining the physical facilities necessary to permit purchases from a qualifying facility.

(9) "Demand" means the average rate in kilowatts at which electric energy is delivered during a set period, to be determined by mutual agreement between the electric utility and the customer.

(10) "Electric utility" means a nonregulated utility or a public utility as defined in ORS 758.505.

(11) "Energy" means electric energy, measured in kilowatt hours (kWh).

(12) "Energy costs" means:

(a) For nonfirm energy, the incremental costs associated with the production or purchase of electric energy by the electric utility, which include the cost of fuel and variable operation and maintenance expenses, or the cost of purchased energy;

(b) For firm energy, the combined allocated fixed costs and associated variable costs applicable to a displaced generating unit or to a purchase.

(13) "Firm energy" means a specified quantity of energy committed by a qualifying facility to an electric utility.

(14) "Index rate" means the lowest avoided cost approved by the Commission for a generating utility for the purchase of energy or energy and capacity of similar characteristics including on-line date, duration of obligation, and quality and degree of reliability.

(15) "Interruptible power" means electric energy or capacity supplied by a public utility to a qualifying facility subject to interruption by the electric utility under certain specified conditions.

(16) "Nonfirm energy" means:

(a) Energy to be delivered by a qualifying facility to an electric utility on an "as available" basis; or

(b) Energy delivered by a qualifying facility in excess of its firm energy commitment.

**NOTE:** The rate for nonfirm energy may contain an element representing the value of aggregate capacity of nonfirm sources.

(17) "Maintenance power" means electric energy or capacity supplied by a public utility during scheduled outages of a qualifying facility.

(18) "Nonregulated utility" means an entity providing retail electric utility service to Oregon customers that is a people's utility district organized under ORS Chapter 261, a municipal utility operating under ORS Chapter 225, or an electric cooperative organized under ORS Chapter 62.

(19) "Primary energy source" means the fuel or fuels used for the generation of electric energy. The term does not include minimum amounts of fuel required for ignition, start-up, testing, flame stabilization, and control uses; the term does not include minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies which directly affect the public health, safety, or welfare.

(20) "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(21) "Public utility" means a utility regulated by the Commission under ORS Chapter 757, that provides electric power to customers.

(22) "Qualifying facility" means a cogeneration facility or a small power production facility as defined by these rules.

(23) "Rate" means any price, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electric energy or capacity or any rule, regulation, or practice respecting any such price, charge, or classification.

(24) "Sale" means the sale of electric energy or capacity or both by a public utility to a qualifying facility.

(25) "Small power production facility" means a facility which produces electric energy using as a primary energy source biomass, waste, solar energy, wind power, water power, geothermal energy, or any combination thereof. Such facility must be at least 50 percent owned by a person who is not an electric utility, an electric utility holding company, an affiliated interest, or any combination thereof. Only small power production facilities which, with any other facilities located at the same site, have power production capacities of 80 megawatts or less, are covered by these rules.

(26) "Supplementary power" means electric energy or capacity supplied by a public utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

(27) "System emergency" means a condition on a public utility's system which is likely to result in imminent, significant disruption of service to customers, in imminent danger of life or property, or both.

(28) "Time of delivery" means:

(a) In the case of capacity, when the generation is first on line and capable of meeting the capacity commitment of the qualifying facility to the electric utility under the terms of its contract or other legally enforceable obligation.

(b) In the case of firm energy and depending upon the contract between the parties, either:

(A) When the first kilowatt-hour of energy is able to be delivered under the commitment of the qualifying facility; or

(B) When each kilowatt-hour is delivered under the commitment of the qualifying facility.

(29) "Time the obligation to purchase the energy capacity or energy and capacity is incurred" means the earlier of:

(a) The date on which a binding, written obligation is entered into between a qualifying facility and a public utility to deliver energy, capacity, or energy and capacity; or

(b) The date agreed to, in writing, by the qualifying facility and the electric utility as the date the obligation is incurred for the purposes of calculating the applicable rate.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 5-

1986, f. & ef. 5-15-86 (Order 86-488); PUC 14-1987, f. & ef. 11-19-87 (Order 87-1154); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 9-2001, f. & cert. ef. 3-21-01

## 860-029-0020

### Obligations of Qualifying Facilities to the Electric Utility

The conditions listed in this rule shall apply to all qualifying facilities that sell electricity to a public utility under this Division:

(1) The owner or operator of a qualifying facility purchasing or selling electricity pursuant to these rules shall execute a written agreement with the public utility. The public utility shall file a true copy or summary of the terms of the executed agreement with the Commission within 30 days of the execution of the agreement. If a summary is filed, the summary shall identify the quantity and quality of the power and the price being paid. A true copy of the executed contract shall be available upon request for Commission staff review.

(2) Contracts:

(a) All contracts between a qualifying facility and a public utility for energy, or energy and capacity shall include language which substantially conforms to the following:

This agreement is subject to the jurisdiction of those governmental agencies and courts having control over either party or this agreement. The public utility's compliance with the terms of this contract is conditioned on the qualifying facility submitting to the public utility and to the Public Utility Commission of Oregon, before the date of initial operation, certified copies of all local, state, and federal licenses, permits, and other approvals required by law.

(b) Under subsection (2)(a) of this rule, the public utility shall bear no obligation to identify which approvals are required by law, or to verify the approvals were properly obtained, or that the project is maintained pursuant to the terms of the approvals.

(3) To ensure system safety and reliability of interconnected operations, all interconnected qualifying facilities shall be constructed and operated in accordance with all applicable federal, state, and local laws and regulations.

(4) The qualifying facility shall furnish, install, operate, and maintain in good order and repair, and without cost to the public utility, switching equipment, relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as shown by the public utility to be reasonably necessary to operate the qualifying facility in parallel with the public utility's system, or may contract for the public utility to do so at the expense of the qualifying facility. Delivery shall be at a voltage, phase, power factor, and frequency as specified by the public utility.

(5) Switching equipment capable of isolating the qualifying facility from the public utility's system shall be accessible to the public utility at all times.

(6) At its option, the public utility may choose to operate the switching equipment, described in section (4) of this rule if, in the sole opinion of the public utility, continued operation of the qualifying facility in connection with the public utility's system may create or contribute to a system emergency. Such a decision by the public utility is subject to the Commission's verification pursuant to OAR 860-029-0070. The public utility shall endeavor to minimize any adverse effects on the qualifying facility of the operation of the switching equipment.

(7) Any agreement between a qualifying facility and a public utility shall provide for the degree to which the qualifying facility will assume responsibility for the safe operation of the interconnection facilities.

(8) At its option, the public utility may require a qualifying facility to report periodically the amount of deliveries and scheduled deliveries to the public utility, as shown to be reasonably necessary for the public utility's system operations and reporting.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 2-1985, f. & ef. 2-15-85 (Order No. 85-099); PUC 1-1998, f. & cert. ef. 1-12-98

## 860-029-0030

### Obligations of the Public Utility to Qualifying Facilities

(1) Obligations to purchase from qualifying facilities: Each public utility shall purchase, in accordance with OAR 860-029-0040, any energy and capacity in excess of station service (power necessary to produce generation) and amounts attributable to conversion losses, which is made available from a qualifying facility:

(a) Directly from a qualifying facility in its service territory; or

(b) Indirectly from a qualifying facility in accordance with section (4) of this rule.

(2) Obligation to sell to qualifying facilities: Each public utility shall sell to any qualifying facility, in accordance with OAR 860-029-0050, any energy and capacity requested by the qualifying facility on the same basis as available to other customers of the public utility in the same class who do not generate electricity.

(3) Obligation to interconnect: Each public utility shall make such interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under this division. The obligation to pay for any interconnection costs shall be determined in accordance with OAR 860-029-0060.

(4) Option to wheel power to other electric utilities or to the Bonneville Power Administration: At the request of a qualifying facility, a public utility (which would otherwise be obliged to purchase energy or capacity from such qualifying facility) may transmit (wheel) energy or capacity to any other electric utility or to the Bonneville Power Administration, at the expense of the qualifying facility. Use of a public utility's transmission facilities shall be on a cost-related basis.

(5) Parallel operation: Each public utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with the standards established in accordance with OAR 860-029-0020.

(6) When the generating portion of the qualifying facility consumes more electric energy than it produces, the public utility shall cease purchases.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & cert. ef. 1-12-98

#### 860-029-0040

##### Rates for Purchases

(1) Rates for purchases by public utilities shall:

(a) Be just and reasonable to the public utility's customers and in the public interest; and

(b) Be in accordance with this rule, regardless of whether the public utility making such purchases is simultaneously making sales to the qualifying facility.

(2) Establishing rates:

(a) Except for qualifying facilities in existence before November 8, 1978, and except when a public utility fails to make a good faith effort to comply with the request from a qualifying facility to wheel, a purchase rate satisfies the requirements of section (1) of this rule if the rate equals the avoided costs after consideration of the factors set forth in section (5) of this rule.

(b) If a public utility fails to make a good faith effort to comply with the request from a qualifying facility to wheel, the public utility shall purchase at a rate which is the public utility's avoided cost or the index rate, whichever is higher. A good faith effort shall be demonstrated by the public utility's publication of a generally applicable reasonable policy of the public utility to use the public utility's transmission facilities on a cost-related basis.

(c) When the purchase rates are based upon estimates of avoided costs over a specific term of the contract or other legally enforceable obligation, the rates do not violate these rules if any payment under the obligation differs from avoided costs.

(d) Nothing in these rules shall be construed as requiring payment of avoided-cost prices to qualifying facilities in existence before November 1978, provided, however, that prices for such purchases shall be sufficient to encourage continued power production.

(3) Rates for purchases — time of calculation: Except for the purchases made under section (4) of this rule (standard rates) each qualifying facility shall have the option to:

(a) Provide nonfirm energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing public utility's nonfirm energy avoided cost or if subsection (2)(b) of this rule is applicable, in effect when the energy is delivered; or

(b) Provide firm energy and/or capacity pursuant to a legally enforceable obligation for the delivery of energy and/or capacity over a specified term, in which case the rates for purchases shall be based on:

(A) The avoided costs calculated at the time of delivery, or, if subsection (2)(b) of this rule is applicable, the index rate in effect at the time of delivery; or

(B) At the election of the qualifying facility, exercised at the time the obligation is incurred, the avoided costs, or the index rate then in effect if subsection (2)(b) of this rule is applicable, projected over the life of the obligation and calculated at the time the obligation is incurred.

(4) Standard rates for purchases shall be implemented as follows:

(a) In the same manner as rates are published for electricity sales each public utility shall file with the Commission, within 30 days of Commission acknowledgement of its least-cost plan pursuant to Order No. 89-507, standard rates for purchases from qualifying facilities with a nameplate capacity of one megawatt or less, to become effective 30 days after filing. The publication shall contain all the terms and conditions of the purchase. Except when a public utility fails to make a good faith effort to comply with the request of a qualifying facility to wheel, the public utility's standard rate shall apply to purchases from qualifying facilities with a nameplate capacity of one megawatt or less.

(b) If a public utility fails to make a good faith effort to comply with the request from a qualifying facility to wheel, the public utility shall purchase at a rate which is the public utility's standard rate or the index standard rate, whichever is higher. A good faith effort shall be demonstrated by the public utility's publication of its generally accepted reasonable policy to use the public utility's transmission facilities on a cost-related basis.

(c) The public utility's standard rate may differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.

(5) Factors affecting rates for purchases: In determining avoided costs and for determining the index rate the following factors shall, to the extent practicable, be taken into account:

(a) The data provided pursuant to OAR 860-029-0080(3) and the Commission's evaluation of the data; and

(b) The availability of energy or capacity from a qualifying facility during the system daily and seasonal peak periods, including:

(A) The ability of the public utility to dispatch output of the qualifying facility;

(B) The expected or demonstrated reliability of the qualifying facility;

(C) The terms of any contract or other legally enforceable obligation;

(D) The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the public utility's facilities;

(E) The usefulness of energy and/or capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;

(F) The individual and aggregate value of energy and capacity from qualifying facilities on the public utility's system; and

(G) The smaller capacity increments and the shorter lead times available, if any, with additions of capacity from qualifying facilities.

(c) The relationship of the availability of energy and/or capacity from the qualifying facility as derived in subsection (5)(b) of this rule, to the ability of the public utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and

(d) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility if the purchasing public utility generated an equivalent amount of energy itself or purchased an equivalent amount of energy and/or capacity.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 5-1986, f. & ef. 5-15-86 (Order No. 86-488); PUC 14-1987, f. & ef. 11-19-87 (Order No. 87-1154); PUC 11-1991, f. & cert. ef. 12-5-91 (Order No. 91-1605); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 1-1998, f. & cert. ef. 1-12-98

#### 860-029-0050

##### Rates for Sales

(1) Rates for sales by public utilities shall:

(a) Be just and reasonable and in the public interest; and

(b) Not discriminate against qualifying facilities.

(2) Rates for sales which are based on accurate data and consistent, system-wide costing principles shall be considered not to discriminate against any qualifying facility to the extent that such rates apply to the public utility's other customers with similar load or other cost-related characteristics.

(3) The following additional services shall be provided by a public utility to a qualifying facility at its request:

- (a) Supplementary power;
- (b) Back-up power;
- (c) Maintenance power; and
- (d) Interruptible power.

(4) The Commission may waive any requirement of section (3) of this rule if, after notice in the area served by the public utility and after opportunity for public comment, the public utility demonstrates and the Commission finds that compliance with such requirement will:

- (a) Impair the public utility's ability to render adequate service to its other customers; or
- (b) Place an undue burden on the public utility.
- (5) The rate for sale of back-up power or maintenance power:
  - (a) Shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on a public utility's system will occur simultaneously, during the system peak, or both; and
  - (b) Shall take into account the extent to which scheduled outages of the qualifying facilities can be coordinated usefully with the scheduled outages of the public utility's facilities.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & cert. ef. 1-12-98

#### 860-029-0060

##### Interconnection Costs

(1) Obligation to pay: Any interconnection costs shall be the responsibility of the owner or operator of the qualifying facility. Interconnection costs which may reasonably be incurred by the public utility shall be assessed against a qualifying facility on a nondiscriminatory basis with respect to other customers with similar load or other cost-related characteristics.

(2) Reimbursement of interconnection costs: The public utility shall be reimbursed by the qualifying facility for any reasonable interconnection costs including costs of financing at an interest rate no greater than the effective rate of the public utility's last senior securities issuance at the time of the contract with the qualifying facility. Such reimbursement may be over any agreed period not greater than one-half the length of any contract between the public utility and the qualifying facility when the contract is for a period greater than two years; otherwise, reimbursement shall be made over a one-year period. At the public utility's option and with the Commission's approval, a public utility may guarantee a loan to a qualifying facility for interconnection costs rather than finance such costs from the public utility's own funds.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & cert. ef. 1-12-98

#### 860-029-0070

##### System Emergencies

(1) Qualifying facility's obligation to provide power during system emergencies: A qualifying facility shall be required to provide energy and capacity to a public utility during a system emergency only to the extent:

- (a) Provided by agreement between such qualifying facility and public utility; or
- (b) Ordered under section 202(c) of the Federal Power Act.
- (2) During any system emergency, a public utility may curtail:
  - (a) Purchases from a qualifying facility if such purchases would contribute to such emergency (including net output requirement); and
  - (b) Sales to a qualifying facility, as qualified by section (3) of this rule, provided that such curtailment is on a nondiscriminatory basis.
- (3) Except in cases of practical impossibility, sales to a qualifying facility which is generating 50 percent or more of its load, shall not be curtailed during a system emergency, or under mandatory cur-

tailments established by Order No. 78-823, until all other customers in its class have been fully curtailed.

(4) A qualifying facility which is unable to deliver power to a public utility owing to curtailment by the public utility shall be relieved of any obligation to sell to the public utility during the curtailment period.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & cert. ef. 1-12-98

#### 860-029-0080

##### Electric Utility System Cost Data

(1) Each public utility shall provide sufficient data concerning its avoided costs and costs of interconnection to allow the owner or operator of a qualifying facility to estimate, with reasonable accuracy, the payment it could receive from the utility if the qualifying facility went into operation under any of the purchase agreements provided for in these rules.

(2) By January 1 of each odd-numbered year, each nonregulated utility shall prepare and file with the Commission a schedule of avoided costs equaling the nonregulated utility's forecasted incremental cost of resources over at least the next 20 years.

(3) Each public utility shall file with the Commission draft avoided-cost information with its least-cost plan pursuant to Order No. 89-507 and file final avoided-cost information within 30 days of Commission acknowledgment of the least-cost plan to be effective 30 days after filing. The information submitted shall be maintained for public inspection and include the following data for calculating avoided costs:

(a) The estimated avoided costs on its system, solely with respect to the energy component, for expected levels of purchases from qualifying facilities. The levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1,000 megawatts or more and in blocks equivalent to not more than 10 percent of the system peak demand for systems of less than 1,000 megawatts. The avoided costs shall be stated on a cents-per-kWh basis, during peak and off-peak periods, by year, for the current calendar year and each of the next five years; and

(b) The public utility's estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kW, and the associated energy costs of each addition or purchase, expressed in cents per kWh. These costs shall be expressed in terms of individual generating resources and of individual, planned firm purchases.

(4) Each public utility contracting to purchase nonfirm energy from a qualifying facility under OAR 860-029-0040(3)(a) shall file with the Commission each quarter its nonfirm energy avoided cost.

(5) Nothing in these rules shall preclude the determination of avoided costs:

(a) As the average avoided costs over an appropriate period of time; or

(b) To reflect variations in avoided costs due to changes in stream flows, generating unit availability, loads, seasons, or other conditions.

(6) State review: Any data submitted by a public utility under this rule shall be subject to review and approval by the Commission. In any such review, the public utility has the burden of supporting and justifying its data. Any standard rates filed under OAR 860-029-0040 shall be subject to suspension and modification by the Commission.

(7) A public utility may propose or the Commission may require a public utility to file the data described in OAR 860-029-0080(3) during the two-year period between filing least-cost plans pursuant to Order No. 89-507 to reflect significant changes in circumstances, such as the acquisition of a major block of resources or the completion of a competitive bid. Such a revision will become effective 90 days after filing.

(8) At least every two years, the public utility must file with the Commission the data described in OAR 860-029-0040(4) and 860-029-0080(3).

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 1-1998, f. & cert. ef. 1-12-98

**860-029-0090**

**Qualifying Cogeneration and Small Power Production Facilities**

18 Code of Federal Regulations (CFR), Part 292, Subpart B, in effect on April 1, 1983, is adopted and prescribed by the Commission as minimum criteria that a cogeneration facility or small power production facility must meet to qualify as a qualifying facility.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 7-1982, f. & ef. 7-21-82 (Order No. 82-514); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & cert. ef. 1-12-98

**DIVISION 30**

**RESIDENTIAL AND COMMERCIAL  
ENERGY CONSERVATION**

**860-030-0000**

**Exemptions**

(1) Except as provided in section (2) of this rule, the rules contained in this division do not apply to unincorporated associations and cooperative corporations or to investor-owned electric utilities that satisfy their public purpose obligations under ORS 757.612.

(2) These rules apply to investor-owned electric utilities to the extent required by ORS 469.860 through 469.900.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 757.612

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 2-2001, f. & cert. ef. 1-5-01

**860-030-0005**

**Energy Information and Audit Services**

(1) As used in division 030, the terms “cash payment,” “commercial lending institution,” “Commission,” “cost-effective,” “director,” “dwelling,” “dwelling owner,” “energy audit,” “energy conservation measure,” “investor-owned utility,” “residential customer,” “space heating,” and “tenant” shall have the meanings set forth in ORS 469.631.

(2) Investor-owned energy utilities shall notify their customers annually of the availability of energy audits without direct charge to the customers. Such notification shall be made:

- (a) In a bill insert or other direct mailing; and
  - (b) Stating the types of assistance and technical advice available.
- (3) Energy audits:

(a) Except as provided in section (5) of this rule, each energy utility shall provide energy audits to eligible customers upon request. The audit shall be performed in accordance with the provisions of ORS 469.631(8) and 469.633(2). The energy utility may set a schedule of reasonable charges for residential energy audits performed beyond the first energy audit for an individual customer in a particular residence;

(b) If an energy utility’s records do not contain sufficient data to establish a normal consumption for the customer in the dwelling (for example, a newly-established residence or a residence using a supplemental fuel, maintained at approximately 70 degrees F.), the energy utility shall make a reasonable estimate of such consumption for the purpose of completing the audit; and

(c) If the dwelling requested to be audited is a rental unit, the audit shall include a heating cost estimate using average temperatures and typical lifestyles. A statement shall be included to the effect that a household’s energy bill will contain charges for uses in addition to space heating. Such heating cost estimate and statement shall be displayed on the audit or a separate document suitable for conspicuous posting.

(4) An eligible customer is any customer of the energy utility receiving residential electric or natural gas service.

(5) Primary responsibility for furnishing an energy audit lies with the energy utility providing the primary source of home heating energy, and an energy utility, not a primary supplier, may discharge its energy audit obligation by arranging for the primary supplier of space heating to perform the energy audit.

(6) Any residential customer using a space-heating fuel other than electricity or natural gas who receives service from an electric company shall be eligible for an energy audit from that utility if no other audit is obtainable. The electric company may set a schedule of rea-

sonable charges for these audits which shall be separate from the periodic utility bill.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 11-1981(Temp), f. & ef. 10-30-81 (Order No. 81-778); PUC 2-1982, f. & ef. 2-26-82 (Order No. 82-130); PUC 10-1985, f. & ef. 7-5-85 (Order No. 85-619); PUC 14-1985, f. & ef. 9-27-85 (Order No. 85-891); PUC 15-1985, f. & ef. 10-1-85 (Order No. 85-896); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 7-2005, f. & cert. ef. 11-30-05

**860-030-0007**

**Gas Utility Avoided Costs**

(1) Investor-owned gas utilities shall file a proposed avoided-cost method and draft avoided costs with their least-cost plans pursuant to Order No. 89-507. Final avoided-cost information shall be filed within 30 days of Commission acknowledgment of the least-cost plan to become effective 30 days after filing. The avoided-cost method filed should be appropriate for determining the cost effectiveness of weatherization measures from the gas utility’s perspective.

(2) A gas utility may propose or the Commission may require a gas utility to file the data described in OAR 860-030-0007(1) during the two-year period between filing least-cost plans pursuant to Order No. 89-507 to reflect significant changes in circumstances, such as acquisition of a major block of resources. Such a revision will become effective 90 days after filing.

(3) At least every two years, the gas utility must file with the Commission the data described in section (1) of this rule.

Stat. Auth.: ORS 183 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 1-1998, f. & cert. ef. 1-12-98

**860-030-0010**

**Cost Effectiveness**

(1) “Cost-effective,” as defined in ORS 469.631(4), relates an energy conservation measure’s cost, life cycle, and the cost of alternative energy facilities. An energy utility’s cost-effectiveness calculations should be consistent with the utility’s most recently acknowledged least-cost plan pursuant to Order No. 89-507.

(2) Unless otherwise demonstrated in an acknowledged energy utility least-cost plan, the following energy conservation measures are deemed to be in all installations:

- (a) Caulking;
- (b) Weather stripping;
- (c) Timed (set-back) thermostats (except when used with heat pumps); and
- (d) Water heater, steam pipe, and hot and cold water pipe wraps.

(3) Unless otherwise demonstrated in an acknowledged energy utility least-cost plan, the following energy conservation measures are deemed to be cost-effective when installed along with certain other energy conservation measures, as indicated:

(a) Ground cover, when installed in conjunction with under-floor insulation;

(b) Vapor barrier materials, when installed in conjunction with wall, ceiling, or under-floor insulation;

(c) Dehumidifiers, when installed in conjunction with storm windows and doors, and caulking and weather stripping of all openings allowing infiltration; and

(d) Attic ventilation, excluding power ventilators, when installed in conjunction with ceiling or attic insulation.

(4) The following energy conservation measures shall be deemed to have the indicated life cycles:

- (a) Attic, ceiling, wall and under-floor insulation — 30 years.
- (b) Insulation of walls in heated basements — 30 years.
- (c) Insulation of heating system supply and return air ducts — 30 years.

(d) Thermal doors — 30 years.

(e) Storm windows — 15 years.

(f) Windows meeting the requirements of Chapter 53 of the Oregon Residential Energy Code, and window replacements — 25 years.

(g) Storm doors — 7 years.

(h) Electronic furnace ignition (gas) — 10 years.

(5) Within 30 days after approval of an energy utility’s avoided-cost filing submitted in compliance with OAR 860-029-0040 or 860-030-0007, such utility shall submit for the Commission’s approval the computations used to determine the cost effectiveness of weatheriza-

tion measures. The computations shall include present worth of energy and capacity saved per unit for different life cycles, recognizing, where appropriate, line losses, administrative costs of conservation programs, and revenues from additional wholesale sales made possible by the conservation activity. At the same time, such utility shall file tariffs relating to payments for weatherization measures using the new cost-effectiveness computations, to become effective 30 days after submission.

(6) Energy and capacity savings due to conservation shall be considered firm for purposes of the calculations in OAR 860-030-0010(5). The calculated costs as specified in section (5) of this rule shall be multiplied by 1.1 to determine the cost effectiveness of the conservation alternative.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 11-1981(Temp), f. & ef. 10-30-81 (Order No. 81-778); PUC 2-1982, f. & ef. 2-26-82 (Order No. 82-130); PUC 10-1985, f. & ef. 7-5-85 (Order No. 85-619); PUC 11A-1985(Temp), f. & ef. 7-16-85 (Order No. 85-639); PUC 14-1985, f. & ef. 9-27-85 (Order No. 85-891); PUC 15-1985, f. & ef. 10-1-85 (Order No. 85-896); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 93-035); PUC 3-1993, f. & cert. ef. 1-8-93 (Order No. 92-1792); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 7-2005, f. & cert. ef. 11-30-05

### 860-030-0015

#### Residential Energy Conservation Financing

(1) An eligible dwelling owner may obtain a loan or a cash payment from or through the energy utility for energy conservation measures.

(2) Financing:

(a) The loan shall be made in accordance with the following terms, conditions, and limitations:

(A) A principal amount of up to \$5,000;

(B) On a loan from or through an electric company, an interest rate that does not exceed 6.5 percent annually;

(C) On a loan from or through a gas utility, an annual interest rate 10 percentage points lower than the rate published by the Federal Housing Administration for Title I property improvement loans (24 Code of Federal Regulations (CFR), subsection 201.4(a)) on the date of the loan application, but not lower than 6.5 percent or higher than 12 percent;

(D) A repayment period of not more than ten years;

(E) Unless waived by the energy utility, a minimum monthly payment of not less than \$15; and

(F) To eligible dwelling owners with approved credit.

(b) The cash payment shall be in the amount of:

(A) Twenty-five percent of the cost-effective portion of the energy conservation measures recommended under subsection (2)(c) of this rule, including installation (but not including the dwelling owner's own labor), not to exceed the cost of the measure; or

(B) \$350, whichever is less.

(c) Any dwelling owner is eligible for financing under this rule, provided:

(A) A valid energy audit preceded the work and established the cost-effective portion of the recommended measures;

(B) The measures installed are those recommended by the energy utility; and

(C) The dwelling has a space-heating system, installed and operational, which is designed to heat the living space of the customer's dwelling, and which draws its energy for operation from the energy utility from which financing is sought.

(d) A dwelling owner who acquires a dwelling for which a previous loan was obtained under this rule may obtain a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when there remain cost-effective energy conservation measures to be undertaken with regard to the dwelling.

(3) An energy utility shall not make a loan or a cash payment for the installation of urea-formaldehyde wall insulation.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 11-1981(Temp), f. & ef. 10-30-81 (Order No. 81-778); PUC 2-1982, f. & ef. 2-26-82 (Order No. 82-130); PUC 10-1985, f. & ef. 7-5-85 (Order No. 85-619); PUC 11A-1985(Temp), f. & ef. 7-16-85 (Order No. 85-639); PUC 11B-1985(Temp), f. & ef. 7-16-85, ef. 9-20-85 (Order No. 85-639); PUC 28-1985, f. & ef. 12-20-85 (Order No. 85-1212); PUC 15-1989, f. & cert. ef. 11-3-89 (Order No. 89-1465); PUC 11-1992(Temp), f. & cert. ef. 6-15-92 (Order No. 92-856); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 3-1993, f. & cert. ef. 1-8-93 (Order No. 92-1792); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 7-2005, f. & cert. ef. 11-30-05

92-1793 & 93-035); PUC 3-1993, f. & cert. ef. 1-8-93 (Order No. 92-1792); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 7-2005, f. & cert. ef. 11-30-05

### 860-030-0018

#### Rental Unit Additional Financing

(1) After December 31, 1985, energy utilities, upon request of final certification from the Department of Energy, under ORS chapter 469, shall offer additional financing as described in section (3) of this rule for energy conservation measures installed by a dwelling owner who rents the dwelling to a tenant whose dwelling unit receives energy for space heating from an energy utility.

(2) Upon being notified by the Department of Energy that it has committed all available tax credits for rental unit additional financing for a given calendar year, an energy utility shall stop offering additional financing until it is notified that tax credits are available.

(3) The dwelling owner may select one of the following types of financing:

(a) The dwelling owner may select a low-interest loan pursuant to OAR 860-030-0015(2)(a). In such case, the dwelling owner shall be liable to repay to the energy utility the loan minus the present value to the utility of the tax credit received, as established pursuant to ORS 469.185 to 469.225;

(b) The dwelling owner may select a cash payment pursuant to OAR 860-030-0015(2)(b). In such case, the cash payment shall be supplemented by an amount equal to the present value to the energy utility of the tax credit received, as established pursuant to ORS 469.185 to 469.225.

(4) Investor-owned energy utilities shall notify their customers annually of the availability of the financing options with regard to the tax credit established pursuant to ORS 469.185 to 469.225 and of the option to apply directly to the State of Oregon for a tax credit.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 28-1985, f. & ef. 12-20-85 (Order No. 85-1212); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 7-2005, f. & cert. ef. 11-30-05

### 860-030-0020

#### Certain Energy Conservation Measures Excluded from Financing

Energy conservation measures for any of the following building and improvement activities shall not be financed under an energy utility's residential energy conservation program adopted pursuant to ORS 469.631 through 469.645:

(1) Construction of a new dwelling; or

(2) Construction which increases or changes the living space in a dwelling being remodeled, added to, or otherwise substantially altered.

(3) When a dwelling or property owner proposes to build a new dwelling, remodel, or otherwise alter an existing dwelling, the Uniform Building Code (UBC) or local equivalent code must be complied with. Because weatherization programs are designed to be an incentive encouraging people to voluntarily weatherize, it would not be in the public interest to spend this money on loans or grants for measures which otherwise are required by state or local law.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 11-1981(Temp), f. & ef. 10-30-81 (Order No. 81-778); PUC 2-1982, f. & ef. 2-26-82 (Order No. 82-130); PUC 10-1985, f. & ef. 7-5-85 (Order No. 85-619); PUC 15-1985, f. & ef. 10-1-85 (Order No. 85-896); PUC 1-1998, f. & cert. ef. 1-12-98

### 860-030-0025

#### Assurance of Work Quality

(1) The energy utility shall, at a minimum, inspect:

(a) Each installation for which the customer requests inspection;

(b) For each contractor with whom the energy utility has no current experience of work performance or whose past performance has shown inadequate performance, the first ten installations by that contractor and at least two of every ten installations thereafter.

(2) The purposes of the inspections required under subsections (1)(a) and (1)(b) of this rule are to verify that the financed measures were installed and the standards of materials and workmanship set by the energy utility, which shall meet or exceed those of the Oregon State Building Code, are met.

(3) When subsection (1)(a) or (1)(b) of this rule requires inspections, utility funds used for principal payment under this program shall not be dispersed until the standards referenced in section (2) of this rule are met.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645  
Hist.: PUC 11-1981(Temp), f. & ef. 10-30-81 (Order No. 81-778); PUC 2-1982, f. & ef. 2-26-82 (Order No. 82-130); PUC 10-1985, f. & ef. 7-5-85 (Order No. 85-619); PUC 1-1998, f. & cert. ef. 1-12-98

### 860-030-0035

#### Accounting Rules

(1) "Indirect costs" shall mean:

(a) Reasonable expenses which the energy utility incurs in providing to its residential customers information about weatherization programs and other means of saving energy;

(b) Reasonable expenses which the energy utility incurs in providing to its residential customers technical advice concerning advantages and disadvantages of various methods of saving energy in the customer's dwelling unit;

(c) Reasonable expenses which the energy utility incurs in providing pre-installation inspection services, cost estimates, and post-installation inspections for its residential customers;

(d) Cash payments made to dwelling owners pursuant to ORS 469.633;

(e) The interest or other carrying charges resulting from the difference between the interest charges authorized by the Commission, pursuant to ORS 469.633, and the cost of the energy utility's own funds used to finance weatherization services, or, if the energy utility arranges financing with a commercial lending institution, the difference between the interest charges allowed by the Commission, pursuant to ORS 469.633, and the interest charged by the commercial lending institution;

(f) Reasonable carrying charges on the unamortized balance included in the deferred debit account until the unamortized balance is included in the rate base;

(g) Any reasonable level of bad debts, including a reasonable level of casualty losses attributable to the services performed under ORS 469.633;

(h) Fees charged an energy utility pursuant to ORS 469.185 to 469.225;

(i) Tax credits authorized under ORS 469.185 to 469.225; and

(j) Reasonable administrative costs of residential energy conservation programs.

(2) All other terms shall have the meanings provided in ORS 469.631.

(3) The energy utility shall pass on to all its customers the indirect cost incurred pursuant to ORS 469.631 through 469.645, by accounting for the costs as an allowable revenue deduction and by including when applicable the unamortized balance of the accumulated deferred debits associated with indirect costs in the rate base for rate-making purposes.

(4) The energy utility shall keep books and accounts to permit the Commission to readily identify all direct and indirect costs incurred in connection with the weatherization program and any other insulation or energy-saving programs.

(5) Except for a reasonable level of bad debts, including casualty losses and cash payments to dwelling owners pursuant to ORS 469.333, no direct costs of weatherization services provided to individual space-heating residential customers shall be allowable expenses for rate-making purposes. Direct costs shall be a personal obligation of the owner of the dwelling unit requesting weatherization services. Direct costs include the cost of all materials and labor directly associated with the services.

(6) All indirect costs incurred by an energy utility, pursuant to ORS 469.631 through 469.645, shall be placed in a deferred debit account until the Commission issues an order including an appropriate amount of indirect costs in rates.

(7) Tax credits authorized under ORS 469.185 to 469.225 and OAR 860-030-0018 shall be accounted for under section (6) of this rule as deferred debits, until each year's credit is recovered.

(8) After an appropriate amount of indirect costs is included in rates, deferred debit accounting shall not be used to recover additional indirect costs unless the energy utility demonstrates that the present level of recovery of indirect costs is inadequate.

(9) The amounts of indirect costs accumulated in the deferred debit account may be disposed of by being included in rates by a tracking procedure or by being included in rates upon the issuance of a Commission order.

(10) Carrying charges associated with the energy utility's own funds as defined as subsection (1)(e) of this rule shall be recorded in Account 421, Miscellaneous Nonoperating Income, concurrently with the recording of those costs in the deferred debit account. Carrying charges associated with the balance in the deferred debit account not amortized to operating expenses as defined in subsection (1)(f) of this rule shall be recorded in Account 421, concurrently with their being recorded in the deferred debit account.

(11) Income tax normalization procedures shall be used when appropriate for amounts included in the deferred debit account.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 11-1981(Temp), f. & ef. 10-30-81 (Order No. 81-778); PUC 2-1982, f. & ef. 2-26-82 (Order No. 82-130); PUC 15-1985, f. & ef. 10-1-85 (Order No. 85-896); PUC 28-1985, f. & ef. 12-20-85 (Order No. 85-1212); PUC 1-1998, f. & cert. ef. 1-12-98

### 860-030-0040

#### Commercial Energy Conservation

Purpose, Statutory Authorization, and Policy. The purpose of these rules is to provide procedures, standards, and criteria for electric and gas utilities to present energy audit programs for commercial buildings as required by Oregon Laws 1981, Chapter 708, Sections (1) through (11) (ORS 469.865 et seq.).

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 10-1982, f. & ef. 9-30-82 (Order No. 82-685); PUC 1-1998, f. & cert. ef. 1-12-98

### 860-030-0045

#### Definitions for Energy Conservation

For the purpose of these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Automatic control system" means devices, including but not limited to: wide dead band thermostats, which regulate lighting, heating, ventilating, air conditioning, or other energy loads automatically based on time, temperature, humidity, pressure, or load limiting measures. Equipment associated with automatic control systems includes, but is not limited to: automatic dampers, wiring, electronic circuitry, relays, valves, and other equipment which produces a reduction in energy consumption or demand.

(2) "BTU" means a British Thermal Unit, the amount of energy required to raise the temperature of a one-pound mass of water one degree Fahrenheit.

(3) "Commercial building" means a public building as defined in ORS 456.746 and other commercial structures as defined by energy utility tariff.

(4) "Commercial building customer" means the owner or tenant of a commercial building who is responsible for paying fuel costs to an energy utility which provides electricity or gas energy to the building.

(5) "Commercial energy audit" means the service provided to a commercial building customer which includes on-site data gathering, energy use analysis, and a report to the customer recommending energy conservation measures, and an estimate of the cost/benefit of those measures.

(6) "Commercial energy auditor" (or "Level I Auditor") means a person who is qualified through general training and experience and who has demonstrated a general knowledge of heat transfer principles, construction terms and components, energy efficient operations and maintenance procedures, boiler and furnace efficiency improvements, infiltration controls, envelope weatherization, heating, ventilating, and air conditioning (HVAC) systems, electric control systems, lighting systems, solar insulation, and applicable energy conservation measures.

(7) "Commercial energy specialist" (or "Level II Auditor") means a person who is qualified through specialized training and experience, who has demonstrated knowledge and abilities of a qualified commercial energy auditor, and who can in addition:

(a) Perform calculations of energy use analysis;

(b) Perform calculations of energy efficiencies of HVAC, lighting, plumbing, water, steam, control, or electrical systems; and

(c) Can prepare technical reports of net energy savings for energy conservation measures.

(8) "Conservation services" means those services specified in ORS 469.865 and 469.885.

(9) “Commission” means the Public Utility Commission of Oregon.

(10) “Energy use analysis” means estimates of energy consumed by various systems and components of a building including, but not limited to: envelope, lighting, HVAC, and hot water.

(11) “Energy conservation measure” has the meaning specified in ORS 469.860(1)(c).

(12) “Envelope weatherization” includes, but is not limited to: insulation of ceiling, walls, floors, ducts, or pipes, and installation of storm or thermal windows and doors.

(13) “Furnace and boiler efficiency improvements” means replacement burners, furnaces, or boilers of the same energy type which, due to their design, reduce energy use due to an increase in combustion efficiency, improved heat generation or reduced heat losses, automatic vent dampers, automatic ignition devices, replacement filters, and cleaning and combustion efficiency adjustments.

(14) “Heat recovery devices” means those devices or equipment which recover heat from commercial use by capturing, storing, transferring, and using heat content of liquid or gaseous streams to reduce the need for additional energy resources. Devices include, but are not limited to: recuperators, heat wheels, regenerators, heat exchangers, and economizers.

(15) “Heating, ventilating, and air conditioning (HVAC) system modifications” includes, but is not limited to: improving control and use of outside air, adjusting temperature and humidity of supply air, reducing energy use of reheat systems and exhaust hoods, and replacement air conditioning systems of the same energy type which reduce the amount of energy use due to an increase in efficiency.

(16) “Infiltration controls” means caulking, weather stripping, dampers, sealants, air locks, revolving doors, and gaskets used to reduce air leaks in a building shell.

(17) “Improved operations and maintenance measures” means any energy conservation measure which is presumed cost-effective because there is little or no cost associated with the measure, so the simple payback period is generally less than one year. Operations and maintenance measures include, but are not limited to: temperature setbacks, water flow reductions, reduced use of ancillary systems or reduced energy use when a building is unoccupied, repairing air duct leaks, and steam system and furnace or boiler maintenance.

(18) “Lighting system improvements” means devices and actions which reduce overall indoor or outdoor lighting energy consumption while maintaining satisfactory lighting levels. Devices and actions include, but are not limited to: reducing light levels to acceptable minimum levels; installation of task lighting, local switching, time control, and sensing devices; and installation of more efficient lamps.

(19) “Net energy savings” means the BTU savings from a conservation measure, taking into account interactions of other known consumption measures being implemented and impacts on all energy sources and systems in the building.

(20) “Simple payback period” means the estimated total installed costs of an energy conservation measure divided by the estimated first year dollar savings to the customer resulting from the measure.

(21) “Solar water heaters” means water heating devices, either active or passive, designed to heat water with radiant energy from the sun.

(22) “Utility” or “energy utility” shall have the meaning given to an “investor-owned utility” in ORS 469.631 or to a “public utility” under ORS 757.005, which provides natural gas or electric service for heat, light, or power and is regulated by the Commission under ORS Chapter 757.

(23) “Water heating heat pumps” means water heating devices designed to heat water by extracting energy from the surrounding ambient environment, including air, earth, and ground water.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 10-1982, f. & ef. 9-30-82 (Order No. 82-685); PUC 15-1985, f. & ef. 1-85 (Order No. 85-896); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 18-1998, f. & cert. ef. 10-12-98; PUC 9-2001, f. & cert. ef. 3-21-01

## 860-030-0050

### Commercial Energy Audit Programs

(1) Each energy utility shall be responsible, to the extent possible, for ensuring that the services required by these rules are offered

to all commercial building customers within its service territory and the services are provided to the standards required herein.

(2) Each energy utility shall have available on request information about energy saving operations and maintenance measures for commercial buildings. The information may be tailored to special classes of commercial building customers.

(3) Each energy utility shall notify its commercial building customers about its energy conservation and energy audit services annually.

(4) Each energy utility shall actively promote the availability of energy audit services whenever it enters into any phase of a contingency or curtailment plan for dealing with an energy supply shortfall.

(5) Each energy utility shall be responsible for having available trained commercial energy auditors, specialists, or other engineering or architectural professionals either employed directly, or as independent consultants, so sufficient persons with appropriate education and experience are available to provide energy audits of simple and complex commercial building systems and components which may exist in its service area.

(6) When an energy utility receives a request from a commercial building customer who uses less than 4,000 kWh of electricity or 200 therms of gas per month on the average annually for a commercial energy audit, a qualified energy auditor shall perform an on-site audit to collect data and evaluate energy conservation measures including, but not limited to: operations and maintenance measures, simple automatic control systems, envelope weatherization, infiltration controls, and lighting systems improvements.

(7) When an energy utility receives a request from a commercial building customer who uses more than 4,000 kWh of electricity per month or 200 therms of natural gas per month on the average annually for a commercial energy audit, the energy utility shall use a qualified energy specialist, engineer, or architect to perform the energy audit and evaluate more complex energy conservation measures, such as sophisticated automatic control systems, furnace and boiler efficiency improvements, heat recovery devices, HVAC system modifications, lighting system improvements, and solar water heaters or water heating heat pumps, unless the energy utility can substantiate that analysis of the systems in use does not require that level of expertise.

(8) Each energy utility shall be responsible for: designing or obtaining data recording forms for an energy audit, developing procedures for analyzing energy use in a commercial building, and for calculating potential energy savings, and designing report forms for recommendations to customers. The system so designed shall have the capability of reporting simple payback periods of at least ten years.

(9) Reports to a commercial building customer shall include as a minimum: a brief description of the building's energy using systems and overall condition; an energy use analysis; recommended operations and maintenance measures; energy conservation measures which have a simple payback period of up to three years or up to ten years upon the customer's request, including a description of each measure, its estimated cost, and estimated net energy and dollar savings for the first year. Information about the availability of state tax credits and any low-cost financing options or other incentives available through the utility for the commercial building customer shall also be included.

(10) The Commission may review any federal or regional commercial energy audit programs to determine if they meet or exceed the requirements of these rules. Any energy utility whose commercial energy audit program meets the guidelines of the federal or regional programs, and which has executed a contract to implement the program, shall be considered to have met the requirements of this rule for training and level of audit service. Use of associated federal or regional model commercial audit formats will be considered satisfactory for data collection, analysis procedures, and reports to commercial building customers.

(11) If a commercial building customer qualifies for equal or better audit services under another subsidized program of the federal, state, or local government or utility, the energy utility may refer the commercial building customer to that program. Use of such services shall be at the customer's option.

(12) During the course of an audit, an energy utility shall not recommend fuel switching from one source of energy to another. If it appears a change of energy sources might benefit the customer, the customer shall be advised to seek independent consulting advice.

However, if in the case of a joint audit both utilities agree to recommend fuel switching, such a recommendation may be made.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 469.631 - 469.645 & 756.040

Hist.: PUC 10-1982, f. & ef. 9-30-82 (Order No. 82-685); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 18-1998, f. & cert. ef. 10-12-98; PUC 18-1998, f. & cert. ef. 10-12-98

#### 860-030-0055

##### Coordination of Utilities

(1) When more than one utility serves the same building, the utilities shall, whenever possible, conduct a joint analysis of the energy consuming systems and present combined recommendations to the commercial building customer. When disputes arise among utilities in the coordination of analysis and recommendations, such disputes will be resolved by the utility with the highest average monthly billing for that customer.

(2) If the commercial building customer uses oil, wood, or a renewable resource in the building, the energy utility shall make reasonable efforts to determine or estimate previous energy use records for that energy system and shall evaluate the system, particularly the operations and maintenance aspects of the system. When the practices and systems seem to warrant attention beyond the capability of the auditor or specialist, the customer shall be referred to the oil or wood supplier, qualified contractor, engineer, or architect.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 10-1982, f. & ef. 9-30-82 (Order No. 82-685); PUC 1-1998, f. & cert. ef. 1-12-98

#### 860-030-0060

##### Fees

All utilities shall develop and present a fee schedule to the Commission for approval. A fee schedule may provide incentives to encourage audit and implementation of audit results. Fee schedules may be defined in terms of the level of complexity of the audit and may identify: per-hour cost of the on-site visit, basic per-hour analysis and report preparation costs, and cost of private consulting engineer's or auditor's fees, if any. Fees may be charged in proportion to work performed if two utilities cooperate on performing the audit for a single building or complex.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 10-1982, f. & ef. 9-30-82 (Order No. 82-685); PUC 1-1998, f. & cert. ef. 1-12-98

#### 860-030-0070

##### Reporting Requirements

(1) Each energy utility shall perform on an annual basis a cost-effectiveness analysis of its commercial energy audit program which shall include, but not be limited to:

- (a) The number and cost of audits performed;
- (b) Number of measures recommended, by type;
- (c) Number of measures installed, by type;
- (d) Predicted energy and capacity savings, by type of measure installed and by the program as a whole;
- (e) The total program cost to customers;
- (f) The energy utility's conclusions as to the cost effectiveness of the program; and

(g) The energy utility's recommendations for changes in the program. If the energy utility's service is offered through an association, the association may provide the above information on an individual basis for each utility served.

(2) Each energy utility may be required to report data aggregated by commercial category. The energy utility shall obtain the customer's consent before making details of an audit available to any other person or entity.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 469.631 - 469.645 & 756.040

Hist.: PUC 10-1982, f. & ef. 9-30-82 (Order No. 82-685); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 18-1998, f. & cert. ef. 10-12-98

#### 860-030-0075

##### Accounting

(1) The energy utility shall pass on to all of its customers the commercial energy audit program costs reasonably incurred pursuant to ORS 469.860 to 469.900, by accounting for the costs not recovered from the commercial building customer as an allowable revenue deduction and by including where applicable the unamortized balance

of the accumulated deferred debits associated with commercial energy audit program costs in the rate base for rate-making purposes.

(2) The energy utility shall keep books and accounts to permit the Commission to readily identify all costs incurred in connection with the commercial energy audit program.

(3) All costs incurred by an energy utility pursuant to Oregon Laws 1981, Chapter 708, shall be placed in a deferred debit account until such time as the Commission issues an order including an appropriate amount of costs in rates.

(4) After the authorized amount of costs is included in rates, deferred debit accounting shall not be used to recover additional costs unless the energy utility demonstrates the present level of recovery of costs is inadequate.

(5) The costs accumulated in the deferred debit account may be disposed of by being included in rates by a tracking procedure or by being included in rates upon the issuance of an order by the Commission.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 10-1982, f. & ef. 9-30-82 (Order No. 82-685); PUC 15-1985, f. & ef. 10-1-85 (Order No. 85-896); PUC 1-1998, f. & cert. ef. 1-12-98

### DIVISION 31

#### INSPECTION OF GAS PIPELINE OPERATORS AND WAIVER OF SAFETY STANDARDS

#### 860-031-0001

##### Applicability

The rules contained in this division apply to all pipeline operators identified in ORS 757.039.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.039 & 759.039

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99

#### 860-031-0005

##### Inspection of Gas Pipeline Operator Facilities

(1) Priority in inspections will be given to those systems and plants with greater risk potential. The following factors will be considered in determining potential risk: the size of the plant or system and the number of customers it serves, the ratio of total pipe to cathodically protected pipe, the ratio of total pipe to coated pipe, the leaks per mile of main, the percentage of unaccounted-for gas volume, and the number of past accidents.

(2) Inspections will include reviews of the operator's standard practices and records concerning design, construction, operation, maintenance, inspection, emergency procedures, and damage prevention programs. Field inspections may include, but are not limited to: checks of cathodic protection levels, construction practices, barricading or protection of equipment from damage, witnessing operational checks of overpressure protection and regulating equipment, odorization, leak surveys, and other field functions. Any documentation, records, or physical evidence necessary to support allegations of non-compliance may be obtained by the investigator during the inspection or at any later date.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.039

Hist.: PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 9-2001, f. & cert. ef. 3-21-01

#### 860-031-0010

##### Verbal Notice of Probable Violation to a Gas Pipeline Operator

When an evaluation of an operator's records, practices, or facilities indicates that the operator is not in compliance with a pipeline safety regulation, the investigator will informally discuss the probable violation of the regulation with the operator whenever practical before concluding the inspection. The operator may take on-site corrective action during the inspection or during the concluding interview at the facility when a probable violation exists. Whenever a probable violation is found, the investigator will issue a written inspection report pursuant to OAR 860-031-0015.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.039

Hist.: PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 9-2001, f. & cert. ef. 3-21-01

**860-031-0015**

**Written Notice of Probable Violation to a Gas Pipeline Operator**

(1) As soon as practical after an inspection where a probable violation was noted, a written inspection report listing all violations found will be issued. The report will contain a notice that a probable violation exists, a short description of the probable violation, and a citation to the rule(s) in point. The report will specify reasonable times for the operator to submit a response and to correct the violation. If the probable violation was corrected at the time of the inspection or concluding interview, the corrective action will be noted in the inspection report.

(2) The operator's written response pursuant to OAR 860-031-0020 must be received by the Commission's gas pipeline safety section within the time specified in the inspection report. If no written response is received within such time, the probable violation will be taken to be admitted.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.039

Hist.: PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 9-2001, f. & cert. ef. 3-21-01

**860-031-0020**

**Responses Open to the Gas Pipeline Operator**

(1) After receiving the citation, the gas pipeline operator may:

(a) Correct the violation within the time allotted in the inspection report and notify the Commission's gas pipeline safety section of the action taken; or

(b) Submit a written plan of action indicating the action to be taken to correct the probable violation, including a schedule and the date when the completion of corrective action is anticipated; or

(c) Request an informal conference with the Commission's gas pipeline safety section.

(2) If the plan of action is rejected, or if the operator selects the third option, an informal conference will be scheduled.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.039

Hist.: PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 9-2001, f. & cert. ef. 3-21-01

**860-031-0025**

**Informal Conference for a Probable Violation by a Gas Pipeline Operator**

A date, time, and place for the informal conference will be arranged. At the conference the operators may explain their positions and may present alternatives for remedying the probable violation. The operators and the gas pipeline safety staff may agree on a plan to remedy the probable violation.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.039

Hist.: PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 9-2001, f. & cert. ef. 3-21-01

**860-031-0030**

**Referral to the Commission of a Probable Violation by a Gas Pipeline Operator**

After receiving a response from the operators and after holding the informal conference, if any, or after receiving no response within the time specified in the inspection report, the Commission's gas pipeline safety staff will determine whether to refer the case to the Commission for formal action. In such case, the staff shall notify the Commission of the response chosen by the operators and the result of the informal conference, if any.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.039

Hist.: PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 9-2001, f. & cert. ef. 3-21-01

**860-031-0035**

**Civil Penalties**

Civil penalties for failure to comply with gas pipeline safety rules or regulations shall be based on the gravity of the violation, the extent of the operators' past violations, and other matters as justice may require.

**NOTE:** ORS 756.180 provides for the enjoining of a violation of the utility laws. ORS 757.991 provides for penalties for failure to comply with gas pipeline safety rules or regulations of \$10,000 per day, to a maximum of \$500,000 for any related series of failures.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.039

Hist.: PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 9-2001, f. & cert. ef. 3-21-01

**860-031-0040**

**Waivers of Gas Pipeline Safety Standards**

(1) Upon application by an operator, the Commission may grant a waiver from compliance with the gas pipeline safety regulations for intrastate pipeline transportation. The application shall include a statement of reasons why the regulations are not appropriate and why a waiver is consistent with gas pipeline safety. The Commission may grant a waiver if:

(a) The noncompliance does not entail a significant risk to the operator's employees or the public; or

(b) The degree of risk does not justify the expense of bringing the system into compliance.

(2) If the Commission decides to grant a waiver, it shall issue the waiver under such terms and conditions as are appropriate, with a statement of reasons for granting the waiver. The waiver shall contain a recital that it is subject to the approval of the Secretary of Transportation of the United States Department of Transportation. If the Commission denies the waiver, it shall notify the applicant of the reasons for the denial.

(3) The Commission shall give the Secretary of Transportation of the United States Department of Transportation written notice 60 days before the effective date of the waiver. If, before the effective date of the waiver, the Secretary objects in writing to the granting of the waiver, the Commission's action granting the waiver will be stayed. The Commission may present the case for the waiver to the Secretary, who, in such case, shall determine finally whether the requested waiver will be granted. If the Commission does not present the case for the waiver to the Secretary, the grant of the waiver shall be withdrawn and the waiver shall be denied.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.039

Hist.: PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 9-2001, f. & cert. ef. 3-21-01

**DIVISION 32**

**TELECOMMUNICATIONS**

**860-032-0001**

**Definitions for Telecommunications**

For the purpose of this division:

(1) "Affiliated interest" between telecommunications providers means:

(a) Every corporation and person owning or holding directly or indirectly 5 percent or more of the voting securities of such telecommunications provider;

(b) Every corporation and person in any chain of successive ownership of 5 percent or more of voting securities of such telecommunications provider;

(c) Every corporation 5 percent or more of whose voting securities are owned by any person or corporation owning 5 percent or more of the voting securities of such telecommunications provider or by any person or corporation in any chain of successive ownership of five percent or more of voting securities of such telecommunications provider;

(d) Every person who is an officer or director of such telecommunications provider or of any corporation in any chain of successive ownership of 5 percent or more of voting securities of such telecommunications provider;

(e) Every corporation that has two or more officers or two or more directors in common with such telecommunications provider;

(f) Every corporation and person, 5 percent or more of which is directly or indirectly owned by a telecommunications provider;

(g) Every corporation or person who or which the Commission determines as a matter of fact, after investigation and hearing, actually is exercising any substantial influence over the policies and actions of such telecommunications provider, even though such influence is not based upon stockholdings, stockholders, directors, or officers to the extent specified in this section of this rule;

(h) Every person or corporation who or which the Commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and

actions of such telecommunications provider in conjunction with one or more other corporations or persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with such telecommunications provider within the meaning of this section even though no one of them alone is so affiliated.

(2) "Competitive provider" means a competitive telecommunications provider as defined in ORS 759.005(2)(a), who provides services authorized pursuant to ORS 759.020.

(3) "Cooperative" means a cooperative corporation or association, which provides local exchange telecommunications service within its own exchanges, which is organized under ORS Chapter 62, and which is certified under ORS 759.025(2).

(4) "Exempt service" means a telecommunications service for which all revenues from, costs of, and assets dedicated to providing the service are excepted from the Commission's regulatory authority pursuant to ORS 759.030(2) or (3).

(5) "Local exchange service" means local exchange telecommunications service as defined in ORS 759.005(2)(c). Local exchange service includes "shared service."

(6) "Operator service" means service provided by a telecommunications provider in response to a request for special billing, dialing assistance, or information regarding the use of and charges for its telecommunications services. An operator service may be manual or automatic.

(7) "Pay telephone" means a telephone instrument, generally placed in public areas, for transient use on a pay-per-call basis. "Pay telephone" instruments may be coin operated, noncoin operated, prepay, postpay, central office controlled, instrument controlled, provided by local exchange carriers, or provided by other persons or entities.

(8) "Price-listed service" means a product or service whose price and terms are authorized under OAR 860-032-0023, 860-032-0035, ORS 759.030, 759.050, or 759.195, and posted in a price list filed with the Commission. The costs and revenues of a price-listed product or service shall be considered part of the telecommunications utility's regulated activities.

(9) "Private telecommunications network" means a system, including the construction, maintenance, or operation of the system, for the provision of a service or any portion of a service, by a person for the exclusive use of that person and not for resale, directly or indirectly. "Private telecommunications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

(10) "Shared service" means shared telecommunications service as defined in ORS 759.005(2)(f); and

(a) The provision of telecommunications and information management services and equipment:

(A) To a user group comprised of one person or association served by a single telecommunications system;

(B) Located in a single building or in several buildings on contiguous property;

(C) By a commercial shared service provider or by a users' association; and

(D) Through privately owned customer premises equipment and associated data processing and information management services.

(b) Includes connection to local exchange service.

(11) "Telecommunications provider" or "provider" includes competitive providers, cooperatives, and telecommunications utilities.

(12) "Telecommunications service" or "service" means two-way switched access and transport of voice communications, and all services provided in connection with such services, but excludes:

(a) Services provided by radio common carrier;

(b) One-way transmission of television signals;

(c) Surveying;

(d) Private telecommunications networks; and

(e) Customer communications that take place on the customer's side of the network interface.

(13) "Telecommunications utility" means a person who is not a competitive provider and is designated as a telecommunications utility under OAR 860-032-0010.

(14) "Toll service" means a telecommunications service between local exchanges carried on the public switched network for which charges are made on a per-unit basis.

(15) "Unserved person" means a person:

(a) Who lacks local exchange service;

(b) Who is applying for residential service or business service with five or fewer lines; and

(c) Who, for the initiation of such service, would be required to pay line extension charges.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.005 & 759.020

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 19-1986(Temp), f. & ef. 12-15-86 (Order No. 86-1253); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1989(Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 5-1993, f. & cert. ef. 2-19-93 (Order No. 93-184); PUC 1-1994, f. & cert. ef. 1-5-94 (Order No. 94-040); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 26-2001, f. & cert. ef. 11-5-01; PUC 1-2003, f. & cert. ef. 2-12-03

## 860-032-0002

### Notice and Procedures for a Proceeding Initiated Under Division 032

(1) All notices initiating a proceeding under this Division, including, but not limited to, applications, petitions, complaints, and other pleadings, shall be served on all telecommunications providers and all persons on the Commission's telecommunications mailing list. Any person wishing to be included on the list shall submit his/her name, electronic mail address, and mailing address to the Commission's Administrative Hearings Division. A person need not comply with the requirement of providing an electronic mail address upon the filing with the Commission a written statement of inability to obtain such an address.

(2) Except as otherwise provided, every proceeding under this Division shall follow the procedures in ORS 756.500 et seq. and the Commission's rules of procedure.

(3) Any person submitting information under the Commission's rules may request that the information be held in confidence pursuant to the public records law, ORS 192.500.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020 & 759.025

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 9-2001, f. & cert. ef. 3-21-01; PUC 4-2003, f. & cert. ef. 3-11-03

## 860-032-0005

### Application for New or Amended Certificate of Authority, or to Transfer Authority

(1) No person shall provide intrastate telecommunications service on a for-hire basis, or transfer a certificate of authority to provide such service, except as authorized by the Commission.

(2) Any person intending to provide intrastate telecommunications service in Oregon, or to transfer a certificate of authority to provide such service, shall file an application, on a form prescribed by the Commission. A copy of the applicable application form is available on the Commission's website.

(3) The applicant(s) shall also submit a copy of the application and any subsequent amendments in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. The electronic copy may be an unsigned version of the application. An applicant need not comply with this requirement upon the filing with the Commission a written statement of inability to file an electronic copy.

(4) Applicant(s) must complete all applicable parts of the application. If an application, in any material respect, is incomplete, inaccurate, false, or misleading, the Commission shall reject the application.

(5) An application for a new or amended certificate shall contain:

(a) A request for classification as a telecommunications utility or competitive provider;

(b) The name, mailing address, telephone number, and electronic mail address of the applicant;

(c) A description of the service the applicant seeks to provide, including designation of such service as local exchange, shared, or interexchange service, and a designation of such service as switched or non-switched service, and a description of how applicant will provide such service;

(d) A description of the territory where the service is to be offered. An application to provide local exchange service shall include a description and map of the local exchange service boundaries or a list of the local exchanges to be served;

(e) The names of affiliated interests of the applicant, as defined in OAR 860-032-0001, which are certified to provide or are actually providing telecommunications service in Oregon;

(f) A list of each certificate of authority to provide service in Oregon, which was granted to applicant or to an affiliated interest, whether such certificate is in effect or canceled; and

(g) In addition to the requirements of subsections (5)(a) through (f) of this rule, an application to provide shared service shall:

(A) Describe the user group to whom service will be provided;

(B) List the street address of the building(s) where service will be provided; and

(C) If service will be provided to a user group located in two or more buildings, the application shall include a clear, precise, legible map, of the area to be served.

(6) An application to transfer a certificate of authority shall contain:

(a) The names, mailing addresses, telephone numbers, and electronic mail addresses of the transferor and transferee;

(b) A description of the telecommunications services and service area for which authority is to be transferred; and

(c) The names of affiliated interests of the transferee, as defined in OAR 860-032-0001, which are certified to provide or are actually providing telecommunications service in Oregon.

(7) For all applications:

(a) The Commission shall serve notice of the application as provided in OAR 860-032-0002(1).

(b) Within 20 days of the date of service of the notice, any person may file a protest to an application. The protest shall set forth the grounds for the protest. The protestant(s) shall also submit a copy of the protest in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. The electronic copy may be an unsigned version of the protest. A protestant need not comply with this requirement upon the filing with the Commission a written statement of inability to file an electronic copy.

(c) The Commission may require a person filing a protest to show that it is affected by the application or that its appearance and participation will not unreasonably broaden the issues or burden the record. Failure of the telecommunications utility or cooperative to protest an application to provide local exchange service, other than shared service, shall not be considered consent to the application.

(d) Any protestant shall be made a party to the application proceeding. Other persons may be made a party upon formal request to the Commission and serving copies of the request to the applicant(s) in accordance with OAR 860-013-0021.

(e) The applicant shall serve other parties with copies of amendments and additional information submitted during the application process. If an applicant intends to broaden the authority requested during the application process, it shall file a new application pursuant to sections (2) through (6) of this rule. However, an applicant may narrow its request by serving its amendment on each party.

(f) The Commission may grant or deny an application without hearing, unless a hearing is required by ORS 759.020(4).

(g) If the Commission processes the application without a hearing, the Commission staff may issue to the parties a proposed order that grants or denies the application. Within 15 days of service of any proposed order, any party may file exceptions. Exceptions shall be filed with the Administrative Hearings Division, Commission staff, and all parties. Within 10 days of service of any exceptions, Commission staff and any party may file a reply. In its reply, Commission staff may modify its proposed order in response to the exceptions filed.

(h) A party to the application proceeding may request rehearing or reconsideration of the order, which grants or denies the application, pursuant to ORS 756.561 and OAR 860-014-0095.

(8) For applicants who request classification as a telecommunications utility, all services proposed to be offered by the applicant shall be deemed essential services. However, applicant may accompany the application with a petition to exempt some services pursuant to OAR 860-032-0025 or to price-list some or all services pursuant to OAR 860-032-0035.

(9) The Commission shall review applications for interexchange service or shared service pursuant to ORS 759.020. Applications for local exchange service, other than shared service, shall be reviewed pursuant to ORS 759.020 and 759.050.

(10) For applications for local exchange service, other than shared service, the following apply in addition to provisions of sections (7) through (9) of this rule:

(a) The Commission may apply the public interest criteria from ORS 759.050(2), or the Commission may determine pursuant to ORS 759.020(3) that the affected telecommunications utility is unable to provide service; and

(b) Failure by the telecommunications utility to provide reasonable and adequate local exchange service shall constitute inability to provide service.

(11) Applications to transfer authority to provide telecommunications service are subject to sections (1) through (4) and (6) through (10) of this rule. With Commission approval, a telecommunications provider may transfer a certificate of authority subject to the following requirements:

(a) The transferor may transfer some or all of its authority;

(b) Transferee shall be liable for all fees incurred and reports due by the transferor as of the date the transfer is approved; and

(c) All relevant conditions and restrictions which attend the authority held by the transferor will apply to the certificate held by the transferee.

(d) When the application is granted the transferor will no longer be authorized to provide the telecommunications services that are transferred.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.025, 759.030, 759.050, 759.225 & 759.690

Hist.: PUC 27-1985(Temp), f. & cert. ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & cert. ef. 11-17-86 (Order No. 86-1159); PUC 10-1989(Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 23-1990, f. & cert. ef. 12-31-90 (Order No. 90-1918); PUC 9-1991, f. & cert. ef. 7-16-91 (Order No. 91-854); PUC 2-1998, f. & cert. ef. 2-24-98; PUC 10-1998, f. & cert. ef. 4-28-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 26-2001, f. & cert. ef. 11-5-01; PUC 4-2003, f. & cert. ef. 3-11-03

## 860-032-0007

### Conditions of Certificates of Authority

A certificate to provide telecommunications service shall be subject to the following conditions:

(1) The certificate holder shall provide only the telecommunications service authorized in the certificate.

(2) A telecommunications utility shall not abandon service except as authorized under the Commission's rules.

(3) For telecommunications utilities, the records and books of the certificate holder are open to inspection by the Commission, and shall be maintained according to the Commission's rules.

(4) For competitive providers and cooperatives, the books and records of the certificate holder shall be open to inspection by the Commission to the extent necessary to verify information required of the certificate holder. The books and records shall be maintained according to the applicable rules of the Commission.

(5) The certificate holder shall pay all access charges and subsidies imposed pursuant to the Commission's rules, orders, tariffs, or price lists.

(6) The certificate holder involved in the provision of an operator service shall:

(a) Notify all callers at the beginning of each call of the telecommunications provider's name; however, a telecommunications provider furnishing operator service for another telecommunications provider may brand the call by identifying the other provider;

(b) Disclose rate and service information to the caller when requested;

(c) Maintain a current list of emergency numbers for each service territory it serves;

(d) Transfer an emergency call to the appropriate emergency number when requested, free of charge;

(e) Transfer a call to, or instruct the caller how to reach, the originating telecommunications utility's operator service upon request of the caller, free of charge;

(f) Not transfer a call to another operator service provider without the caller's notification and consent;

(g) Not bill or collect for calls not completed to the caller's destination telephone number; and

(h) Not screen calls and prevent or block the completion of calls which would allow the caller to reach an operator service company different from the certificate holder. In addition, the certificate holder

shall, through contract provisions with its call aggregator clients, prohibit the blocking of a caller's access to his or her operator service company of choice. A certificate holder may apply for a waiver from the Commission if necessary to prevent fraudulent use of its services.

(7) Telecommunications providers who enter into operator service contracts or arrangements with call aggregators shall include in those contracts or arrangements provisions for public notification as follows:

(a) A sticker or name plate identifying the name of the certificate holder shall be attached to each telephone available to the public; and

(b) A brochure, pamphlet, or other notice shall be available in the immediate vicinity of the telephone giving the name of the operator service provider, stating that rate quotes are available upon request, listing a toll-free telephone number for customer inquiry, and giving instructions on how the caller may access other operator service providers.

(8) Competitive providers may contract with telecommunications utilities, other competitive providers, or other persons for customer billing and collection under the following conditions:

(a) The telecommunications utility, other competitive provider, or other person, in billing for the competitive provider, shall include on the bill the name of a company with the information and authority to provide information and resolve disputes about billing entries, a toll-free number to reach that company, and details of the services and charges billed;

(b) The telecommunications utility shall not deny telecommunications service to customers for failure to pay charges for competitive provider services or unregulated utility services.

(9) The certificate holder shall comply with Commission rules and orders applicable to the certificate holder.

(10) The certificate holder shall not take any action that impairs the ability of other certified telecommunications providers to meet service standards specified by the Commission;

(11) The certificate holder shall respond in a timely manner to Commission inquiries.

(12) The certificate holder shall submit required reports in a timely manner.

(13) The certificate holder shall notify the Commission of changes to the certificate holder's name, address, or telephone numbers within ten days of such change.

(14) Telecommunications providers shall meet service standards set forth in applicable Commission's rules, including OAR 860-032-0012.

(15) The certificate holder shall timely pay all Commission taxes, fees, or assessments adopted pursuant to Oregon law or Commission rules, orders, tariffs or price lists.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.030, 759.050, 759.225 & 759.690  
Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1989(Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 23-1990, f. & cert. ef. 12-31-90 (Order No. 90-1918); PUC 9-1991, f. & cert. ef. 7-16-91 (Order No. 91-854); PUC 2-1998, f. & cert. ef. 2-24-98; PUC 10-1998, f. & cert. ef. 4-28-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2000, f. & cert. ef. 2-9-00, Renumbered from 860-032-0005(9)

#### 860-032-0008

##### Failure to File Information or Pay the Annual Fee

(1) If the Commission has not received an annual fee payment from a telecommunications provider by April 1 of the year after the calendar year upon which the fee is based, a penalty shall be due and payable. The penalty shall equal two percent of the annual fee for each and every month or fraction thereof that the fee remains unpaid.

(2) If the Commission has not received requested information or an annual fee within the specified time, or a telecommunications provider does not cooperate with a Commission audit, the Commission may commence a proceeding to impose sanctions, including but not limited to, revoking the telecommunications provider's certificate of authority to operate in Oregon.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040, 756.310, 756.320, 756.350 & 759.020  
Hist.: PUC 13-1999, f. & cert. ef. 12-7-99

#### 860-032-0010

##### Classification of Applicants as Telecommunications Providers

(1) Pursuant to ORS 759.020, there shall be two classifications of telecommunications providers:

(a) Telecommunications utility; and

(b) Competitive provider.

(2) The Commission shall classify an applicant for a certificate of authority pursuant to ORS 759.020.

(3) A telecommunications provider may file a petition with the Commission under OAR 860-032-0005 to change its classification. On the Commission's own motion, and after notice and opportunity for hearing, the Commission may change a telecommunications provider's classification upon finding the provider no longer qualifies for the classification previously assigned or qualifies for a different classification.

(4) Local exchange telecommunications service provided by a telecommunications utility or a cooperative within the boundaries of local exchanges belonging to another telecommunications utility or cooperative, which exchanges are defined pursuant to ORS 759.005(2)(c), shall be considered the operations of a competitive provider, and may only be provided pursuant to a certificate of authority granted by the Commission under ORS 759.020. Such service shall be considered operations of a competitive provider without regard to the manner the provider treats those operations.

(5) Telecommunications services provided by a telecommunications utility or a cooperative pursuant to a certificate of authority granted under ORS 759.020, wherein the provider was classified as a competitive provider for purposes of providing those services, shall be considered the operations of a competitive provider without regard to the manner the provider treats those operations.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.005, 759.020 & 759.030

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986 f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 9-2001, f. & cert. ef. 3-21-01

#### 860-032-0011

##### Advertisements by Competitive Providers

Each competitive provider shall ensure that advertisements or other offers of service do not refer to the Commission's certification of the competitive provider, unless the advertisement or offer conspicuously includes the following statement:

The Public Utility Commission of Oregon does not regulate the rates of this carrier. Certification by the Commission means that this carrier is listed with the Commission to do business in Oregon.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020 & 759.050

Hist.: PUC 5-1991, f. & cert. ef. 4-3-91; PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00

#### 860-032-0012

##### Retail Telecommunications Service Standards for Competitive Telecommunications Providers

Every large telecommunications utility, as defined in OAR 860-023-0001(2), must adhere to the standards in OAR 860-023-0055. Every small telecommunications utility, as defined in OAR 860-034-0010(3)(a) must adhere to the standards in OAR 860-034-0390. Every competitive telecommunications provider, as defined in ORS 759.005(2)(a), that maintains more than 1,000 access lines on a statewide basis, must adhere to the following service standards:

(1) Definitions.

(a) "Access Line" — A facility engineered with dialing capability to provide retail telecommunications service that connects a customer's service location to the Public Switched Telephone Network;

(b) "Average Busy Season Busy Hour" — The hour that has the highest average traffic for the three highest months, not necessarily consecutive, in a 12-month period. The busy hour traffic averaged across the busy season is termed the average busy season busy hour traffic;

(c) "Average Speed of Answer" — The average time that elapses between the time the call is directed to a representative and the time it is answered;

(d) "Blocked Call" — A properly dialed call that fails to complete to its intended destination except for a normal busy (60 interruptions per minute);

(e) "Customer" — Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity that has applied for, been accepted, and is currently receiving local exchange telecommunications service;

(f) “Exchange” — Geographic area defined by maps filed with and approved by the Commission for the provision of local exchange telecommunications service;

(g) “Final Trunk Group” — A last-choice trunk group that receives overflow traffic and that may receive first-route traffic for which there is no alternative route;

(h) “Force Majeure” — Circumstances beyond the reasonable control of a competitive telecommunications provider, including but not limited to, delays caused by:

(A) A vendor in the delivery of equipment, where the competitive telecommunications provider has made a timely order of equipment;

(B) Local, state, federal, or tribal government authorities in approving easements or access to rights of way, where the competitive telecommunications provider has made a timely application for such approval;

(C) The customer, including but not limited to, the customer’s construction project or lack of facilities, or failure to provide access to the customer’s premises;

(D) Uncontrollable events, such as explosion, fire, floods, frozen ground, tornadoes, severe weather, epidemics, injunctions, wars, acts of terrorism, strikes or work stoppages, and negligent or willful misconduct by customers or third parties, including but not limited to, outages originating from introduction of a virus onto the provider’s network;

(i) “Held Order for Lack of Facilities” — Request for access line service delayed beyond the initial commitment date due to lack of facilities. An access line service order includes an order for new service, transferred service, additional lines, or change of service;

(j) “Initial Commitment Date” — The initial date pledged by the competitive telecommunications provider to provide a service, facility, or repair action. This date is within the minimum time set forth in these rules or a date determined by good faith negotiations between the customer and the competitive telecommunications provider;

(k) “Network Interface” — The point of interconnection between the competitive telecommunications provider’s communications facilities and customer terminal equipment, protective apparatus, or wiring at a customer’s premises. The network interface must be located on the customer’s side of the competitive telecommunications provider’s protector;

(l) “Retail Telecommunications Service” — A telecommunications service provided for a fee to customers. Retail telecommunications service does not include a service provided by a competitive telecommunications provider to another competitive telecommunications provider or telecommunications utility, unless the competitive telecommunications provider or telecommunications utility receiving the service is the end user of the service;

(m) “Service Area” — The entire geographic area the Commission has certified a competitive telecommunications provider to serve. A competitive telecommunications provider may petition the Commission to designate a different geographic area as its service quality reporting area.

(n) “Tariff” — A schedule showing rates, tolls, and charges that the competitive telecommunications provider has established for a retail service;

(o) “Trouble Report” — A report of a malfunction that affects the functionality and reliability of retail telecommunications service on existing access lines, switching equipment, circuits, or features made up to and including the network interface, to a competitive telecommunications provider by or on behalf of that competitive telecommunications provider’s customer, which affects the functionality and reliability of retail telecommunications service;

(p) “Wire Center” — A facility where local telephone subscribers’ access lines converge and are connected to switching equipment that provides access to the Public Switched Telephone Network, including remote switching units and host switching units. A wire center does not include collocation arrangements in a connecting competitive telecommunications provider’s wire center or broadband hubs that have no switching equipment.

(2) Measurement and Reporting Requirements. A competitive telecommunications provider must take the measurements required by this rule and report them to the Commission as specified. Reported measurements must be reported to the first significant digit (i.e., one number should be reported to the right of the decimal point). The ser-

vice quality objective service levels set forth in sections 4 through 8 of this rule apply only to normal operating conditions and do not establish a level of performance to be achieved during force majeure events.

(3) Additional Reporting Requirements. The Commission may require a competitive telecommunications provider to submit additional reports on any item covered by this rule.

(4) Provisioning and Held Orders for Lack of Facilities. The representative of the competitive telecommunications provider must give a retail customer an initial commitment date of not more than six business days after a request for access line service, unless a later date is determined through good faith negotiations between the customer and the competitive telecommunications provider. The competitive telecommunications provider may change the initial commitment date only if requested by the customer. When establishing the initial commitment date, the competitive telecommunications provider may take into account the actual time required for the customer to meet prerequisites; e.g., line extension charges or trench and conduit requirements. If a request for service becomes a held order for lack of facilities, the serving competitive telecommunications provider must, within five business days, send or otherwise provide the customer a written commitment to fill the order.

(a) Measurement:

(A) Commitments Met — A competitive telecommunications provider must calculate the monthly percentage of commitments met for service, based on the initial commitment date, across its Oregon service territory. Commitments missed for reasons solely attributed to customers, another competitive telecommunications provider or telecommunications utility may be excluded from the calculation of the “commitments met” results;

(B) Held Orders for Lack of Facilities — A competitive telecommunications provider must determine the total monthly number of held orders, due to lack of facilities, not completed by the initial commitment date during the reporting month and the number of primary (initial access line) held orders, due to lack of facilities, over 30 days past the initial commitment date.

(b) Objective Service Level:

(A) Commitments Met — Each competitive telecommunications provider must meet at least 90 percent of its commitments for service.

(B) Held Orders:

(i) The number of held orders for the lack of facilities for each competitive telecommunications provider must not exceed the greater of two per wire center, or designated service area, per month averaged over the entire Oregon geographic area served by the competitive telecommunications provider, or five held orders for lack of facilities per 1,000 inward orders and

(ii) The total number of primary held orders for lack of facilities in excess of 30 days past the initial commitment date must not exceed 10 percent of the total monthly held orders for lack of facilities within the entire Oregon geographic area served by the competitive telecommunications provider.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission the percentage of commitments met for service, total number of held orders for lack of facilities, and the total number of primary held orders for lack of facilities over 30 days past the initial commitment date.

(d) Retention Requirement: Each competitive telecommunications provider must maintain records about held orders for lack of facilities for one year. The record must explain why each order is held and the initial commitment date.

(5) Trouble Reports. Each competitive telecommunications provider must maintain an accurate record of all reports of malfunction made by its customers.

(a) Measurement: A competitive telecommunications provider must determine the number of customer trouble reports that were received during the month. The competitive telecommunications provider must relate the count to the total working access lines within a reporting wire center, or designated service area. A competitive telecommunications provider need not report those trouble reports that were caused by circumstances beyond its control. The approved trouble report exclusions are:

(A) Cable Cuts: A competitive telecommunications provider may take an exclusion if the “buried cable location” (locate) was either not requested or was requested and was accurate. If a competitive telecommunications provider or the provider’s contractor caused the cut, the

exclusion can only be used if the locate was accurate and all general industry practices were followed;

(B) Internet Service Provider (ISP) Blockage: If an ISP does not have enough access trunks to handle peak traffic;

(C) Modem Speed Complaints: An exclusion may be taken if the copper cable loop is tested at the subscriber location and the objective service levels in section 10 of this rule were met;

(D) No Trouble Found: Where no trouble is found, one exemption may be taken. If a repeat report of the same trouble is received within a 30-day period, the repeat report and subsequent reports must be counted;

(E) New Feature or Service: Trouble reports related to a customer's unfamiliarity with the use or operation of a new (within 30 days) feature or service;

(F) No Access: An exclusion may be taken if a repair appointment was kept and the copper based access line at the nearest accessible terminal met the objective service levels in section 10 of this rule. If a repeat trouble report is received within the following 30-day period, the repeat report and subsequent reports must be counted;

(G) Subsequent Tickets/Same Trouble/Same Access Line: Only one trouble report for a specific complaint for the same access line should be counted within a 48-hour period. All repeat trouble reports after the 48-hour period must be counted;

(H) Non-Regulated or Deregulated Equipment: Trouble associated with such equipment should not be counted;

(I) Trouble with Other Competitive Telecommunications Providers or Telecommunications Utilities: A trouble report caused solely by another competitive telecommunications provider or telecommunications utility;

(J) Lightning Strikes: Trouble reports received for damage caused by lightning strikes can be excluded if all accepted grounding, bonding, and shielding practices were followed by the competitive telecommunications provider, at the damaged location; and

(K) Other exclusions: As approved by the Commission.

(b) Objective Service Level: A competitive telecommunications provider must maintain service so that the monthly trouble report rate, after approved trouble report exclusions, does not exceed:

(A) For wire centers, or designated service areas with more than 1,000 access lines: two per 100 working access lines per wire center, or designated service area, more than three times during a sliding 12-month period.

(B) For wire centers, or designated service area, with 1,000 or less access lines: three per 100 working access lines per wire center, or designated service area, more than three times during a sliding 12-month period.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission:

(A) The trouble report rate by wire center, or designated service area;

(B) The reason(s) a wire center, or designated service area, meeting the standard (did not exceed the trouble report rate threshold for more than three of the last 12 months) exceeded a trouble report rate of 3.0 per 100 working access lines during the reporting month;

(C) The reason(s) a wire center, or designated service area, not meeting the standard, after the exclusion adjustment, exceeded the trouble report rate threshold per 100 access lines during the reporting month; and

(D) The access line count for each wire center, or designated service area.

(d) Retention Requirement: Each competitive telecommunications provider must maintain a record of reported trouble in such a manner that it can be forwarded to the Commission upon the Commission's request. The competitive telecommunications provider must keep all records for a period of one year. The record of reported trouble must contain as a minimum the:

(A) Telephone number;

(B) Date and time received;

(C) Time cleared;

(D) Type of trouble reported;

(E) Location of trouble; and

(F) Whether or not the present trouble was within 30 days of a previous trouble report.

(6) Repair Clearing Time. This standard establishes the clearing time for all trouble reports from the time the customer reports the trouble

to the competitive telecommunications provider until the trouble is resolved. The competitive telecommunications provider must provide each customer making a network trouble report with a commitment time when the competitive telecommunications provider will repair or resolve the problem.

(a) Measurement: The competitive telecommunications provider must calculate the percentage of trouble reports cleared within 48 hours for each repair center, or designated service area.

(b) Objective Service Level: A competitive telecommunications provider must monthly clear at least 95 percent of all trouble reports within 48 hours of receiving a report. Trouble reports attributed solely to customers or another competitive telecommunications provider or telecommunications utility may be excluded from the calculation of the "repair clearing time" results.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission the percentage of trouble reports cleared within 48 hours by each repair center, or designated service area.

(d) Retention Requirement: None.

(7) Blocked Calls. A competitive telecommunications provider must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of levels listed in subsection (7)(b) of this rule.

(a) Measurement:

(A) A competitive telecommunications provider must collect traffic data; i.e., peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups.

(B) System blockage is determined by special testing at the wire center. Commission Staff or a competitive telecommunications provider technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percentage of calls completed must be calculated.

(b) Objective Service Level:

(A) A competitive telecommunications provider must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P.01 grade of service); and

(B) A competitive telecommunications provider must maintain its switch operation so that 99 percent of the calls do not experience blockage during the normal busy hour.

(C) When a competitive telecommunications provider fails to maintain the interoffice final trunk group P.01 grade of service for four or more consecutive months, it will be considered out-of-standard until the condition is resolved. A single repeat blockage within two months of restoring the P.01 grade of service will be considered a continuation of the original blockage.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission:

(A) Local and extended area service (EAS) final trunk groups that do not meet the objective service level for trunk group blockage, measured from each of its switches, regardless of the ownership of the terminating switch;

(B) Its tandem switch final trunk group blockages associated with EAS traffic;

(C) Any known cause for the blockage and actions to bring the trunks into standard; and

(D) Identity of the competitive telecommunications provider or telecommunications utility, if other than the reporting competitive telecommunications provider, responsible for maintaining those final trunk groups not meeting the standard.

(d) Retention Requirement: Each competitive telecommunications provider must maintain records for one year.

(8) Access to Competitive Telecommunications Provider Representatives. This rule sets the allowed time for competitive telecommunications provider business office or repair service center representatives to answer customer calls.

(a) Measurement:

(A) Direct Representative Answering: A competitive telecommunications provider must measure the answer time from the first ring

at the competitive telecommunications provider business office or repair service center;

(B) Driven, Automated, or Interactive Answering System: The option of transferring to the competitive telecommunications provider representative must be included in the initial local service-screening message. The competitive telecommunications provider must measure the answering time from the point a call is directed to its representatives; e.g., when the call leaves the Voice Response Unit;

(C) Each competitive telecommunications provider must calculate:

(i) The monthly percentage of the total calls placed to the business office and repair service center and the number of calls answered by representatives within 20 seconds; or

(ii) The average speed of answer time for the total calls received by the business office and repair service center.

(b) Objective Service Level:

(A) No more than 1 percent of calls to the competitive telecommunications provider business office or repair service center may encounter a busy signal.

(B) The competitive telecommunications provider representatives must answer at least 80 percent of calls within 20 seconds or have an average speed of answer time of 50 seconds or less.

(c) Reporting Requirement:

(A) Each competitive telecommunications provider must report monthly to the Commission an exception report if busy signals were encountered in excess of 1 percent for either the business office or repair service center; and

(B) Each competitive telecommunications provider must report monthly to the Commission the percentage of calls answered within 20 seconds or the average speed of answer time for both the business office and repair service center. Once a method of measurement is reported by the provider, that method can only be changed with permission of the Commission.

(d) Retention Requirement: None.

(9) Interruption of Service Notification. A competitive telecommunications provider must report significant outages that affect customer service. These interruptions could be caused by switch outage, electronic outage, cable cut, or construction.

(a) Measurement: A competitive telecommunications provider must notify the Commission when an interruption occurs that exceeds any of the following thresholds:

(A) Cable cuts, excluding service wires and wires placed in lieu of cable, or electronic outages lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(B) Toll or Extended Area Service isolation lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(C) Isolation of a central office (host or remote) from the E 9-1-1 emergency dialing code or isolation of a Public Safety Answering Position (PSAP).

(D) Isolation of a wire center for more than 15 minutes.

(E) Outage of the business office or repair center access system lasting longer than 15 minutes in those instances where the traffic cannot be re-routed to a different center.

(b) Objective Service Level: Not applicable.

(c) Reporting Requirement: A competitive telecommunications provider must report service interruptions to the Commission engineering staff by telephone, by facsimile, by electronic mail, or personally within two hours during normal work hours of the business day after the company becomes aware of such interruption of service. Interim reports will be given to the Commission as significant information changes (e.g., estimated time to restore, estimated impact to customers, cause of the interruption, etc.) until it is reported that the affected service is restored.

(d) Retention Requirement: None.

(10) Customer Access Line Testing. All customer access lines must be designed, installed, and maintained to meet the levels in subsection (b) of this section.

(a) Measurement: Each competitive provider must make all loop parameter measurements at the network interface, or as close as access allows;

(b) Objective Service Level: Each access line must meet the following levels:

(A) Loop Current: The serving wire center loop current, when terminated into a 400-ohm load, must be at least 20 milliamperes;

(B) Loop Loss: The maximum loop loss, as measured with a 1004-hertz tone from the serving wire center, must not exceed 8.5 decibels (dB);

(C) Metallic Noise: The maximum metallic noise level, as measured on a quiet line from the serving wire center, must not exceed 20 decibels above referenced noise level — C message weighting (dBrnC); and

(D) Power Influence: As a goal, power influence, as measured on a quiet line from the serving wire center, must not exceed 80 dBrnC.

(c) Reporting Requirement: A competitive telecommunications provider must report measurement readings as directed by the Commission;

(d) Retention Requirement: None.

(11) Customer Access Lines and Wire Center Switching Equipment. All combinations of access lines and wire center switching equipment must be capable of accepting and correctly processing at least the following network control signals from the customer premises equipment. The wire center must provide dial tone and maintain an actual measured loss between interoffice and access trunk groups.

(a) Measurement: Each competitive telecommunications provider must make measurements at or to the serving wire center;

(b) Objective Service Level:

(A) Dial Tone Speed. Ninety-eight percent of originating average busy hour call attempts must receive dial tone within three seconds; and

(B) A competitive telecommunications provider must maintain all interoffice and access trunk groups so that the actual measured loss (AML) in no more than 30 percent of the trunks deviates from the expected measured loss (EML) by more than 0.7 dB and no more than 4.5 percent of the trunks deviates from EML by more than 1.7 dB.

(c) Reporting Requirement: None.

(d) Retention Requirement: None.

(12) Special Service Access Lines. All special service access lines must meet the performance requirements specified in applicable competitive telecommunications provider tariffs or contracts.

(13) Competitive Telecommunications Provider Interconnectivity. A competitive telecommunications provider connected to the facilities of another competitive telecommunications provider or telecommunications utility must operate its system in a manner that will not impede either company's ability to meet required standards of service. A competitive telecommunications provider must report interconnection operational problems promptly to the Commission.

(14) Alternatives to These Telecommunications Standards. A competitive telecommunications provider whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules if it specifically indicates the alternative standards to be applied or indicates which standards would be waived.

(15) Remedies for Violation of This Standard.

(a) If a competitive telecommunications provider subject to this rule fails to meet a minimum service quality standard, the Commission must require the competitive telecommunications provider to submit a plan for improving performance as provided in ORS 759.450(5). If a competitive telecommunications provider does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, the Commission may assess penalties in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that a competitive telecommunications provider subject to this rule has violated one or more of its service standards, the Commission must give the competitive telecommunications provider notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the competitive telecommunications provider to provide the following relief to the affected customers:

(A) An alternative means of telecommunications service for violations of paragraph (4)(b)(B) of this rule;

(B) Customer billing credits equal to the associated non-recurring and recurring charges of the competitive telecommunications provider for the affected service for the period of the violation; and

(C) Other relief authorized by Oregon law.

(16) Exemption From These Rules.

(a) A competitive telecommunications provider may petition the Commission for an exemption, in whole or in part, from these rules.

(b) The Commission may grant an exemption, including but not limited to, the following circumstance: If the Commission determines that effective competition exists in one or more exchange(s), it may exempt all competitive telecommunications providers and telecommunications utilities providing telecommunications services in those exchanges from the requirements of this rule, in whole or in part. In making this determination, the Commission will consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Number of suppliers;

(F) Price to cost ratios;

(G) Demand side substitutability (e.g., customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(c) When a competitive telecommunications provider petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant competitive telecommunications providers and telecommunications utilities providing the applicable service(s) in the exchange(s) in question. The Commission will provide such notified competitive telecommunications providers and telecommunications utilities an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in paragraphs (16)(b)(A) through (H), the commenting competitive telecommunications provider or telecommunications utilities be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) The Commission may grant a competitive telecommunications provider's petition for an exemption from service quality reporting requirements if the competitive telecommunications provider meets all service quality objective service levels set forth in sections (4) through (8) of this rule for the 12 months prior to the month in which the petition is filed.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.030 & 759.050

Hist.: PUC 5-1991, f. & cert. ef. 4-3-91; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 13-2001, f. & cert. ef. 5-25-01; PUC 7-2002, f. & cert. ef. 2-26-02; PUC 10-2005, f. & cert. ef. 12-27-05

#### 860-032-0013

##### Uncertified Telecommunications Providers

(1) No telecommunications provider shall provide telecommunications service to another person for purposes of resale, unless the purchaser has a valid certificate of authority from the Commission to operate as a telecommunications provider.

(2) No telecommunications provider shall purchase telecommunications service, for purposes of resale, from another person, unless the seller has a valid certificate of authority from the Commission to operate as a telecommunications provider.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020 & 759.050

Hist.: PUC 5-1991, f. & cert. ef. 4-3-91; PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00

#### 860-032-0015

##### Cancellation or Suspension of a Telecommunications Provider's Certificate

(1) The Commission may cancel or suspend a certificate of authority to provide telecommunications service upon a finding that:

(a) The certificate holder intentionally filed an application containing incomplete, inaccurate, false, or misleading information or otherwise misrepresented the services or territory the applicant intends to serve, the applicant's ownership, affiliates of the applicant, or the applicant's assets or other information presented to the Commission;

(b) The certificate holder has failed to comply with the terms and conditions of the certificate;

(c) The certificate holder intentionally provided to the Commission incomplete, inaccurate, false, or misleading information; or

(d) The certificate holder failed to pay the annual PUC fee, as required by OAR 860-032-0095.

(2) If the Commission finds a telecommunications provider has violated section (1) of this rule, the Commission may, by order, can-

cel or suspend the authority in its entirety or the authority to provide a particular service. Upon suspension or cancellation, the telecommunications provider shall be prohibited from providing the services specified in the order.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 756.320, 759.020 & 759.050

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 9-2001, f. & cert. ef. 3-21-01

#### 860-032-0020

##### Abandonment of Service

(1) For the purpose of this rule:

(a) "Abandon" means to discontinue or cease providing.

(b) "Commission" means the Public Utility Commission of Oregon.

(c) "Exiting provider" means a telecommunications provider, which intends to abandon a telecommunications service.

(d) "Grandfather" means to discontinue or cease offering a service to new customers and to continue offering the service to existing customers.

(e) "Oregon Emergency Management" means the Technology and Operations Section, Oregon Emergency Management, Department of State Police, in Salem, Oregon.

(f) "Receiving provider" means a telecommunications provider, which receives or acquires customers for a service being abandoned by an exiting provider. A receiving provider may be a telecommunications utility, a telecommunications cooperative, or a competitive provider.

(g) "Receiving telecommunications utility" means a telecommunications utility, which is a receiving provider.

(h) "Receiving competitive provider" means a competitive provider, which is a receiving provider.

(i) "Regulated service" means a telecommunications service provided by a telecommunications utility which is not an exempt service as defined in OAR 860-032-0001.

(j) "Starting date" means the day a telecommunications utility may lawfully disconnect service to an exiting provider or the date a telecommunications utility knows that an exiting provider ceases providing service, whichever comes first.

(k) "Sunset date" means the day a telecommunications provider will abandon a grandfathered service being provided to existing customers.

(l) "Through service" has the same meaning as in OARs 860-022-0003 and 860-034-0015.

(2) Except as specified in section (3) of this rule, this rule applies:

(a) When a telecommunications utility or competitive provider abandons any intrastate telecommunications service; and

(b) When a telecommunications cooperative abandons any through service.

(3) This rule does not apply:

(a) When a telecommunications utility or cooperative transfers control of its operations, for any or all of its service area in Oregon, to another telecommunications utility or cooperative, under ORS 759.375 to 759.390 or 759.500 to 759.570;

(b) When a telecommunications provider replaces a telecommunications service with a substantially similar service; and

(c) When a telecommunications provider disconnects service to an individual customer at the customer's request or for cause, including non-payment.

(4) This rule does not relieve telecommunications providers of any requirements imposed by the Federal Communications Commission (FCC), including FCC anti-slamming rules and 47 Code of Federal Regulations, Section 63.71.

(5) Notifications required by this rule shall include the following at a minimum:

(a) Name of the exiting provider;

(b) Address and telephone number where the public, customers, Commission staff, and affected telecommunications providers may contact the exiting provider for information regarding the abandonment;

(c) Description of telecommunications services to be abandoned;

(d) Identification of geographic areas where the services will be abandoned;

(e) Date the service(s) will be abandoned;

(f) If applicable, a statement whether customers of the service(s) to be abandoned will be converted to different service(s) offered by the exiting provider, and if so, what customers must do to be converted to the different service(s);

(g) If applicable, a statement that all customers will be automatically transferred to a specified receiving provider unless they disconnect or obtain service from another provider. The exiting provider must identify the receiving provider to which customers will be transferred;

(h) If the exiting provider intends to transfer customers to a specified receiving competitive provider and the receiving competitive provider will not accept all customers, a statement that customers may or will lose their service unless they obtain services from a provider of their choice. The exiting provider must provide reasonable means for each customer to determine whether he or she will be accepted by the receiving competitive provider;

(i) If applicable, a statement that service will be abandoned and that customers must obtain the service(s) to be abandoned from another provider;

(j) An explanation of how customers may receive a refund of payments or deposits for service they will not receive because of the abandonment; and

(k) An electronic document containing the notice in a format suitable for posting on the Commission website. The Commission will post such notification within two business days of receipt from the exiting carrier.

(6) In addition to other notifications required by this rule, the following notifications are also required at the same time the exiting provider files notice with the Commission. Notifications here required shall include the information required by section (5) of this rule plus the information specified in subsections (6)(a) or (6)(b) of this rule.

(a) An exiting provider that intends to abandon any service which allows access to the emergency 9-1-1 reporting system shall:

(A) Mail notification to Oregon Emergency Management, which notification shall include the number of customers affected by the proposed abandonment of service;

(B) Provide access to its customer records in the Enhanced 9-1-1 database(s), so that other telecommunications providers can update those customer records; and

(C) Send a letter to the appropriate Enhanced 9-1-1 database provider(s), with copies to the incumbent local exchange carrier(s), the Commission and Oregon Emergency Management, authorizing the Enhanced 9-1-1 database provider(s) to allow access by other telecommunications providers to any remaining Enhanced 9-1-1 database records belonging to the exiting provider, after the exiting provider has abandoned the service.

(b) An exiting provider that intends to abandon service so that it will no longer use a central office code or a thousands block of numbers (i.e., an NXX or an NXX-X) shall notify the North American Numbering Plan Administrator and the national administrator of the Local Exchange Routing Guide.

(7) A telecommunications utility that intends to abandon any regulated service, whether throughout its service territory or in limited geographic areas, for which there are current customers, shall:

(a) Petition the Commission for authority to abandon the service. The petition shall be filed at least 90 days before the telecommunications utility intends to abandon the service. If the Commission does not deny the petition or set it for hearing within 90 days after receiving the petition, it shall be deemed approved;

(b) Mail a notification to each affected customer and to each telecommunication provider affected by the proposed abandonment at the same time it files the petition with the Commission. The notification shall include the information required by section (5) of this rule. In addition, the notification shall include a statement that upon request from affected customers or providers the Commission may, but is not required to, deny the petition or set it for hearing;

(c) File with the Commission a copy of the notification at the same time it mails the notification and files the petition. In addition, the telecommunications utility shall inform the Commission of the number of customers and the number of other providers affected by the proposed abandonment;

(d) Demonstrate that the abandonment will not deprive the public of necessary telecommunications services. The telecommunications

utility shall reinstate service at the Commission's request to prevent the public from being deprived of necessary services; and

(e) Obtain Commission approval before transferring customers to other telecommunications providers. If the telecommunications utility seeks such approval, it shall include in the petition to abandon service a request for approval to automatically transfer customers.

(8) A telecommunications utility may request to abandon a regulated service for which there are no current customers by filing a tariff change which deletes the regulated service along with a cover letter or advice letter which clearly and explicitly discloses which regulated service the telecommunications utility proposes to abandon.

(9) A telecommunications utility that intends to abandon any exempt service, whether throughout its service territory or in limited geographic areas, for which there are current customers, shall comply with the following:

(a) At least 90 days before abandoning the service the telecommunications utility shall mail to each affected customer and to each telecommunication provider affected by the proposed abandonment, a notification of its intent to abandon the service. The notification shall include information required by section (5) of this rule;

(b) At the time the telecommunication utility mails notification to affected customers, it shall file a copy of the notification with the Commission. In addition, the telecommunications utility shall inform the Commission of the number of customers and the number of other providers affected by the proposed abandonment; and

(c) The telecommunications utility may, after complying with subsections (9)(a) and (9)(b) of this rule and subject to section (12) of this rule, transfer customers of its exempt service to another telecommunications provider, including an affiliated provider, without requiring affirmative approval from affected customers.

(10) A telecommunications cooperative that intends to abandon any through service, whether throughout its service territory or in limited geographic areas, shall:

(a) Petition the Commission for authority to abandon the service. The petition shall be filed at least 90 days before the telecommunications cooperative intends to abandon the service. If the Commission does not deny the petition or set it for hearing within 90 days after receiving the petition, it shall be deemed approved;

(b) Mail a notification to each affected customer and to each telecommunication provider affected by the proposed abandonment at the same time it files the petition with the Commission. The notification shall include the information required by section (5) of this rule. In addition, the notification shall include a statement that upon request from affected customers or providers the Commission may, but is not required to, deny the petition or set it for hearing;

(c) File with the Commission a copy of the notification at the same time it mails the notification and files the petition. In addition, the telecommunications cooperative shall inform the Commission of the number of customers and the number of other providers affected by the proposed abandonment;

(d) Demonstrate that the abandonment will not deprive customers of necessary telecommunications services. The telecommunications cooperative shall reinstate service at the Commission's request to prevent customers from being deprived of necessary services; and

(e) Obtain Commission approval before transferring customers to other telecommunications providers. If the telecommunications cooperative seeks such approval, it shall include in the petition to abandon service a request for approval to automatically transfer customers.

(11) A competitive provider that intends to abandon any or all services, whether throughout its service territory or in limited geographic areas, for which there are current customers, shall comply with the following:

(a) At least 90 days before abandoning service the competitive provider shall mail to each affected customer, and to each telecommunications provider affected by the proposed abandonment, a notification of its intent to abandon the service(s). The notification shall include information required by section (5) of this rule;

(b) At the time it mails notification to affected customers, the competitive provider shall file a copy of the notification with the Commission. In addition, the competitive provider shall inform the Commission of the number of customers and the number of other providers affected by the proposed abandonment; and

(c) The competitive provider may, after complying with subsections (11)(a) and (11)(b) of this rule and subject to sections (12) and

(13) of this rule, transfer customers to another telecommunications provider, including an affiliated company, without requiring affirmative approval from affected customers.

(12) Notwithstanding OAR 860-021-0009 or 860-034-0030, an exiting provider may transfer customers of an abandoned service to a receiving telecommunications utility without the customers applying to the receiving telecommunications utility for service only under all the conditions listed below. The exiting provider may be an affiliate of the receiving telecommunications utility:

(a) The receiving telecommunications utility must enter into a written agreement with the exiting provider to accept all the exiting provider's customers with service locations within the receiving telecommunications utility's local exchange service area;

(b) The exiting provider must provide at least a 90 day notice to its customers that it intends to abandon service, as provided in section (11) of this rule;

(c) The notice must comply with section (5), including subsection (5)(g), of this rule to ensure that:

(A) Customers are notified that they may apply to another telecommunications provider for the service which is being abandoned; and

(B) Customers are notified that if they do not act to obtain service from another telecommunications provider, then the exiting provider will automatically transfer them to the receiving telecommunications utility for the service which is being abandoned.

(d) Customers may be automatically transferred to a receiving telecommunications utility only if their service location is within that utility's local exchange service area;

(e) The receiving telecommunications utility shall accept all customers of the exiting provider who are automatically transferred and shall provide to those customers the service being abandoned; and

(f) After the transferred customers become customers of the receiving telecommunications utility, they shall be treated equally as similarly situated customers.

(13) When an exiting provider fails to provide to its customers adequate notice that it intends to abandon service, as provided in section (11) of this rule, and when the exiting provider is either reselling finished, regulated, intraexchange services of a telecommunications utility, or the exiting provider is selling combinations of unbundled network elements equivalent to a finished, regulated, intraexchange service furnished by the telecommunications utility, the following conditions apply:

(a) Notwithstanding OAR 860-021-0009 or 860-034-0030, the underlying telecommunications utility may, at its option, continue providing service to the exiting provider's customers, for not more than 45 calendar days from the starting date, without those customers first applying for service from the telecommunications utility. For purposes of this section (13) of this rule, those customers shall be defined as potential applicants for service from the telecommunications utility; and

(b) If the telecommunications utility chooses to continue service to the potential applicants, the following apply:

(A) The telecommunications utility shall apply the same procedures to all potential applicants;

(B) The telecommunications utility shall accept and process applications pursuant to administrative rules in chapter 860, division 021 or chapter 860, division 034;

(C) If an application is accepted, then the telecommunications utility may charge the applicant, who is now a customer of the telecommunications utility, for service provided as of the starting date;

(D) If an application is rejected, then the telecommunications utility shall disconnect the applicant's service; and

(E) If a potential applicant does not apply for service within 45 days from the starting date, then telecommunications utility shall disconnect service immediately. For good and sufficient reason, the Commission may grant the telecommunications utility an extension of this time period.

(14) If an exiting provider abandons service, with or without adequate notice to its customers, a telecommunications utility or a competitive provider may not have resources or facilities in place sufficient to accept and serve all customers whose service is being abandoned. Upon application from those customers for service, the telecommunications utility shall provide service to them as soon as possible. However, under the circumstances described in this section (14) of this

rule, the Commission's intent is that a telecommunications utility or competitive provider not be penalized for failing to meet the applicable standards for held orders set forth in OARs 860-023-0055, 860-032-0012, or 860-034-0390. Therefore, in cases where an exiting provider abandons service, the telecommunications provider that intends to provide service may petition the Commission for relief from requirements of applicable Commission rules.

(15) The following provisions apply when a telecommunications utility grandfathers a regulated service or a telecommunications cooperative grandfathers a through service:

(a) Grandfathering a service without a sunset date is not considered abandonment of service.

(b) If a telecommunications utility intends to grandfather a regulated service, without a sunset date, whether throughout its service territory or in limited geographic areas, it shall file a tariff which designates the service as grandfathered. Normal tariff filing and review requirements applicable to the telecommunications utility and the grandfathered service apply.

(c) When a telecommunications utility intends to grandfather any regulated or exempt service, with a sunset date, whether throughout its service territory or in limited geographic areas, that grandfathering shall be considered abandonment of service subject to this rule.

(d) If a telecommunications cooperative intends to grandfather a through service, without a sunset date, whether throughout its service territory or in limited geographic areas, it shall petition the Commission for authority to grandfather the through service. If the Commission does not deny the petition or set it for hearing within 60 days after receiving the petition, it shall be deemed approved.

(e) When a telecommunications cooperative intends to grandfather a through service, with a sunset date, whether throughout its service territory or in limited geographic areas, then that grandfathering shall be considered abandonment of service subject to this rule.

(16) For good and sufficient reason, the Commission may grant a petition to waive any time period or requirement in this rule.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.035 & 759.050

Hist. PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 1-2003, f. & cert. ef. 2-12-03

## 860-032-0023

### Price List Petitions

(1) When submitting a petition for price listing pursuant to ORS 759.195, the telecommunications utility shall submit a list of the services deemed to be essential and a list of the remaining services. The telecommunications utility shall provide the following information:

(a) A description of each price-listed service; and

(b) Any proposed maximum price to be charged for the price-listed service and the basis upon which this price has been established.

(2) The petition shall demonstrate that the following conditions have been met:

(a) Pricing flexibility is reasonably necessary to enable the telecommunications utility to respond to current and future competitive conditions for any or all telecommunications services;

(b) Pricing flexibility will maintain the appropriate balance between the need for price flexibility and the protection of customers and applicants;

(c) Pricing flexibility is likely to benefit the customers of fixed-rate services;

(d) Pricing flexibility is unlikely to cause any undue harm to any customer class; and

(e) The rate for the service is not lower than the long-run incremental cost of providing the service.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.030 & 759.190

Hist.: PUC 18-1988, f. & cert. ef. 12-29-88 (Order No. 88-1522); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 15-2001, f. & cert. ef. 6-21-01, Renumbered from 860-032-0210

## 860-032-0025

### Petition to Exempt Services from Regulation

(1) Upon petition by a telecommunications utility and upon notice and hearing, except as provided in section (7) of this rule, the Commission shall exempt a service from regulation in whole or in part, if the Commission finds price and service competition exists.

(2) Upon petition by any person, including a telecommunications utility, and upon notice and hearing, except as provided in section (7) of this rule, the Commission may exempt a service from regulation in whole or in part, if the Commission finds:

- (a) Price or service competition exists;
- (b) The service is subject to competition; or
- (c) The public interest no longer requires full regulation of the service.

(3) Prior to making a finding under sections (1) or (2) of this rule, the Commission shall consider:

- (a) The extent to which services are available from alternative telecommunications providers in the relevant market;
- (b) The extent to which the services of alternative telecommunications providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;
- (c) Existing economic or regulatory barriers to entry; and
- (d) Any other factors deemed relevant by the Commission.

(4) Petitions filed under sections (1) and (2) of this rule shall contain:

- (a) The petitioner's name and address;
- (b) A copy of the petitioner's certificate of authority, if any;
- (c) The service or portion of a service proposed to be exempted from regulation;
- (d) Documentation which demonstrates the petition meets the requirements in sections (1), (2), and (3) of this rule;
- (e) The telecommunications utility's revenues from and costs of providing the service, the long-range incremental cost of the service, the cost allocation to regulated and unregulated activities for future rate-making treatment, and supporting documentation. The information submitted under this paragraph may be submitted in confidence;
- (f) A statement from each joint telecommunications provider of the service that it agrees to the exemption; or
- (g) A statement from the petitioner indicating how the exemption will affect the rates and services of all affected joint telecommunications providers of the service.

(5) The Commission may attach reasonable conditions to an exemption granted under this rule and may amend or revoke any such order under ORS 756.568.

(6) Except as provided in section (7) of this rule, after notice and hearing, and upon a finding that the circumstances under which the service was exempted no longer exists or the public interest requires reregulation of the service, the Commission may reregulate a service which has been exempted under this rule.

(7) If no objections are filed to proposals under sections (1), (2), or (6) of this rule, or with agreement of the parties, the Commission may waive the requirement for hearing.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.030

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 9-2001, f. & cert. ef. 3-21-01

## 860-032-0035

### Petition to Price List Telecommunications Utility Services

(1) Pursuant to ORS 759.030(6), a telecommunications utility may petition the Commission to price list a service. The petition shall contain the following information:

- (a) The name of the petitioner;
- (b) A description of the proposed price-listed service, including the initial price list with the proposed terms and prices of the service;
- (c) Documentation and information to support findings the Commission must make and the criteria the Commission must consider as set forth in sections (4), (5), and (6) of this rule; and
- (d) A statement from:

(A) Each joint telecommunications provider of the service that it agrees to the price list; or

(B) The petitioner indicating how the price list will affect the rates and services of all joint telecommunications providers of the service.

(2) A telecommunications utility seeking to price list a service shall identify other telecommunications providers who provide the service in the same geographic area as does the petitioner.

(3) After notice and investigation, the Commission may, by order, grant a petition to price list a service.

(4) The petition to price list a telecommunications service may be granted, subject to reasonable conditions, if the Commission finds:

- (a) The service is subject to competition; or
- (b) The service is not essential.

(5) Before finding that a service is subject to competition, the Commission shall consider:

(a) The extent to which services are available from alternative telecommunications providers in the relevant market;

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(c) Existing economic or regulatory barriers to entry; and

(d) Any other factors deemed relevant by the Commission.

(6) Before finding that a telecommunications service is "not essential," for purposes of ORS 759.030(6) and section (4)(b) of this rule, the Commission will apply the following criteria:

(a) There is a rebuttable presumption that a service listed in OAR 860-032-0200 is also essential for purposes of ORS 759.030(6) and this rule;

(b) A service required for emergency 9-1-1 calls is essential;

(c) A service is essential if customers require it to efficiently establish, sustain, or discontinue a telecommunications call by means of the public switched network;

(d) A service may be deemed "not essential" only if it is not essential for all customer classes. If a service is found to be essential for one customer class, it shall be considered an essential service, and it shall not be deemed "not essential." Customers include end-users, telecommunications providers, enhanced service providers, and radio common carriers;

(e) If the Commission determines that a service is "not essential," it will be deemed not essential for all areas in Oregon served by the petitioner;

(f) Presence of alternatives to the service will be considered. The presence or absence of alternatives, in and of itself, is not sufficient to determine whether a service is essential;

(g) For telecommunications utilities certified prior to January 1, 1999, there is a rebuttable presumption that a telecommunications service which is first offered after January 1, 1999, is not essential;

(h) For any person certified as a telecommunications utility after January 1, 1999, all services proposed to be offered initially shall be deemed essential. However, the telecommunications utility may, with the application for a certificate of authority or thereafter, petition under this rule to price list some or all of its telecommunications services.

(i) A service is not new if it merely renames, repackages, or is a variation of an existing service; and

(j) There is a rebuttable presumption that a package of telecommunications services is not essential, provided each service within the package is readily available to customers on a separate basis.

(7) The rate set for a price listed service shall not be lower than the long-run incremental cost of providing the service.

(8) The rate set for a package of services must be equal to or greater than the tariffed rate(s) for the essential service(s) plus the long-run incremental cost(s) of the "not essential" service(s) in the package.

(9) Unless the Commission finds the petition is contrary to the public interest, a petition to price list a service shall be granted, subject to reasonable conditions.

(10) After notice and investigation, the Commission may amend or revoke an order price listing a service. The Commission may take such an action upon a finding that the circumstances under which the service was price listed no longer exist, or that the public interest requires that the telecommunications utility's authority to price list a service be changed.

(11) If the Commission authorizes a telecommunications utility to price list a service, the telecommunications utility shall file a price list consistent with the terms of the order. The telecommunications utility may revise the price list by filing revisions with the Commission. Unless otherwise required by the Commission, a price list shall be effective on the date specified by the telecommunications utility. The price list may be effective immediately on filing with the Commission. The procedures in ORS 759.180 to 759.190 do not apply to filing or revising a price list.

(12) The Commission may at any time order a telecommunications utility to appear before the Commission and establish that any

or all of its price listed service rates or terms and conditions are just, reasonable, nondiscriminatory, and in the public interest. After hearing, the Commission may order the telecommunications utility to change the terms and condition or rates of its price listed services. The telecommunications utility may not thereafter change any terms and conditions or rates of price listed services contrary to the terms of the Commission order without approval by the Commission.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 756.040, 759.030, 759.190 & 759.195  
Hist.: PUC 77-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-032-0040

##### Subsidies for Telecommunications Service

(1) Before determining the need for or the sources of a subsidy to telecommunications providers, the Commission shall investigate and hold hearings. The Commission shall consider:

(a) The need to secure and maintain high-quality universal telecommunications service at just and reasonable rates for all customer classes;

(b) The need to encourage innovation through a balanced program of regulation and competition; and

(c) The effect of changing technology on pricing methods.

(2) Any person may petition the Commission to require telecommunications providers to subsidize services provided by a telecommunications utility.

(3) The Commission shall, by order, identify the revenue source of any fund needed to provide the subsidy and prescribe the manner of collection and distribution of the fund.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 756.040, 759.015 & 759.030  
Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 9-2001, f. & cert. ef. 3-21-01

#### 860-032-0045

##### Petitions for Alternative Access by Customers of Shared Telecommunications Service Providers

(1) Any person whose only access to local exchange telecommunications service is a shared service provider may petition the Commission for an order requiring the shared service provider to make available to the petitioner alternative facilities or conduit space at reasonable terms, conditions, and prices for the purpose of establishing alternative access to local exchange telecommunications service.

(2) The petition shall include:

(a) The name and address of the petitioner;

(b) The name and address of the shared service provider;

(c) The type of services required by the petitioner; and

(d) The petitioner's statement indicating a willingness to pay a reasonable fee to the shared service provider for alternative access.

(3) The shared service provider shall establish one or more points of interconnection to provide alternative access as a result of a petition under this rule. A point of interconnection is a location where facilities of the shared service provider may be connected to the facilities of a telecommunications utility or competitive telecommunications provider. The Commission will determine appropriate points of interconnection as necessary in the course of considering a petition for alternative access.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 759.030  
Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 13-1998, f. & cert. ef. 7-7-98; PUC 9-2001, f. & cert. ef. 3-21-01

#### 860-032-0050

##### Petition for a Declaratory Ruling that a Service Is Not Subject to Regulation

Any person may file a petition requesting a ruling whether a service is subject to regulation by the Commission. The petition shall contain the following information:

(1) The petitioner's name, address, and telephone number;

(2) A detailed description of the service on which the ruling is requested;

(3) The legal basis under which the petitioner contends that the service is, or is not, subject to regulation, including citations to rele-

vant state and federal statutes, court decisions, or orders of the Federal Communications Commission or the Commission;

(4) The names and addresses of any joint telecommunications providers of the service; and

(5) The rate schedules or price lists affected.

Stat. Auth.: ORS

Stats. Implemented: ORS 756.040 & 756.450

Hist.: PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00

#### 860-032-0060

##### Reporting Requirements for Telecommunications Providers

The purpose of this rule is to provide the Commission with accurate information in order to carry out the Legislative policy of ORS 759.015.

(1) The books and records of all telecommunications providers shall be open to the Commission and subject to audit to the extent needed to verify required reports.

(2) Annual report — form and filing date:

(a) Competitive providers — On forms provided by the Commission, each competitive provider, including shared service providers, shall submit an annual report before April 1, containing data required by section (3) of this rule related to its operations for the preceding calendar year.

(b) Telecommunications utilities — Telecommunications utilities shall submit annual reports as required by OARs 860-027-0070 or 860-034-0395.

(c) Cooperatives — Cooperatives shall submit annual reports as required by OAR 860-034-0750. Each cooperative that does not file an annual report pursuant to OAR 860-034-0750 shall submit an annual report before April 1, on forms provided by the Commission, containing data required by section (3) of this rule related to its operations for the preceding calendar year.

(3) Annual report — contents:

(a) Exact legal business name, street address, mailing address, and telephone number; and

(A) Name, address, telephone number, and position of the person who is the contact for the Commission and its staff; and

(B) Name, address, telephone number, and position of the person who is the contact for the general public;

(b) Other names used in Oregon, including Assumed Business Names, "Doing Business As" names, and "Also Known As" names;

(c) Former names used in Oregon during the past three calendar years;

(d) Interests, as defined by OAR 860-032-0001(15), which are affiliated with the telecommunications provider and which are authorized to provide service, or are actually providing service, in Oregon;

(e) Areas in Oregon served;

(f) Types of telecommunications services provided;

(g) How the services are provided, whether by resale, the telecommunications provider's own facilities, use of building blocks (unbundled network elements), or a combination of the above; and

(h) As applicable: number of customers, number of lines, originating conversation minutes, percent of conversation minutes which are intrastate and percent which are interstate, and revenue from Oregon operations.

(4) If the Commission receives a public records request for information submitted pursuant to subsection (3)(h) of this rule, the Commission shall assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure. The material shall be marked "EXEMPT FROM PUBLIC DISCLOSURE AS TRADE SECRETS." Subject to the applicable requirements of the Public Records Law or ORS 759.060, access to this material shall be limited to Commissioners, their Counsel, and Commission staff. The materials shall be segregated and maintained in a locked file.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 756.105, 759.020 & 759.050

Hist.: PUC 17-1988, f. & cert. ef. 11-15-88 (Order No. 88-1306); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 10-1998, f. & cert. ef. 4-28-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 26-2001, f. & cert. ef. 11-5-01

**860-032-0070**

**Confidential Information Submitted by Local Exchange Telecommunications Utilities and Cooperatives**

(1) Except as provided in section (2) of this rule, the following information, submitted or filed with the Commission by a local exchange telecommunications utility or cooperative, in any form including magnetic, electronic, and paper media, is exempt from disclosure because the Commission has determined that such information could potentially be used to the competitive disadvantage of the telecommunications utility or cooperative:

- (a) Company-specific cost studies and traffic studies and Form I, except the income statement and the rate base summary of that form;
- (b) Detailed company-specific and service-specific information;
  - (A) Annual charge factors;
  - (B) Demand data, including minutes of use; and
  - (C) Market segment data.
- (c) Company-specific and service-specific forecasts submitted in support of price-listed services;
- (d) Company-specific cost and price data related to unregulated services;
- (e) Income tax returns and supporting information;
- (f) Affiliated companies' financial results of operations, including pricing information, that are not otherwise available to the public;
- (g) Customer opinion surveys that are company-specific or that have been purchased by a telecommunications utility or cooperative;
- (h) Market studies and plans that are company-specific or that have been purchased by a telecommunications utility or cooperative;
- (i) Bid, vendor, or contract information, including affiliated interest contracts, that contains specific cost and price information; and
- (j) Facility maps, engineering diagrams, and other technical information describing the network, system, and facilities of a telecommunications utility or cooperative.

(2) The Commission may determine, on a case-by-case basis, whether information of a type not listed in section (1) of this rule, submitted or filed with the Commission by a local exchange telecommunications utility or cooperative, in any form including magnetic, electronic, and paper media, is exempt from disclosure if such information could potentially be used to the competitive disadvantage of the telecommunications utility or cooperative.

(3) Except as provided in section (4) of this rule, the following information, submitted or filed with the Commission by a local exchange telecommunications utility or cooperative, in any form, including magnetic, electronic, and paper media, is exempt from disclosure because the Commission has determined that such information concerns matters of a personal nature to an employee or stockholder of the utility or an employee or member of the cooperative: Information exempt from disclosure under ORS 192.502(2).

(4) The Commission may determine, on a case-by-case basis, whether information of a type not listed in section (1), submitted or filed with the Commission by a local exchange telecommunications utility or cooperative, in any form including magnetic, electronic, and paper media, is exempt from disclosure if such information concerns matters of a personal nature to an employee or stockholder of the utility or an employee or member of the cooperative.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 2-1997, f. & ef. 1-7-97; PUC 10-1998, f. & cert. ef. 4-28-98

**860-032-0080**

**Definition of Gross Retail Intrastate Revenue for Purposes of Annual Fees Payable to the Commission by a Telecommunications Provider**

"Gross retail intrastate revenue" means the total amount derived from intrastate retail service before uncollectibles or expenses. Gross retail intrastate revenues shall be accrued in accordance with generally accepted accounting principles during the calendar year. For purposes of determining the annual fees payable to the Commission by telecommunications providers under OARs 860-021-0036, 860-032-0095, and 860-034-0095:

(1) "Gross retail intrastate revenue" includes all revenue paid by or on behalf of a final customer for the following services: Centrex; directory and operator services including yellow pages; extended area service; features and advanced services including custom calling, vertical service, custom local area signaling service, market expansion lines, remote call forwarding, toll restriction, and voice messaging;

interexchange and long distance services when the call or signal originates and terminates in Oregon; and local service including subscriber line charge and universal service fund (USF) distributions from the federal USF, Oregon USF, and Residential Service Protection Fund.

(2) "Gross retail intrastate revenue" excludes revenue from the following services: carrier billing and collection; carrier access; interstate interexchange and long distance services; internet service; pay-phone service sold to an end user; installation, maintenance, repair, lease rental, or sale of telecommunications equipment; and when provided by a radio common carrier: cellular, personal communications systems (PCS), radio paging, or other radio communications services.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.310

Hist.: PUC 13-1999, f. & cert. ef. 12-7-99; PUC 9-2001, f. & cert. ef. 3-21-01

**860-032-0090**

**Allocation of Revenues by a Telecommunications Provider**

(1) Each telecommunications provider shall allocate total Oregon revenues between gross retail intrastate revenues from telecommunications services and other revenues for each subject year.

(2) Each telecommunications provider shall maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services for each subject year.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.310

Hist.: PUC 13-1999, f. & cert. ef. 12-7-99

**860-032-0095**

**Annual Fees Payable to the Commission by a Competitive Provider**

(1) On statement forms prescribed by the Commission, each competitive provider must provide the requested information for the subject year.

(2) Each competitive provider must pay to the Commission:

(a) An annual fee of no less than \$100. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the gross retail intrastate revenue during the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the competitive provider's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350 and OAR 860-032-0008(1).

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the competitive provider.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) Each competitive provider must:

(a) Collect the annual fee by charging an equitable amount to each retail customer, using apportionment methods that are consistently applied by the competitive provider through Oregon, and

(b) Describe the amount of the apportioned charge upon each retail customer's bill.

(5) Each competitive provider must:

(a) Maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services, as defined in OAR 860-032-0080;

(b) Follow the revenue allocation procedures in OAR 860-032-0090; and

(c) Make its revenue accounting records available to the Commission upon the Commission's request. A competitive provider must keep all records supporting each statement form for three (3) years, or until a Commission review or audit is complete, whichever is later.

(6) For any year in which a competitive provider's statement form was due, the Commission may audit the competitive provider as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three years after the statement form's due date. However, if the competitive provider failed to obtain a certificate of authority, an audit may occur at any time.

(b) If the Commission determines that the competitive provider has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the competitive provider has overpaid its annual fee, the Commission may, at its discretion, recompense the competitive provider with a refund or a credit against annual fees subsequently due.

(7) If the Commission receives a public record request for the confidential information required by this rule, the Commission may assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure.

(8) A cooperative that is a competitive provider must pay an annual fee only on the gross retail intrastate revenue from telecommunications services that are provided under the cooperative's ORS 759.020 certificate of authority. A cooperative should not pay an annual fee on revenue from telecommunications services that are provided under the cooperative's ORS 759.025 certificate of authority.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 13-1999, f. & cert. ef. 12-7-99; PUC 8-2003, f. & cert. ef. 4-28-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-032-0097

##### Estimated Annual Fees Payable to the Commission

(1) For any year in which a competitive provider fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-011-0080; and

(c) Be made no later than three (3) years after the statement form's due date. However, if the competitive provider failed to obtain a certificate of authority, an audit may occur at any time.

(2) The Commission must provide written notice of the proposed annual fee to the competitive provider.

(3) Within 30 days after service of the notice of proposed annual fee, the competitive provider may file a petition with the Commission for a hearing. In its petition, the competitive provider must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the competitive provider has not filed a petition by the end of the 30-day period, the proposed annual fee is due and payable.

(5) During the 30-day period allowed for filing a petition, the competitive provider may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 8-2003, f. & cert. ef. 4-28-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-032-0100

##### Collective Consideration of Oregon Intrastate Rate, Tariff, or Service Proposals

(1) Local exchange telecommunications utilities, unincorporated associations, and cooperative corporations may become members of the Oregon Exchange Carrier Association, Inc. The Association's rules of procedure shall be subject to approval by the Commission. The Association's rules of procedure shall provide for joint or collective consideration of proposals for changes in intrastate rates, tariffs, or conditions of service. The Association may file petitions and publish tariffs and may represent its members before the Commission. Membership in the Association by a local exchange telecommunications utility providing toll service shall be subject to approval by the Commission.

(2) All telecommunications rates, fares, charges, classifications, rules, and regulations governing the practices and services of local exchange telecommunications utilities, unincorporated associations, and cooperative corporations who are subject to ORS 759.225 shall be filed with the Commission. Changes in all tariffs shall be submitted to the Commission subject to all the procedural requirements and protections presently associated with utility filings before the Commission.

(3) The Association shall not discourage independent proposals of members to be filed directly with the Commission, nor oppose at hearings any independent proposal of a member or nonmember telecommunications provider.

(4) The Commission has the authority to supervise the activities of the Association. However, such supervision and advice shall not compromise the independent evaluation of any proposal that must be submitted to the Commission for final approval.

(5) To the extent that the Association is involved in the collection and redistribution of funds pursuant to Commission orders authorizing certain revenue sharing arrangements under common tariff, the Association shall maintain and provide to the Commission, in a timely manner, monthly and annual financial reports. These reports shall include:

(a) Budgetary estimates and forecasts for the fund administrator and all fund collections and distributions to each member local exchange carrier and the basis upon which the collection and distribution are budgeted;

(b) Actual expenditures of the fund administrator;

(c) Actual fund collections and distributions to each member local exchange carrier and the bases upon which the collection and distribution are made; and

(d) Budget-to-actual tracking reports for the fund administrator and for fund collections and distributions for each member local exchange carrier.

(6) Activities taken pursuant to this rule are deemed to be an integral and necessary part of state regulation of telecommunications service in Oregon and are in the public interest.

(7) The Association shall adopt rules to provide for broad participation by its members, interested persons, and nonmember telecommunications providers in its deliberations. The rules shall provide procedures for notifying members and other persons of Association meetings and for providing meeting agendas to such persons.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 759.225

Hist.: PUC 19-1986(Temp), f. & ef. 12-15-86 (Order No. 86-1253); PUC 7-1987, f. & ef. 9-16-87 (Order No. 87-955); PUC 2-1998, f. & cert. ef. 2-24-98; PUC 10-1998, f. & cert. ef. 4-28-98; PUC 9-2001, f. & cert. ef. 3-21-01

#### 860-032-0190

##### Definition of Basic Telephone Service

(1) Purpose of rule. This rule defines the term "basic telephone service" pursuant to Ch. 1093, Laws of 1999 (SB 622), Section 23(1), as the term is used in Ch. 1093, Laws of 1999 (SB 622), Sections 23 through 38.

(2) "Basic telephone service" means retail telecommunications service that is single party, has voice grade or equivalent transmission parameters and tone-dialing capability, provides local exchange calling, and gives customers access to but does not include:

(a) Extended area service (EAS);

(b) Long distance service;

(c) Relay service for the hearing and speech impaired;

(d) Operator service such as call completion assistance, special billing arrangements, service and trouble assistance, and billing inquiry;

(e) Directory assistance; and

(f) Emergency 9-1-1 service, including E-9-1-1 where available.

(3) The following are classified as basic telephone service, whether sold separately or in a package:

(a) Residential single party flat rate local exchange service;

(b) Business single party flat rate local exchange service, also known as "simple" business service;

(c) Residential single party measured local exchange service, including local exchange usage;

(d) Business single party measured local exchange service, including local exchange usage;

(e) Private branch exchange (PBX) trunk service;

- (f) Multiline or “complex” business service; and
  - (g) Public access line (PAL) service.
- (4) Services that are not considered basic telephone service include but are not limited to the following:
- (a) Integrated Services Digital Network (ISDN) service;
  - (b) Digital subscriber line service, also known as xDSL service;
  - (c) Frame relay service;
  - (d) Centrex-type service;
  - (e) Private line or dedicated point-to-point service;
  - (f) Packet switched service;
  - (g) Foreign exchange service;
  - (h) Multiparty service, such as two-party and four-party suburban service; and
  - (i) Custom calling features, such as call waiting and caller ID.
- Stat. Auth.: ORS 183, 756 & 759  
 Stats. Implemented: ORS 759.005 & 759.400  
 Hist.: PUC 15-1999(Temp), f. 12-15-99, cert. ef. 12-30-99 thru 6-26-00; PUC 11-2000, f. & cert. ef. 5-31-00; PUC 15-2001, f. & cert. ef. 6-21-01, Renumbered from 860-032-0260

#### 860-032-0200

##### Essential Services

(1) For purposes of ORS 759.195, a local exchange service is essential if customers require it to efficiently establish, sustain, or discontinue a telecommunications service by means of the public network. The public network is comprised of a system of interconnected telecommunications channels held out by a local exchange carrier for use by the general public.

(2) A local exchange service is essential if the service is essential for one or more local customer classes.

(3) If essential and potentially price-listed services are packaged together, the entire package is eligible to be considered for price listing if each essential service in the package is readily available to customers on a separate basis and the package price is equal to or greater than the tariffed rate(s) for the essential service(s) plus the long-run incremental cost(s) of the price-listed service(s).

(4) Any new service is presumed to be potentially price listed until the Commission determines otherwise. A service is not new if it merely repackages or renames an existing service.

(5) A service can only be discontinued pursuant to OAR 860-032-0020, whether the service is essential or potentially price listed.

(6) The following are essential services:

- (a) Residential Flat;
- (b) Residential Measured;
- (c) Residential Multiparty;
- (d) Suburban;
- (e) Farmer Line;
- (f) Business Simple;
- (g) Business Complex;
- (h) Public Access Line;
- (i) Tone Dialing (Touch Tone);
- (j) Hunting;
- (k) Direct Inward Dialing;
- (l) Conditioning;
- (m) Intercept Announcement and Referral;
- (n) Directory Listing (White and Yellow Pages);
- (o) Privacy Listing;
- (p) Directory Assistance;
- (q) Emergency (9-1-1);
- (r) Switched Access Service; and
- (s) Toll Restriction.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.1905

Hist.: PUC 18-1988, f. & cert. ef. 12-29-88 (Order No. 88-1522); PUC 1-1994, f. & cert. ef. 1-5-94 (Order No. 94-040); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 2-1999, f. & cert. ef. 8-10-99

#### 860-032-0220

##### Application for Service by Unserved Person

(1) Applications under ORS 759.590 for an order of the Commission directing another telecommunications utility to provide local exchange service to an unserved person shall contain the following information:

(a) The name, address (both a physical address to which service is requested and a mailing address), and telephone number (if any) of the applicant or unserved person.

(b) The name of the telecommunications utility in whose service territory the applicant is located, if known.

(c) The name of the telecommunications utility who is willing to provide local exchange service to the applicant, if any.

(d) Such information and supporting data needed for the Commission to make the findings described in ORS 759.595(1), including, if known:

(A) The line extension charges or other facilities installation charges estimated by the telecommunications utility in whose territory the applicant is located; and

(B) The line extension charges or other facilities installation charges estimated by the telecommunications utility from which the applicant seeks local exchange service.

(2) The application shall be signed by the applicant, or the applicant’s agent or attorney.

(3) An original and two copies of the application shall be filed with the Commission.

(4) The applicant shall mail or otherwise serve a copy of the application on the telecommunications utility in whose territory the applicant is located and the telecommunications utility from which the applicant seeks local exchange service.

(5) The Commission shall, upon request of the applicant or any telecommunications utility affected by granting the application, hold a hearing to determine whether the application should be granted. Also, the Commission may hold such a hearing on its own initiative.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.580, 759.585, 759.590 & 759.595

Hist.: PUC 5-1993, f. & cert. ef. 2-19-93 (Order No. 93-184); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00

#### 860-032-0230

##### Pay Telephones

(1) This rule does not apply to pay telephones located within inmate areas of jails, prisons, or similar institutions.

(2) A pay telephone must allow free access to emergency 9-1-1 and must not limit the duration of calls to 9-1-1.

(3) Unless the pay telephone is restricted to local calling:

(a) Access to all available alternative interLATA and intraLATA long distance carriers via 10XXX+0 dialing must be allowed where equal access exists, and

(b) In all areas access to all available alternative interLATA and intraLATA long distance carriers must be allowed via “800” and 950-XXXX numbers.

(4) Pay telephones must carry a label which includes:

(a) The owner and the number to call for reporting problems;

(b) Notification if the pay telephone provider has knowledge of extensions which enable eavesdropping on calls;

(c) The price of a local call;

(d) Any toll or local calling time duration restrictions;

(e) Notification if the pay telephone will reject incoming calls;

(f) The presubscribed interLATA and intraLATA long distance carriers;

(g) Notification that this telephone provides access to all available long distance carriers; and

(h) Notice to dial 9-1-1 for emergencies.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.690

Hist.: PUC 1-1994, f. & cert. ef. 1-5-94 (Order No. 94-040); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 4-2000, f. & cert. ef. 2-9-00

#### Safety and Attachment Standards for Telecommunications Providers

#### 860-032-0410

##### Location of Underground Facilities

A telecommunications provider and its customers shall comply with requirements of OAR chapter 952 regarding the prevention of damage to underground facilities.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 757.542 - 757.562

Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

**860-032-0420**

**Construction, Safety, and Reporting Standards for Telecommunications Providers**

A telecommunications provider shall comply with the construction, safety, and reporting standards set forth in OAR chapter 860, division 024.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stat. Implemented: ORS 757.035  
Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

**860-032-0430**

**Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities**

Pole and conduit attachments shall comply with the rules set forth in OAR chapter 860, division 028.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 757.270 - 757.290 & 759.650 - 759.675  
Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

**Customer Proprietary Network Information**

**860-032-0510**

**Customer Proprietary Network Information (CPNI)**

(1) The purpose of this rule is to specify requirements under which telecommunications carriers may use, disclose, or permit access to customer proprietary network information. This rule does not relieve telecommunications carriers of any requirements imposed by the Federal Communications Commission (FCC) regarding Customer Proprietary Network Information in 47 Code of Federal Regulations (CFR), Part 64, §64.2001 through §64.2009, or by Section 222 of the Communications Act of 1934, as amended (47 USC 222).

(2) This rule applies to all telecommunications carriers providing intrastate telecommunications service in Oregon, except that it applies to telecommunications cooperatives only for services which are subject to the Commission's jurisdiction pursuant to ORS 759.220 and 759.225.

(3) For purposes of this rule, the following definitions apply:

(a) "Aggregate customer proprietary network information" or "Aggregate CPNI" means collective CPNI data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

(b) "Carrier" or "telecommunications carrier" means any provider of intrastate telecommunications service as defined in ORS 759.005(2). "Carrier" or "telecommunications carrier" includes competitive providers, telecommunications cooperatives, and telecommunications utilities

(c) "Customer" means a subscriber, end-user, or consumer of carrier services or an applicant for carrier services.

(d) "Customer proprietary network information" or "CPNI" means individual customer information that a carrier accumulates in the course of providing telecommunications service to the customer. CPNI includes information that relates to type, quantity, technical configuration, destination, location, billing amounts, and usage data. CPNI also includes information contained in bills pertaining to telecommunications service received by a customer, except that CPNI does not include subscriber list information.

(e) "Subscriber list information" means the listed names of subscribers of a carrier and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of establishment of service), or any combination of such listed names, numbers, addresses, or classifications.

(4) Except as required by law or with approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of telecommunications service shall only use, disclose, or permit access to CPNI in its provision of:

(a) The telecommunications service from which such information is derived; or

(b) Services necessary to, or used in, the provision of such telecommunications service, including publishing of directories and billing.

(5) A telecommunications carrier shall disclose CPNI, upon affirmative written request by the customer, to any person designated by the customer.

(6) A telecommunications carrier that obtains CPNI by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate CPNI for any lawful purpose. However, a telecommunications carrier may use, disclose, or permit access to aggregate CPNI other than for purposes described in subsection (4) of this rule only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions, upon reasonable request therefor.

(7) Nothing in this rule prohibits a telecommunications carrier from using, disclosing, or permitting access to CPNI obtained from its customers, either directly or indirectly through its agents:

(a) To initiate, render, bill, or collect for telecommunications services;

(b) To protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

(c) To provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 756.040, 759.015 & 759.030  
Hist.: PUC 3-2004, f. & cert. ef. 1-15-04

**860-032-0520**

**Customer Service Records (CSRs)**

(1) The purpose of this rule is to provide for an exchange of information, in order to ensure that a requesting Local Service Provider (LSP) has enough customer information from the current LSP, so a customer can migrate local exchange service from one LSP to another in a seamless and timely manner, without delays or unnecessary procedures. This rule does not relieve carriers of any requirements imposed by either the Federal Communications Commission (FCC) regarding Customer Proprietary Network Information in 47 Code of Federal Regulations (CFR), Part 64, §64.2001 through §64.2009, or by Section 222 of the Communications Act of 1934, as amended (47 USC 222).

(2) This rule:

(a) Applies to telecommunications carriers without an approved interconnection agreement with the requesting LSP that addresses requirements covered by this rule.

(b) Does not apply to telecommunication cooperatives.

(c) Does not apply to telecommunications carriers with an interconnection agreement with the requesting LSP, which is approved pursuant to OAR 860-016-0020 through 860-016-0030, that addresses requirements covered by this rule.

(3) For purposes of this rule, the following definitions apply:

(a) "Carrier" or "telecommunications carrier" means any provider of intrastate telecommunications service as defined in ORS 759.005(2). "Carrier" or "telecommunications carrier" includes competitive providers and telecommunications utilities.

(b) "Circuit ID" means circuit identification number of a loop.

(c) "Commission" means the Public Utility Commission of Oregon.

(d) "Competitive local exchange carrier" or "CLEC" means a competitive provider as defined in OAR 860-032-0001 that provides local exchange service.

(e) "Customer" means a subscriber, end-user, or consumer of local exchange services or an applicant for local exchange services.

(f) "Customer service record" or "CSR" means the customer's account information, which includes the customer's address, features, services, and equipment.

(g) "Customer proprietary network information" or "CPNI" has the meaning given in OAR 860-032-0510.

(h) "Current LSP" means the LSP from whom a customer receives local exchange service prior to migrating to another LSP. After migration occurs, the current LSP becomes the customer's old LSP.

(i) "Local exchange service" has the meaning given in OAR 860-032-0001.

(j) "Local service provider" or "LSP" means the carrier that interacts directly with the customer and provides local exchange service to that customer. Based on the service configuration, an LSP can also be the NSP. In some cases, the following more specific designations may be used:

(A) "New local service provider" or "new LSP" means the new local service provider after service migration occurs.

(B) "Old local service provider" or "old LSP" means the old local service provider after service migration occurs.

(k) "Local service request" or "LSR" means the industry standard forms and supporting documentation for ordering local exchange services.

(l) "Network service provider" or "NSP" means the company whose network carries the dial tone, switched services and loop(s) to the customer. Based on the service configuration, a NSP can also be the LSP. In some cases the following more specific designations may be used:

(A) "Network service provider-switch" or "NSP-switch" means the provider that provides the dial tone and switched services.

(B) "Network service provider-loop" or "NSP-loop" means the provider of the local loop to the end user premises or other mutually agreed upon point.

(C) "New network service provider" or "new NSP" means the new network service provider after service migration occurs.

(D) "Old network service provider" or "old NSP" means the old network service provider after service migration occurs.

(m) "Requesting LSP" means the LSP whom a customers has authorized to view his/her customer service information. After migration occurs, the requesting LSP becomes the customer's new LSP.

(n) "Resale" means the sale of a local exchange telecommunications service by a CLEC to a customer by purchasing that service from another carrier.

(o) "Transition information" means network information (e.g., circuit ID), identity of the current network service providers (e.g., loop and switch providers), and identity of other providers of services (e.g., E-911 provider, directory service provider) associated with a customer's telecommunications service.

(p) "UNE" means unbundled network element. The following more specific designations may be used.

(A) "UNE-loop" or "UNE-L" means unbundled network element loop.

(B) "UNE-platform" or "UNE-P" means unbundled network element platform.

(4) An LSP may request CSR information for a specific customer from the customer's current LSP. Before requesting a CSR for a specific customer, the requesting LSP must have on file one of the following verifiable forms of customer authorization:

(a) Letter of authorization from the customer to review his/her account;

(b) Third party verification of the customer's consent;

(c) Recording verifying consent from the customer to review his/her account; or

(d) Record of oral authorization given by the customer, which clearly gives the customer's consent to review his/her account.

(5) Every requesting LSP shall retain the customer authorization on file for one year from the date it received such authorization.

(6) A customer's current LSP may not require a copy of the end user's authorization from the requesting LSP prior to releasing the requested CSR. In the event the customer complains or other reasonable grounds exist, the current LSP may request verification of the customer's authorization from the requesting LSP. The parties must attempt to resolve any dispute concerning the validity of the customer's authorization prior to filing a formal complaint with the Commission.

(7) When requesting a CSR, a requesting LSP:

(a) Shall include, at a minimum, the following information:

(A) Customer's telephone number(s);

(B) An indication of customer consent to review the CSR;

(C) How to respond with the CSR information;

(D) The name of the requesting LSP, with contact name and telephone number, for questions about the request;

(E) Date and time the request was sent;

(F) Indication whether circuit ID is requested for UNE-L reuse; and

(G) Indication whether listing information is requested.

(b) May include the following information:

(A) Customer service address;

(B) Customer name;

(C) Tracking number for the request; or

(D) Other applicable information.

(8) Requesting LSPs may transmit CSR requests via facsimile, electronic mail, regular mail, or other agreed-upon means. All carriers must, at a minimum, allow for reception of CSR requests via facsimile.

(9) All carriers should reuse existing UNE-L facilities in lieu of ordering a new UNE-L. A UNE-L shall be considered reusable when the existing circuit or facilities are no longer needed by the old LSP to provide service to the migrating customer or any customer that is currently using those facilities. When requested and reuse of the UNE-L facility is available the current LSP must provide the circuit ID for the requested UNE-L facility to the requesting LSP as part of the CSR response or transition information. Authorization is not required from the old LSP for the new LSP to reuse portions of the network that were provided to the old LSP by a NSP(s), and the old LSP shall not prohibit such reuse. To order the reuse of a UNE-L facility, the new LSP shall furnish the circuit ID on the LSR issued to the existing or new NSP-L.

(10) When responding to a CSR request the current LSP shall provide, at a minimum, the following:

(a) Account level information, including the following:

(A) Billing telephone number and/or account number;

(B) Complete customer billing name and address;

(C) Directory listing information including address and listing type, when requested;

(D) Complete service address (including floor, suite, unit); and

(E) Requesting LSP's tracking number when provided on the CSR request.

(b) Line level information, including the following:

(A) Working telephone number(s);

(B) Current preferred interexchange carrier(s) (PIC) for interLATA and intraLATA toll, including PIC freeze status;

(C) Local freeze status;

(D) All vertical features (e.g., custom calling, hunting) identified in a manner that clearly designates the products and services to which the customer subscribes;

(E) Options (e.g., Lifeline, 900 blocking, toll blocking, remote call forwarding, off-premises extensions), if applicable;

(F) Service configuration information (e.g., resale, UNE-L, UNE-P);

(G) Identification of the NSPs and/or LSPs, when different from the LSP providing the response. This is considered transition information;

(H) Identification of data services or any other services on the customer's line utilizing that UNE-L (e.g., alarm services); and

(I) Circuit ID to be provided when requested and the UNE-L is not being used for other services. This is considered transition information.

(11) If requested, and not provided with the CSR response, the current LSP shall provide transition information, and identify the current provider(s) of various service components to the customer (e.g., loop, directory service) if different from the current LSP. Circuit ID should only be provided by the current LSP when the UNE-L is reusable.

(12) Current LSPs responding to CSR requests may transmit the CSR information by facsimile, electronic mail, electronic data interchange, or by other agreed-upon means. All carriers must, at a minimum, allow for transmission of responses to CSR requests by facsimile. Regular mail may be used if the response is 50 or more pages or if the CSR request was transmitted by regular mail.

(13) Upon the effective date of this rule, current LSPs shall respond to CSR requests within two business days of when the request was received. Six months after the effective date of this rule, current LSPs shall respond to CSR requests within one business day of when the request was received. If the current LSP cannot meet the response requirement for any legitimate reason, such as complex services, the current LSP shall notify the requesting LSP within 24 hours of when the request was received. The notification shall include a legitimate reason for the delay. The current LSP and the requesting LSP shall negotiate in good faith to establish a reasonable time for the current LSP to respond to the request.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.030

Hist.: PUC 3-2004, f. & cert. ef. 1-15-04

**860-032-0610**

**General Provisions**

(1) For the purpose of these rules, each calendar year has four quarters as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

(2) For the purpose of OARs 860-032-0610 through 860-032-0660, the quarterly revenue worksheet identified as “OPUC OUS 2” is known as the “contribution report.”

(3) A telecommunications provider may pay any amounts due to the Public Utility Commission (Commission) by electronic transfer.

(4) The Commission may add all costs incurred in collecting a past-due “Oregon universal service” (OUS) contribution amount. In the event the Commission refers the debt to the Department of Revenue or to a collection agency, the Commission may add to the debt the anticipated amount necessary to generate a net return to the Commission of the amount of the debt.

(5) A telecommunications provider must pay a service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(6) In addition to any other penalty, obligation or remedy provided by law, the Commission may suspend or cancel the telecommunications provider’s certificate of authority to provide telecommunications service in Oregon for its failure to file its contribution report or its failure to pay its contribution amount in full.

(7) Except as otherwise provided by law, if after an audit or review the Commission determines that the telecommunications provider has overpaid its OUS contribution amount, the Commission will provide the telecommunications provider a credit in that amount against sums subsequently due from the telecommunications provider.

(8) In computing any time prescribed or allowed by these rules, the day of the act or event from which the designated time begins to run may not be included. The last day of the time period must be included, unless it is a Saturday or legal holiday, including Sunday, in which event the period runs until the end of the next day that is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02; PUC 18-2004, f. & cert. ef. 12-30-04

**860-032-0620**

**Quarterly OUS Report: Filing and Payment**

(1) For the purpose of the OUS fund, a telecommunications provider shall file its contribution report with the OUS Administrator. The contribution report is due on or before the 10th day of the second month after the close of each three-month quarter (i.e. approximately 40 days after the end of each three-month quarter). A telecommunications provider shall send its contribution report so that it is received in the OUS Administrator’s offices no later than 5 p.m. on the date it is due.

(2) A telecommunications provider shall file the contribution report for each quarter with no exceptions, including when the contribution amount shown on the report is \$0.00.

(3) The amount shown on the contribution report is due and payable by the telecommunications provider on or before the 28th day of the second month after the close of each three-month quarter. Payment shall be made to the Commission. A telecommunications provider shall send payment (electronically or by mail) so that it is received in the Commission’s offices by no later than 5 p.m. on the date it is due.

(4) If the contribution amount is less than \$100, a telecommunications provider may defer payment and accumulate it to the following quarter’s contribution. This accumulation may continue interest-free until either the accumulated amount is greater than \$100 or four quarters have passed from the first deferment, whichever comes first.

(5) If a telecommunications provider fails to file a contribution report as required by these rules, the Commission shall impose a late report fee of \$100. The Commission shall not impose a late report fee until a contribution report is five business days past due.

(6) If a telecommunications provider files a contribution report but fails to pay the contribution amount in full on or before the day it is due, the Commission shall add a late payment fee equal to 9 percent of the unpaid amount of the contribution, up to a maximum of

\$500. The Commission shall not impose a late payment fee until the required payment is five business days past due.

(7) If a telecommunications provider fails to pay the contribution amount in full on or before the day it is due, the Commission shall add interest on the unpaid contribution amount at the rate of 9 percent per annum from the day payment was due until paid.

(8) If the amount shown due on a contribution report is not paid on the due date, the Commission may issue a proposed order to set the sum due. The Commission may waive late payment fees if the evidence shows that the provider paid its contribution amount late due to circumstances beyond its control.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

**860-032-0630**

**Estimated Report**

(1) For any quarter for which a telecommunications provider fails to file a contribution report as required by these rules, the Commission may make a proposed contribution assessment based upon any information available to the Commission.

(2) The proposed assessment shall include a late payment fee equal to 9 percent of the proposed assessment amount, up to a maximum of \$500 for that quarter.

(3) Each proposed assessment shall bear interest on the amount proposed at the rate of 9 percent per annum from the day the contribution amount was originally due.

(4) The Commission’s proposed assessment for a non-filed contribution report must be made no later than three (3) years after the contribution report’s due date.

(5) Notwithstanding section (4) of this rule, if the telecommunications provider did not hold a certificate of authority, the Commission shall have an unlimited time to propose an assessment for the time period represented by the non-filed contribution report. The proposed assessment shall include all late payment fees and interest as specified in this rule.

(6) Prior to the expiration of the period allowed for filing a petition for a hearing, the telecommunications provider may file its contribution report. The Commission shall accept the report and calculate late report fees, late payment fees, and interest in accordance with the original due date for that quarter’s contribution report and payment, if any, accompanying the report.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

**860-032-0640**

**Commission Audit and Proposed Assessment**

(1) For any quarter for which a telecommunications provider’s contribution report was due, the Commission may audit the telecommunications provider as the Commission deems necessary and practicable.

(2) The Commission’s audit must be commenced no later than three years after the quarter’s contribution report’s due date. After completion of its audit, the Commission may propose to assess an additional contribution amount due from the telecommunications provider.

(3) In the event the telecommunications provider failed to file a contribution report for the quarter, the Commission shall add to the proposed assessment a late payment fee equal to 9 percent of the amount of the proposed assessment, up to a maximum amount of \$500.

(4) Each proposed assessment shall bear interest on the additional amount proposed at the rate of 9 percent per annum from the day the original contribution amount was due.

(5) Notwithstanding section (2) of this rule, if the telecommunications provider did not hold a certificate of authority, the Commission shall have an unlimited time to audit the telecommunications provider for universal service charges.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

**860-032-0650**

**Notice and Hearing on Proposed Orders and Assessments**

(1) The Commission shall provide written notice of the proposed order or proposed assessment to the telecommunications provider and

allow the telecommunications provider an opportunity to request a hearing before the Commission.

(2) Within 30 days after service of the notice of proposed order or proposed assessment, a telecommunications provider may petition the Commission in writing for a hearing. If a petition is not filed within the 30-day period, the Commission shall enter a final order or assessment based upon information in the Commission's files. If a petition is filed within the 30-day period, the Commission shall grant the telecommunications provider a hearing and give the telecommunications provider at least 10 days notice of the time and place of the hearing.

(3) The telecommunications provider must specify in its petition all reasons it disputes the proposed order or the proposed assessment. The Commission shall conduct a hearing on the telecommunications provider's petition under its rules governing hearings and proceedings. Unless the telecommunications provider has filed an amended contribution report, the amount shown on the contribution report shall not be subject to challenge by the telecommunications provider.

(4) A Commission order deciding the petition shall become final after service of the Commission's order upon the petitioning telecommunications provider.

(5) A proposed assessment made by the Commission under these rules is due and payable on the 10th day after the Commission's order becomes final.

Stat. Auth.: ORS 183, 192, 756 & 759  
Stats. Implemented: ORS 756.040, 759.015 & 759.425  
Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

#### 860-032-0660

##### OUS Record-keeping Requirements

(1) A telecommunications provider shall produce for inspection or audit upon request of the Commission or its authorized representative all records supporting its contribution reports. The Commission, or its representative, shall allow the telecommunications provider a reasonable time to produce the records for inspection or audit.

(2) A telecommunications provider must keep all records supporting each contribution report for three years, or until a Commission review or audit is complete, whichever is later.

(3) In addition to any other penalty allowed by law, the Commission may suspend or cancel a telecommunications provider's certificate of authority to provide telecommunications service for its failure to produce for inspection or audit the records required by this rule.

Stat. Auth.: ORS 183, 192, 756 & 759  
Stats. Implemented: ORS 756.040, 759.015 & 759.425  
Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

#### 860-032-0670

##### Refund of Oregon Universal Service Surcharge

(1) A Pay Telephone provider may apply for a refund of the Oregon Universal Service (OUS) surcharge imposed on, and paid by, the provider under ORS 759.425(4) for the provision of Pay Telephone service.

(2) An application for a refund of the OUS surcharge under this rule shall be on forms prescribed by the Public Utility Commission.

(a) An application shall contain the applicant's:

- (A) Name;
- (B) Address;
- (C) Telephone number;
- (D) Time period for which the application is made;
- (E) Name of Pay Telephone provider;
- (F) Contact person;
- (G) Requested refund;
- (H) Number of Pay Telephones located in Oregon;
- (I) Signature of responsible party;
- (J) Affidavit of charges and payment; and
- (K) Mailing address for refund.

(b) The Pay Telephone provider shall be responsible for contacting the Commission to obtain an application form. Forms are available on the Commission's website or by contacting the Commission by telephone.

(3) Applications shall be made on a quarterly basis. Applications must be received by the Commission no later than 180 days after the end of each time period for which a refund is claimed. The quarterly time periods are July 1 through September 30, October 1 through December 31, January 1 through March 31, and April 1 through June

30. The initial period begins July 1, 2003, and ends September 30, 2003.

(a) For good cause shown, the Commission may allow a pay telephone provider to submit its application for refund beyond the 180-day deadline.

(b) Applications for service rendered and payments made prior to July 1, 2003, will not be considered.

(4) A Pay Telephone provider shall produce for inspection or audit upon request of the Commission, or its authorized representative, all records supporting its application for refund. The Commission, or its authorized representative, shall allow the Pay Telephone provider a reasonable time to produce the records for inspection or audit. A Pay Telephone provider must keep all records supporting each refund application for three years, or until a Commission review or audit is complete, whichever is later.

Stat. Auth.: ORS 183, 192, 756 & 759  
Stats. Implemented: ORS 759.425(8)  
Hist.: PUC 7-2003, f. & cert. ef. 4-28-03

### DIVISION 33

#### OREGON TELEPHONE ASSISTANCE PLAN (OTAP)

##### 860-033-0001

###### Applicability

The rules contained in this division apply to all local exchange telecommunications service providers, including telecommunications utilities, unincorporated associations, and cooperative corporations.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987  
Hist.: PUC 3-1999, f. & cert. ef. 8-10-99

##### 860-033-0005

###### Residential Service Protection Fund Definitions

For the purpose of this division:

(1) "Basic Service" means "basic telephone service" as defined in OAR 860-032-0190(2). For qualifying low-income recipients, basic service also includes access to toll-limitation services.

(2) "Eligible Telecommunications Provider" means a provider of telecommunications service, designated as such by the Commission to receive universal service support throughout the service area for which the designation is received, who meets the following criteria:

(a) The telecommunications provider must offer the services supported by the federal universal service fund under 47 CFR Section 54.101 as adopted by the FCC on May 8, 1997, in CC Docket 96-45, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications provider throughout the service area;

(b) The telecommunications provider must advertise the availability of such services and the charges thereof using a medium of general distribution;

(c) A cellular, wireless, or other radio common carrier is eligible for designation as an "eligible telecommunications provider" for purposes of the Residential Service Protection Fund program.

(3) "Local Exchange Service" means a "local exchange telecommunications service" as defined in ORS 759.005(1)(c).

(4) "Monthly Billing" means the billing period between the first day and last day of a calendar month.

(5) "Oregon Telephone Assistance Program (OTAP)" means a program established by the Commission that offers reduced local exchange rates to eligible low-income residential customers.

(6) "Outstanding Accounts" means amounts owing to the Commission including, but not limited to, current accounts receivable and accounts, which the Commission has written off through appropriate legal procedures. The term does not include amounts owing to the Commission, which have been lawfully discharged through bankruptcy proceedings or amounts that are the subject of a proceeding pending before the Commission.

(7) "Quarterly Billing" means the billing periods for the four quarters in each calendar year, which are January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(8) "Residential Service Protection Fund (RSPF)" means a legislatively approved fund in the Oregon State Treasury.

(9) "RSPF Surcharge" means a specified amount up to 35 cents per month against each paying retail subscriber who has telecommunications service with access to the telecommunications relay service:

(a) The RSPF surcharge shall be applied on a telecommunications circuit designated for a particular subscriber. One subscriber line shall be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity of customer premises equipment connected to each circuit. For providers of central office based services, the surcharge shall be applied to each line that has unrestricted connection to the telecommunications relay service. These central office based service lines that have restricted access to the Oregon Telecommunications Relay Service (OTRS) shall be charged based on software design. For cellular, wireless, or other radio common carriers, the surcharge shall be applied on a per-instrument basis.

(b) The RSPF surcharge does not apply to interconnection between telecommunications utilities, telecommunications cooperatives, competitive telecommunications providers certified pursuant to ORS 759.020, radio common carriers, and interexchange carriers or other services exempt by the Constitution or laws of the United States or the State of Oregon.

(c) The Commission annually shall review the surcharge rate and the balance in the Residential Service Protection Fund and may adjust the amount of the surcharge to ensure the fund has adequate resources but does not exceed six months of projected expenses. The annual review by the Commission shall take place every January.

(10) "Remittance Report" means the RSPF remittance report completed on a form provided by the Commission.

(11) "Toll Limitation Service" means a service provided by eligible telecommunications providers that allows OTAP recipients to elect not to allow the completion of outgoing toll calls from their telecommunications circuits (toll blocking) or to specify a certain toll usage that may be incurred on their telecommunications circuits per month or per billing cycle (toll control).

(12) In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event the time period runs until the end of the next day which is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 7-1995(Temp), f. & cert. ef. 8-17-95 (Order No. 95-860); PUC 14-1995, f. & cert. ef. 12-20-95 (Order No. 95-1328); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 18-2000, f. & cert. ef. 10-24-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

## 860-033-0006

### Monthly and Quarterly RSPF Surcharge Remittance Reports and Fees

(1) Each telecommunications provider must submit the RSPF remittance report and surcharge fees each billing period. The remittance report and surcharge fees are due on the 21st calendar day after the close of each monthly or quarterly billing period. The telecommunications provider must send the remittance report and surcharge fees to the RSPF manager at the Commission.

(a) Each telecommunications provider who has 1,000 or more customers must collect and submit the RSPF surcharge fee and remittance report monthly.

(b) Each telecommunications provider who has fewer than 1,000 customers must collect the RSPF surcharge fee and submit the remittance report either monthly or quarterly at the telecommunication provider's discretion.

(2) Each telecommunications provider must submit the remittance report and surcharge fee with no exceptions. If the surcharge collected is \$0.00, the telecommunications provider must still submit a monthly or quarterly remittance report, at the telecommunication provider's discretion.

(3) To cover administrative costs, for each billing period that a telecommunications provider fails to submit the surcharge fees in full on or before the day it is due as required by these rules, the telecommunications provider must pay a late payment fee in accordance with

OR 860-011-0080. The Commission may not impose a late payment fee until the surcharge fees are five business days past due.

(4) If a telecommunications provider fails to file a remittance report as required by these rules, the telecommunications provider must pay a late report fee in accordance with OR 860-011-0080. The Commission may not impose a late report fee until the remittance report is five business days past due.

(5) If the telecommunications provider fails to submit the surcharge fee in full on or before it is due, the Commission will add interest in accordance with OR 860-011-0080.

(6) If the amount shown due on a remittance report is not paid by the due date, the Commission may issue a proposed order to set the sum due. The Commission may waive late payment fees and interest if the evidence shows that the telecommunications provider submitted the surcharge fees late due to circumstances beyond its control.

(7) The telecommunications provider must pay a service fee in accordance with OR 860-011-0080 for each payment returned for non-sufficient funds.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

## 860-033-0007

### Estimated Report

(1) For any time period for which a telecommunications provider fails to file a remittance report as required by these rules, the Commission may make a proposed surcharge assessment based upon any information available to the Commission.

(2) The proposed assessment shall include a late payment fee equal to 9 percent of the proposed assessment amount, up to a maximum of \$500 for that reporting period.

(3) Each proposed assessment shall bear interest on the amount proposed at the rate of 9 percent per annum from the day the surcharge fee was originally due.

(4) The Commission's proposed assessment for a non-filed RSPF remittance report must be made no later than 3 years after the remittance report's due date.

(5) Notwithstanding section (4) of this rule, if the telecommunications provider did not hold a certificate of authority, if one was required by law, the Commission shall have an unlimited time to propose an assessment for the time period represented by the non-filed remittance report. The proposed assessment shall include all late payment fees as specified in this rule.

(6) Prior to the expiration of the period allowed for filing a petition for a hearing, the telecommunications provider may file its remittance report. The Commission shall accept the report and calculate late report fees, late payment fees, and interest in accordance with the original due date for the time period specified in these rules for the report and payment, if any, accompanying the report.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

## 860-033-0008

### Commission Audit and Proposed Assessment

(1) For any time period for which a telecommunications provider's remittance report was due, the Commission may audit the telecommunications provider as the Commission deems necessary and appropriate.

(2) The Commission's audit must begin no later than three years after the remittance report's due date. After completion of the audit, the Commission may propose to assess an additional surcharge amount due from the telecommunications provider.

(3) If a telecommunications provider failed to file a remittance report the time period specified in these rules, the Commission shall add to the proposed assessment a late payment fee equal to 9 percent of the amount of the proposed assessment, up to a maximum of \$500.

(4) Each proposed assessment shall bear interest on the additional amount proposed at the rate of 9 percent per annum from the day the original surcharge amount was due.

(5) Notwithstanding section (2) of this rule, if the telecommunications provider did not hold a certificate of authority, if one were required by law, the Commission shall have an unlimited time to audit the telecommunications provider for the surcharge fees.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987  
Hist.: PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-033-0009

#### Notice and Hearing on Proposed Orders

(1) The Commission shall provide written notice of a proposed order or proposed assessment upon the telecommunications provider, as well as a proposal to revoke or suspend the telecommunications provider's certificate of authority. The Commission will allow the telecommunications provider an opportunity to request a hearing before the Commission on the notice of proposed action.

(2) Within 30 days after the service of the notice of a proposed order, a telecommunications provider may petition the Commission in writing for a hearing. If a petition is not filed within the 30-day period, the Commission shall enter a final order or assessment based upon information in the Commission's files. If a petition is filed within the 30-day period, the Commission shall grant the telecommunications provider a hearing and give the telecommunications provider at least 10 days' notice of the time and place of a hearing.

(3) The telecommunications provider must specify in its petition all reasons it disputes the notice of proposed action. The Commission shall conduct a hearing on the telecommunications provider's petition under its rules governing hearings and proceedings.

(4) A Commission decision regarding the outcome of the petition shall become final after service of the Commission's order upon the petitioning telecommunications provider.

(5) A proposed assessment made by the Commission under these rules is due and payable on the 10th day after the Commission's order becomes final.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987  
Hist.: PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-033-0010

#### OTAP Applicability

The Oregon Telephone Assistance Program (OTAP) is designed to provide reduced rates for an eligible telecommunications provider's basic service for low-income customers who meet eligibility requirements. Reduced rates apply to the single line, or service that is functionally equivalent to a single line, serving the eligible household's principal residence. The surcharge is levied on each local access line. All telecommunications utilities, public utilities, competitive providers, cooperative corporations, and unincorporated associations providing telecommunications service are required to follow these provisions.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987  
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-033-0030

#### OTAP Eligibility

(1) Eligibility for OTAP can be demonstrated by one of the following methods:

(a) Application to the Commission by an individual currently receiving benefits from the federal food stamp program or receiving benefits from another low-income public assistance program for which eligibility requirements do not exceed 135 percent of the poverty level;

(b) Certification by an agency contracting with the Commission to qualify an individual as meeting eligibility criteria; or

(c) Certification of eligibility in a public assistance program which the Commission has determined to meet eligibility criteria.

(2) An applicant or recipient is required to furnish his/her social security number before his/her OTAP eligibility can be determined. Failure to do so will result in denial of benefits.

(3) An applicant must sign a written authorization (OTAP application) permitting the Commission to release necessary information to an eligible telecommunications provider and, as necessary, to the following: Department of Human Services, the applicant's personal representative or a legal guardian.

(4) The Commission must be able to verify an individual's continuing participation in a qualifying program. Continuing OTAP eligibility will be based on periodic recertification by the Commission.

(5) Eligible telecommunications providers and OTAP shall treat OTAP data as confidential information, to the extent allowed by law, to be used for OTAP program purposes only.

(6) An applicant or recipient is required to be the named subscriber to the local telecommunication service in order for that household to qualify for OTAP benefits. The Commission may waive this requirement if it determines that good cause exists.

(7) An applicant who did not receive his or her benefits from a telecommunications provider after being approved by the Commission may be reimbursed up to a maximum of one year of OTAP benefits credited to their telephone line. Applicants must submit their request to the Commission in writing in order to receive the OTAP credit.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987  
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 6-1997, f. & cert. ef. 1-10-97 (Order No. 97-005); PUC 6-1997, f. & cert. ef. 1-10-97; PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-033-0035

#### OTAP Benefits

(1) A residential customer qualifying for the OTAP benefit shall pay a reduced monthly rate for an eligible telecommunications carrier's service as established by the Commission. The monthly OTAP benefit shall include:

(a) The federal baseline lifeline support shall be equal to the telecommunication carriers tariff rate for the federal end user common line charge for primary residential lines and an additional federal lifeline support of \$1.75 approved by the FCC in FCC Order No. 97-157, Paragraph 351, and consented to by the states; and

(b) An additional federal lifeline support, in an amount equal to one-half the amount of support provided by the State of Oregon up to a federal maximum of \$1.75, which shall be available to the eligible telecommunications carriers who provide OTAP benefits to qualifying low-income recipients;

(c) For each qualifying low-income individual living on federally recognized tribal lands, provided this support does not bring the basic local rate below \$1.00 per month:

(A) An additional federal lifeline support, in an amount up to \$25.00 per month, shall be available for each eligible resident; and

(B) A total of up to \$31.75 each month, including first and second tier federal support amounts per primary residential connection, shall be available for each eligible resident on basic local residential service, as prescribed in FCC Order No. 00-208, Paragraph 42.

(2) The OTAP benefit shall be provided for each billing period during which a customer has been determined eligible for assistance. When a customer has been determined eligible for less than an entire billing period, the benefit shall be prorated.

(3) Initial benefits become effective on the date the Commission receives the signed OTAP application (written authorization) from an eligible customer.

(4) Customers removed from OTAP may reapply by telephone when they again meet eligibility criteria. Benefits then become effective on the date the Commission reverifies the customer's eligibility.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290 OL 1987  
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 2-2002, f. & cert. ef. 2-5-02

### 860-033-0040

#### OTAP Alternatives

(1) In lieu of OTAP participation, an eligible telecommunications carrier may apply to the Commission for authority to provide low-income telephone assistance through an alternative plan. An eligible telecommunications carrier's application shall demonstrate:

(a) Customers eligible for OTAP will receive a benefit not less than the benefit the same customers would have received from OTAP;

(b) Customers who qualify for assistance under OTAP will also qualify for assistance under the eligible telecommunications carrier's alternative plan; and

(c) Administrative costs for an alternative plan will be no greater than the administrative costs would be if the eligible telecommunications carrier participated in OTAP.

(2) Eligible telecommunications carriers providing low-income telephone assistance under an alternative plan shall inform the

Commission monthly of the number of subscribers receiving a benefit and the total dollar amount in benefits provided by the eligible telecommunications carrier's plan.

(3) Eligible subscribers shall continue receiving benefits under the Commission plan until the eligible telecommunications carrier's alternative plan is approved by the Commission and implemented by the eligible telecommunications carrier.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 18-1997, f. & cert. ef. 12-17-97

#### 860-033-0045

##### OTAP Compensable Expenses

(1) Each eligible telecommunications provider shall be compensated from the Residential Service Protection Fund for specific costs incurred as a consequence of participating in OTAP. Eligible telecommunications providers shall request compensation by submitting invoices no later than 21 calendar days after the end of the billing period. A telecommunications provider with 1,000 or more OTAP customers must submit the invoice monthly. A telecommunications provider with less than 1,000 monthly customers shall submit an invoice either monthly or quarterly. Funds will be disbursed to a provider no more than 20 calendar days after the Commission receives a properly filed invoice:

(a) Each eligible telecommunications provider will be compensated for benefit costs. Compensation will equal the revenue the provider foregoes by providing local service to qualified low-income customers at a reduced rate. The telecommunications provider's invoices shall indicate the number of qualified customers who received the OTAP benefit during a specified period and the amount of revenue foregone during the same period;

(b) Each eligible telecommunications provider shall receive compensation for each customer it enrolls for the OTAP benefit at the Commission's request. The telecommunications provider's invoices shall indicate the number of customers who were enrolled during a specified period;

(c) Each eligible telecommunications provider shall be compensated for the cost of preparing special administrative reports for OTAP. The telecommunications provider's invoices shall include the number and type of administrative reports prepared for the Commission during a specified period; and

(d) An eligible telecommunications provider may not authorize OTAP benefits for customers without Commission approval. A telecommunication provider who grants OTAP benefits to ineligible customers will have the total amount of the OTAP benefits that were given to those customers deducted from the monthly or quarterly OTAP reimbursement invoices that the telecommunications provider submits to the Commission.

(e) An eligible telecommunications provider shall be compensated for the cost of preparing and distributing educational materials about OTAP at the Commission's request. The telecommunications provider's invoices shall indicate the number of customers receiving the materials and include an itemized accounting of the cost of preparing the materials. The Commission must approve all expenses before the materials are distributed to customers.

(2) The Commission will determine the compensation amount based on the costs an eligible telecommunications provider would reasonably incur to accomplish each task referred to in section (1) of this rule.

(3) Each eligible telecommunications provider providing low-income telephone assistance under approved alternative plans shall be compensated for benefit and administrative costs. However, compensation from the Residential Service Protection Fund shall be no greater than the compensation providers would have received had they participated in OTAP.

(4) Governmental agencies contracting with the Commission to certify the eligibility requirements of individuals or to perform other administrative functions authorized by these rules shall be compensated based on the terms of the contract.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-033-0046

##### OTAP Auditing and Accounting

(1) Based upon accounting procedures approved by the Commission, eligible telecommunications carriers shall maintain accounting records so that costs associated with OTAP can be separately identified. Records shall be provided to the Commission upon request.

(2) The OTAP staff shall conduct an internal audit on a biennial basis and report the results to the Commission.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97

#### Link-Up America

#### 860-033-0050

##### Link-Up America Eligibility

(1) The Commission adopts the Federal Communications Commission (FCC) eligibility criteria for Link-Up America.

(2) Each applicant and recipient must:

(a) Be certified by an organization approved by the Commission as meeting the requirements of an established income test for a low-income assistance program offered through the Department of Human Resources or qualify for the Low Income Energy Assistance Program (LIEAP). LIEAP recipients must provide the Commission a document demonstrating their participation in the program.

(b) Submit their Link-Up America applications to the Commission. The Commission will forward their application to the applicant's telecommunication provider.

(c) Furnish his/her social security number before his/her eligibility in Link-Up America can be determined. Failure to do so will result in denial of benefits.

(2) Security deposit requirements will be waived for residential applicants who are eligible for Link-Up America and who satisfy the credit requirements of OAR 860, division 021, or if the qualifying low-income consumer voluntarily elects toll blocking from the provider, where available.

(3) If an applicant does not meet the credit requirements of OAR 860, division 021, or has an outstanding bill with the eligible telecommunications provider, the deposit will not be waived and the applicant will be subject to the conditions and payment arrangements contained in OAR 860, division 021.

(4) An eligible telecommunications provider shall offer a 50 percent reduction in its tariffed line connection charge, up to a maximum reduction of \$30, to eligible Link-Up America applicants. This assistance does not cover special features, services, or deposits. Eligible residents living on federally recognized tribal lands shall receive an additional reduction of up to \$70 to cover 100% of the charges between \$60 and \$130 for a total maximum support amount of \$100 per qualifying low-income subscriber on tribal lands with initial connection or line extension costs of \$130 or more as prescribed in FCC Order No. 00-208, Paragraph 59. Tribal Lifeline recipients must contact their telecommunications providers directly to submit Link-Up America Applications.

(5) An eligible telecommunications provider shall offer a deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. The interest charges not assessed to the consumer shall be for connection charges of up to \$200 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the provider customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements.

(6) An eligible telecommunications provider's Link-Up America program shall allow a customer to receive the benefit of the Link-Up America program for a second or subsequent time only for a principal place of residence with an address different from the address at which the Link-Up America assistance was previously provided.

(7) An eligible telecommunications provider shall seek reimbursement from the National Exchange Carrier's Association (NECA), an authorized agent of the FCC.

(8) Failure by a customer to make payments as agreed upon with the eligible telecommunications provider will result in disconnection of service pursuant to OAR 860, division 021.

(9) Upon FCC approval of a Commission OTAP and Link-Up America plan, an eligible telecommunications provider subject to Ore-

gon Law 1987, Chapter 290, shall file appropriate tariffs or price lists with the Commission.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 756, 759 & Ch. 290 OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290 OL 1987

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 8-1989, f. & cert. ef. 6-8-89 (Order No. 89-724); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 2-1996, f. & cert. ef. 4-18-96 (Order 96-102); PUC 6-1997, f. & cert. ef. 1-10-97; PUC 18-1997, f. & cert. ef. 12-17-97; PUC 2-2002, f. & cert. ef. 2-5-02; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-033-0100

##### Toll Limitation Service

Upon request, a qualifying OTAP recipient shall be entitled to toll limitation service from an eligible telecommunications carrier, when available, at no additional charge.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 18-1997, f. & cert. ef. 12-17-97

#### Telecommunication Devices Access Program

#### 860-033-0505

##### TDAP Definitions

(1) "Adaptive Equipment" means special telecommunications equipment that permits a person with a disability, other than a hearing- or speech-impaired, to communicate effectively on the telephone.

(2) "Applicant" means a person who applies for an assistive telecommunication device, adaptive equipment, and/or signal device.

(3) "Assistive Telecommunication Device" means a device that uses a keyboard, acoustic coupler, display screen, Braille display, speakerphone, or amplifier to enable people who are deaf, deaf-blind, severely hearing impaired, severely speech impaired or who have a disability that prevents them from using a standard phone to communicate effectively on the telephone.

(4) "Assistive Telecommunication Device or Adaptive Equipment Maintenance Service" means a facility authorized by the Commission to repair any reasonably damaged assistive telecommunication device or adaptive equipment.

(5) "Authorized Distributor" means a facility authorized by the Commission to distribute assistive telecommunication devices and adaptive equipment.

(6) "Disabled" means a physical condition other than hearing or speech impairment that requires use of adaptive equipment before a person can use the telephone.

(7) "Distribution Center" means a facility authorized by the Commission to distribute adaptive equipment.

(8) "Household" means all occupants living in one dwelling.

(9) "Local Exchange Carrier" means a "telecommunications utility" as defined in ORS 759.005(1)(c) or cooperative association that switches and transports communications between customers linked inside an exchange.

(10) "Recipient" means a person whose application for assistive telecommunication devices or adaptive equipment has been approved by the Commission and who receives assistive telecommunication devices or adaptive equipment.

(11) "TDAP Manager" means a person employed by the Commission to implement the Telecommunication Devices Access Program (TDAP).

(12) "TeleBraille" means a two-unit system designed for face-to-face and telephone communication through the use of a modified assistive telecommunication device equipped with a typewriter keyboard, visual display, and acoustical coupler, linked to a Braille display with a 20-cell dynamic Braille display.

(13) "Telecommunication Devices Access Program or TDAP" means a program established by the Commission which with the Telecommunication Devices Access Program Advisory Committee's advice provides assistive telecommunication devices or adaptive equipment and dual party relay services at no additional cost beyond telephone service for customers who are deaf, severely hearing-impaired, severely speech-impaired, or deaf-blind.

(14) "Telephone Relay Center" means a facility authorized by the Commission to provide telephone relay service.

(15) "TTY" is a telecommunication device for the deaf that uses a keyboard and a one-inch screen to transmit messages back and forth through a telephone line.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-033-0506

##### Telecommunication Devices Access Program Advisory Committee (TDAPAC)

The TDAPAC shall consist of 12 Oregon residents appointed by the Commission as prescribed by Oregon Law 1987, Chapter 290, Section 12. The TDAPAC shall meet regularly with the TDAP Manager to give advice concerning matters of general development, implementation, and administration of TDAP. TDAPAC meetings are public, and minutes shall be provided to the public upon request.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 18-1997, f. & cert. ef. 12-17-97

#### 860-033-0510

##### TDAP Applicability

TDAP is designed to provide assistive telecommunication devices or adaptive equipment and services to deaf, severely hearing-impaired, severely speech-impaired, deaf-blind, or disabled customers who meet eligibility requirements.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99

#### 860-033-0530

##### TDAP Eligibility

(1) An applicant is eligible to receive assistive telecommunication devices or adaptive equipment from the TDAP if the applicant:

(a) Shows evidence of regular access to a specific telephone number in Oregon; and

(b) Shows he or she is an Oregon resident; and

(c) Submits to the Commission a written form:

(A) Provided by the TDAP, and

(B) Signed by a licensed physician, audiologist, speech pathologist, vocational rehabilitation counselor from the Oregon State Vocational Rehabilitation Division, or a person certified by the program as qualified to determine whether a person meets the eligibility requirements of TDAP, and

(C) A statement that the applicant is deaf, severely hearing-impaired, severely speech-impaired, deaf-blind, or has a disability that prevents him or her from using a standard phone.

(d) For an applicant under 18 years of age, or an adult applicant who is determined to require a legal guardian, a parent or a guardian must apply on the applicant's behalf and assume full responsibility for the assistive telecommunication device or adaptive equipment and services. Emancipated minors are considered adults. Applicants under the age of 18 years of age must sign a new Conditions of Acceptance form within 30 calendar days after they become 18 years of age. Failure to do so will result in the Commission billing the parent or guardian for the device.

(2) The TDAP shall only approve applications for persons who cannot use the telephone for expressive or receptive communication. The TDAP shall provide equipment suitable to access the telecommunications system.

(3) The TDAP shall provide one assistive telecommunication device or adaptive device per household. However, two assistive telecommunication devices or adaptive devices may be provided to a household if more than one eligible person permanently resides in the household.

(4) If the Commission purchases new devices that may benefit a current TDAP recipient more than the Commission-provided equipment the recipient is currently using, the Commission will allow the recipient to use both the current and new device for a two-week trial period. The recipient must return the equipment that is less beneficial to the Commission within five business days after the end of the trial period. If the recipient fails to return the equipment, the recipient is responsible for the cost of the more expensive equipment.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987  
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 18-1989, f. & cert. ef. 12-14-89 (Order No. 89-1602); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-033-0535

#### Ownership and Identification of Assistive Telecommunication Devices or Adaptive Equipment

The following are ownership and identification procedures:

(1) All assistive telecommunication devices or adaptive equipment purchased under the TDAP will remain the property of the State of Oregon. The distributors and distribution centers shall record the serial number of each assistive telecommunication device or adaptive equipment. A distribution center's failure to comply may terminate the center's contract with the State of Oregon.

(2) Any assistive telecommunication device or adaptive equipment distributed to eligible applicants under this program shall not be sold, loaned, or otherwise transferred from the possession of the original recipient. Unauthorized transfers will subject the recipient to repossession of the assistive telecommunication device or adaptive equipment, prosecution, or liability for the full purchase price of the equipment.

(3) Any recipient who moves to a different address within Oregon must report the new address to the Commission within 30 calendar days of the move. A recipient who moves out of Oregon, or who is no longer receiving telephone services, shall return all assistive telecommunication devices or adaptive equipment received through the TDAP to a distribution center or the Commission within 30 calendar days after termination of local exchange service or before leaving Oregon, whichever is sooner. However, a recipient may take assistive telecommunication devices or adaptive equipment on travel outside Oregon. The recipient must obtain written permission from the TDAP Manager if the travel will be for more than 90 calendar days.

(4) Recipients must sign the Conditions of Acceptance Agreement before they receive an assistive telecommunication device or adaptive equipment.

(5) Stolen Equipment or Equipment Damaged by Acts of Nature or Disasters:

(a) If the equipment is stolen, a recipient must notify the local law enforcement agency within 24 hours of the time the recipient discovers the theft. A recipient shall forward a copy of the police report to the TDAP Manager or a distribution center within five Commission business days of the date the theft was reported. If the local law enforcement agency does not respond to the recipient's theft report, the recipient must notify the Commission's TDAP Manager within two Commission business days after the theft was reported. The recipient shall forward his/her written report to the TDAP Manager that describes the theft and includes any witnesses' names, addresses, and telephone numbers.

(b) If the equipment is stolen outside the United States, the recipient must submit a copy of the police report to the TDAP Manager within five Commission business days of the date the theft was reported. If the local law enforcement agency does not respond to the recipient's theft report, the recipient must notify the TDAP Manager within two Commission business days after returning to Oregon. The recipient shall forward to the TDAP Manager his/her written report that includes the purpose of the recipient's travel; includes any witnesses' names, addresses, and telephone numbers; and describes the theft.

(c) If the equipment is damaged due to acts of nature or disasters that include floods, storms, fire, or other acts of nature, the recipient must submit an insurance, fire department, police report, or other equivalent documentation about the event within five business days after the date the event occurred.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987  
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97 860-033-0535(5) Renumbered to 860-033-0536; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-033-0536

#### TDAP Recipients' Liability

The recipient will be held financially responsible for any damage to the equipment that is not caused by normal wear and tear or acts of nature or disasters. To avoid financial responsibility for damaged

equipment, the recipient must prove to the Commission that the damage was caused by normal wear and tear or acts of nature or disasters. The Commission will also hold the recipient financially responsible for the full replacement cost of the equipment if the recipient moves out of Oregon without returning the equipment.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987  
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97 Renumbered from 860-033-0535(5); PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-033-0537

#### Billing Recipients for Assistive Telecommunication Devices or Adaptive Equipment

(1) Invoices:

(a) The Commission shall mail two invoice notices, at least 30 calendar days apart, indicating the amount of and the reason for such invoice to the responsible recipient at the last known address. The recipient shall have 30 calendar days to respond to each notice.

(b) The invoiced recipient may call or meet with the TDAP Manager to discuss and attempt to resolve the invoices. At the TDAP Manager's discretion, further investigation may be initiated. If the investigation finds that the invoice was issued in error (for example, there is no verifiable reason for the invoice having been sent), the invoice may be canceled.

(c) If the Commission does not receive payment, the TDAP Manager shall begin the complaint process pursuant to ORS 756.500.

(2) Incorrect address: When an invoice is returned with an incorrect address and the invoiced recipient has not notified the TDAP Manager of an address change as required by TDAP rules, the amount billed to the recipient shall become a liquidated debt.

(3) Recipients and applicants who request equipment must have paid all outstanding accounts with the Commission.

(4) Billing procedures for a household with more than two assistive telecommunication devices or adaptive equipment:

(a) The Commission shall mail a letter to the recipient who most recently applied for the equipment, asking the recipient to return the equipment within 30 calendar days; and

(b) If the Commission does not receive a response, the Commission shall send an invoice to the recipient. If the recipient does not pay the amount billed, the Commission may bill one or all the recipients in the household to either regain possession of the State of Oregon's equipment or receive the full replacement value of such equipment.

(c) When the Commission receives notice that a recipient is deceased, the Commission shall request that the estate return the equipment. The Commission may bill the estate for the cost of replacing the equipment if it has not been returned, or is returned in damaged condition.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987  
Hist.: PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-033-0540

#### Distribution Procedures for Assistive Telecommunication Devices or Adaptive Equipment

(1) Subject to appropriation and approval of expenditures for assistive telecommunication devices or adaptive equipment and services purchased by the Commission, the Commission may contract with any governmental agency or other entity to establish authorized for assistive telecommunication devices or adaptive equipment distributors, an assistive telecommunication devices or adaptive equipment distribution center network, and an assistive telecommunication devices or adaptive equipment maintenance center network.

(2) If demand exceeds supply, the Commission will distribute assistive telecommunication devices or adaptive equipment to customers on a first-come first-serve basis.

(3) The authorized distributors shall inform the TDAP in writing of all incoming and outgoing shipping orders of assistive telecommunication devices or adaptive equipment. The written information shall include the serial number they engraved on all assistive telecommunication devices or adaptive equipment.

(4) The assistive telecommunication devices or adaptive equipment distribution centers shall inform the TDAP in writing of all

incoming and outgoing shipping of assistive telecommunication devices or adaptive equipment with the engraved serial numbers.

(5) Upon notice from the TDAP Manager, the distribution centers shall distribute assistive telecommunication devices or adaptive equipment to eligible applicants.

(6) The distribution centers shall require all applicants, including parents and legal guardians, to sign the Conditions of Acceptance Agreement form supplied by the TDAP before they are provided an assistive telecommunication device or adaptive equipment. The distribution centers and maintenance centers shall forward all forms to the TDAP Manager.

(7) If needed, the Commission will contract with an agency or individual(s) to provide training on assistive telecommunication devices or adaptive equipment to specialized populations.

(8) Neither authorized assistive telecommunication devices or adaptive equipment distributors, distribution centers, maintenance centers, nor the TDAP shall provide replacement paper for the assistive telecommunication device or adaptive equipment, the payment of the recipient's monthly telephone bill, purchase or lease cost of recipient's telephone, or the cost of replacement light bulbs for signal devices.

(9) The distribution center shall disseminate a copy of telephone rate reduction application forms, mailing forms for purchasing TTY paper, and telephone relay service information handouts.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 18-1989, f. & cert. ef. 12-14-89 (Order No. 89-1602); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-033-0545

##### TDAP Compensable Expense

(1) The authorized assistive telecommunication devices or adaptive equipment distributors, distribution centers, maintenance centers, and eligible telecommunications providers shall be compensated from the Residential Services Protection Fund for specific costs incurred as a result of participating in the TDAP. These contracted programs and services shall request compensation by submitting an invoice to the Commission at least quarterly. Funds will be disbursed to these contracted programs or services no more than 30 calendar days after a properly filed invoice is received by the Commission:

(a) The eligible telecommunications providers shall be compensated for the costs associated with the verification of service status and notification to the TDAP of service termination under OAR 860-033-0535(7).

(b) The authorized assistive telecommunication devices or adaptive equipment distributors will be compensated for coordinating and storing the assistive telecommunication devices or adaptive equipment. Invoices shall indicate all services performed by distributors and the number of the assistive telecommunication devices or adaptive equipment provided to recipients. Compensable services shall include the cost of assistive telecommunication devices or adaptive equipment with an identification number, shipping costs, storage costs, delivery costs, and other related costs.

(c) The distribution centers will be compensated for the cost of preparing and distributing the assistive telecommunication devices or adaptive equipment and maintenance services requested by the customers. Invoices shall indicate the number of the assistive telecommunication devices or adaptive equipment unit including the engraved identification on either distributing assistive telecommunication devices or adaptive equipment to the recipient or receiving assistive telecommunication devices or adaptive equipment repair orders from the recipient. The specific tasks of preparation and services in distributing the assistive telecommunication devices or adaptive equipment shall be subject to written agreement between the Commission and the contracted assistive telecommunication devices or adaptive equipment personnel.

(d) The assistive telecommunication devices or adaptive equipment maintenance centers shall be compensated for repairing the damaged assistive telecommunication devices or adaptive equipment, the storage of extra assistive telecommunication devices or adaptive equipment replacements, and the required insurance for storage. Invoices shall indicate the labor and parts of the damaged assistive telecommunication devices or adaptive equipment, the storage cost,

and the insurance premium cost, including assistive telecommunication devices or adaptive equipment identification inventory.

(e) The Commission will determine the rate of compensation based on the cost the distribution center should reasonably incur to accomplish each task.

(2) Based upon accounting procedures established by the Commission, the assistive telecommunication devices or adaptive equipment distributors, distribution centers, and maintenance centers shall maintain accounting records in such a manner that costs associated with TDAP can be separately identified. Their records will be audited by the Commission.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03

#### 860-033-0560

##### Oregon Telecommunications Relay Service (OTRS)

(OTRS will comply with the Americans with Disabilities Act's requirements incorporated with the Federal Communications Commission's Adopted Rules of CC Docket No. 90-571, dated July 11, 1991.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 759.030 & Ch. 290, OL 1987

Hist.: PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97

### DIVISION 34

#### SMALL TELECOMMUNICATIONS UTILITIES AND COOPERATIVES

#### 860-034-0010

##### Scope of the Rules

(1) The adoption of these rules shall not preclude the Commission from altering or amending them in whole or in part or from requiring any other or additional service, equipment, facility, or standard upon a complaint, Commission motion, or small telecommunications utility application. Furthermore, these rules shall not in any way relieve any utility from any of its duties under Oregon law. Upon application by a small telecommunications utility, the Commission may relieve the small telecommunications utility of any obligations under these rules.

(2) The rules contained in this Division apply exclusively to telecommunications cooperatives and small telecommunications utilities as defined in section (3) of this rule.

(3) As used in this Division:

(a) "Small telecommunications utility" means a telecommunications utility partially exempt from regulation under ORS 759.040;

(b) "Telecommunications utility" has the meaning given the term in ORS 759.005;

(c) "Telecommunications cooperative" or "Type 1 cooperative" means an unincorporated association or cooperative corporation that provides telecommunications services; and

(d) "Type 2 cooperative" means an unincorporated association or cooperative corporation that charges joint rates or provides through services as defined in OAR 860-034-0015.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045, 759.220 & 759.225

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04

#### 860-034-0015

##### Through Service

"Through service" means an Oregon intrastate telecommunications service the provision of which involves the facilities, equipment, or services of two or more telecommunications utilities and/or cooperatives. Examples of "through services" may include, but are not limited to, intrastate toll/access service, extended area service, and E 9-1-1 service. Whether a service is a "through service" is determined on a case-by-case basis.

Stat. Auth.: ORS 183 & 759

Stats. Implemented: ORS 756.040 & 759.220

Hist.: PUC 3-1998, f. & cert. ef. 2-24-98, PUC 3-1999, f. & cert. ef. 8-10-99, Renumbered from 860-034-0295

General

**860-034-0020**

**Definitions for OAR 860-034-0030 through 860-034-0290**

As used in OAR 860-034-0030 through 860-034-0290:

- (1) "Applicant" means a person who:
  - (a) Applies for service with a small telecommunications utility; or
  - (b) Reapplies for service at a new or existing location after service has been discontinued.
- (2) "Customer" means a person who has applied for, been accepted, and is currently receiving service. Notwithstanding section (1) of this rule, a customer who voluntarily disconnects service and later requests service with the same small telecommunications utility at a new or existing location within 20 days after disconnection retains customer status.
- (3) "Local exchange service" has the meaning given to "local exchange telecommunications service" in ORS 759.005(2)(c).
- (4) "OTAP" has the meaning given to "Oregon Telephone Assistance Program" in OAR chapter 860, division 033.
- (5) "Registered dispute" means an unresolved issue between a customer or applicant and a small telecommunications utility that is under investigation by the Commission's Consumer Services Division but is not the subject of a formal complaint.
- (6) "Regulated charges" means charges for services delivered in Oregon and subject to the jurisdiction and approval of the Commission.
- (7) "Utility service" means a service which is subject to Commission jurisdiction including local exchange service and intraLATA toll service.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 15-2001, f. & cert. ef. 6-21-01

**860-034-0030**

**Applications for Service from a Small Telecommunications Utility**

- (1) An application for telecommunications utility service must be made when:
  - (a) Service is requested by a person who has not previously been served by the small telecommunications utility; or
  - (b) Service has been involuntarily discontinued in accordance with these rules, and the person later seeks to have service restored.
- (2) An application for telecommunications utility service may be requested when service has been voluntarily discontinued, and a request to restore service has not been made within 20 days.
- (3) An application is a request for telecommunications utility service. The small telecommunications utility shall not accept an application for service until the applicant:
  - (a) Establishes credit as set forth in OAR 860-034-0140; or
  - (b) Pays a deposit or deposit installment to the small telecommunications utility.
- (4) A small telecommunications utility may require an applicant to provide the following information when applying for service:
  - (a) The name of person(s) responsible for payment on the account;
  - (b) The name to be used to identify the account, if different than the actual name;
  - (c) The birth date of person(s) responsible for payment on the account;
  - (d) The social security number of person(s) responsible for payment on the account;
  - (e) A current valid Oregon driver license number of the person(s) responsible for payment on the account;
  - (f) The service address;
  - (g) The billing address, if different than service address; and
  - (h) Any available telephone numbers where the applicant can be reached night and day.
- (5) In lieu of providing a valid social security number or current valid Oregon driver license number under section (3) of this rule, an applicant may provide:
  - (a) A valid state or federal identification containing name and photograph of the person(s) responsible for payment on the account;

- (b) A combination of:

- (A) An original or certified true copy of his or her birth certificate;

- (B) A current identification from school or employer containing a photograph; and

- (C) The name, address, and telephone number of a person who can verify the applicant's identity, such as a teacher, employer, or case-worker; or

- (c) Other information deemed sufficient by the utility to establish an applicant's identification.

- (6) If an applicant is denied service for failure to provide an acceptable form of identification, the applicant may pursue conflict resolution under the Commission's rules.

- (7) Upon request, the small telecommunications utility shall protect the account from access by others through the use of a personalized password or other means acceptable to both the small telecommunications utility and the customer.

- (8) A small telecommunications utility shall protect the identity of a customer at risk of domestic violence or other abuse. At its option, the small telecommunications utility shall provide the identity protection by allowing the customer to use a modified or alternative name for a directory listing or by providing, at no cost, a non-published listing in accordance with other applicable tariff provisions for the length of time the endangerment exists. A customer requesting a nonpublished listing under this section must provide:

- (a) A copy of a court order that restrains another person from contact with the customer by reason of risk of domestic violence, as defined in ORS 135.230, or unwanted sexual contact, as defined in ORS 163.305, abuse, as defined by the Elderly and Disabled Person Abuse Prevention Act, ORS 124.005 et seq., or stalking, as defined by ORS 163.730 et seq.; and

- (b) An affidavit, stating that the customer is financially unable to pay for the nonpublished listing.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

**860-034-0040**

**Information for Utility Customers and Applicants**

- (1) Each small telecommunications utility shall, upon request, furnish each customer and applicant with such information as is reasonable to permit them to secure efficient service.

- (2) Each small telecommunications utility shall keep on file and open for public inspection at its offices, complete rate schedules, contract forms, rules and regulations of the utility, and a copy of the Commission's rules and regulations.

- (3) Each small telecommunications utility shall supply, upon request, a copy of the tariffs applicable to the type or types of service furnished to the customer by the utility.

- (4) Upon application for new service, or upon subsequent request, the small telecommunications utility shall assist the customer or applicant in selecting the most advantageous rate to meet individual service requirements. The customer or applicant shall be responsible for making the final selection of a rate schedule.

- (5) When service is initiated and not less than once each year thereafter, every small telecommunications utility shall give its residential customers a written summary of their rights and responsibilities. If service is initiated without a personal visit between the small telecommunications utility and the customer, the utility shall mail the summary to the customer no later than when the first bill statement is mailed. A small telecommunications utility satisfies the annual notification requirement by prominent publication of the information in a telephone directory distributed to its customers annually. The summary shall include the text of a summary prepared by the Commission's Consumer Services Division or prepared by the small telecommunications utility and approved by the Commission that describes:

- (a) The customer's option to designate a third party to receive bills and notices and the availability of notices in languages other than English;

- (b) Applicable financial assistance programs, such as the Oregon Telephone Assistance Program and Link-Up America;

- (c) The availability of medical certificates;

(d) Special payment options. Late-payment charges, if any, shall be explained, along with the availability of any preferred billing date option;

(e) Procedures for conflict resolution, including how to register a dispute with the small telecommunications utility and with the Commission and the toll-free number of the Commission's Consumer Services Division;

(f) Listings of consumer organizations that participate in Commission proceedings, including addresses and telephone numbers, may be requested from the Commission's Consumer Services Division; and

(g) The Commission's telephone solicitation rules.

(6) When service is initiated, the small telecommunications utility shall inquire whether the customer would like to receive notices in a language other than English and will inform the customer of the type of notices and translations currently available. If the language chosen is not available, the small telecommunications utility will tell the customer the translated version does not yet exist, but that the customer's interest will be recorded for the Commission. Each small telecommunications utility shall retain a record of the number of requests for notices and summaries in non-English languages in a format that can be forwarded to the Commission immediately upon request. The reports shall specify the number of requests for each language.

(7) Notices approved by the Commission shall be posted in a conspicuous place in each small telecommunications utility office where credit matters are transacted, setting forth the rights and responsibilities of customers under these rules. The notices shall be printed in large boldface type and shall be written in language that is easy to understand.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0050

##### Multilingual Notices

(1) A small telecommunications utility shall provide a multilingual disconnect notice when 5 percent or 500 customers, whichever is the lesser, have requested such a notice.

(2) Disconnect notices as required in section (1) of this rule shall contain the following information translated into the requested languages:

IMPORTANT NOTICE: Your telephone services will be shut off due to an unpaid balance on your account. You must act immediately to avoid shutoff. Important information about how you can avoid shutoff is printed in English in the enclosed notice. If you cannot understand English, please find someone to translate the notice. If translation assistance is unavailable, please contact (name) at (phone number) who will try to help you. Information on customer's rights and responsibilities printed in this language is also available by calling that number. YOU MUST ACT NOW TO AVOID SHUTOFF.

(3) A small telecommunications utility may petition the Commission for a waiver of the requirement in sections (1) and (2) of this rule to provide multilingual notice for two calendar years, which may be renewed, upon a showing that such notices are not necessary.

(4) The Commission will translate a consumer's rights and responsibilities summary into the following non-English languages: Spanish, Vietnamese, Cambodian, Laotian, and Russian. The Commission will provide copies to a small telecommunications utility upon request.

(5) The small telecommunications utility shall record all requests and promptly mail the requested version of the summary to the consumer.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.030

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0060

##### Dispute Resolution

(1) When a dispute occurs between a customer or applicant and a small telecommunications utility about any bill, charge, or service, the utility shall thoroughly investigate the matter and promptly report the results of its investigation to the customer or applicant. Each small telecommunications utility shall prepare a written record showing the name and address of the customer or applicant involved, the date and character of the dispute, and the disposition of the matter. The small telecommunications utility shall retain records of the dispute pursuant to OAR 860-034-0580.

(2) The small telecommunications utility shall inform the customer or applicant of the right to supervisory review of any dispute, including but not limited to, establishment of credit and termination of service. If a dispute is not resolved, the small telecommunications utility shall notify the customer or applicant of the Commission's dispute resolution procedure and its toll-free telephone number.

(3) A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services Division. The Commission shall notify the small telecommunications utility upon receipt of such a request.

(4) The Commission's Consumer Services Division shall assist the complainant and the small telecommunications utility in an effort to reach an informal resolution of the dispute.

(5) If a registered dispute cannot be resolved informally, the Commission's Consumer Services Division shall advise the complainant of the right to file a formal written complaint with the Commission. The complaint shall state the facts of the dispute and the relief requested. The small telecommunications utility shall answer the complaint within 15 days of service of the complaint. The matter shall then be set for expedited hearing. A hearing may be held on less than ten days' notice when good cause is shown.

(6) Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.

(7) A customer or applicant who has a registered dispute or formal complaint pending with the Commission shall be entitled to continued or restored service provided:

(a) Service was not terminated for theft of service or failure to establish credit;

(b) A bona fide dispute exists in which the facts asserted by the customer or applicant entitle the customer or applicant to service;

(c) When termination is based on nonpayment, the customer or applicant makes adequate arrangement to avoid future loss to the small telecommunications utility, such as prepaying estimated monthly utility charges; and

(d) The customer or applicant diligently pursues conflict resolution under the Commission's rules.

(8) If the conditions in section (7) of this rule are not satisfied, the small telecommunications utility has no obligation to provide continued service. A small telecommunications utility discontinuing service because of a failure to meet the conditions of subsections (7)(c) or (7)(d) of this rule shall give the customer five-day notice served in the same manner as provided by OAR 860-034-0260 except the notice need only describe the defect in performance, the date and time after which utility service will terminate, and the toll-free number of the Commission's Consumer Services Division. In deciding whether the conditions are met, the small telecommunications utility shall consult with the Commission's Consumer Services Division. A customer or applicant who has filed a formal complaint, the small telecommunications utility, or the Commission's Consumer Services Division may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the small telecommunications utility, and the Commission's Consumer Services Division at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.500

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 11-2003, f. & cert. ef. 7-3-03

#### 860-034-0070

##### Designation of Third Party to Receive Notices

Each small telecommunications utility shall offer its customers the option to designate a third party to receive bills and notices set forth in these rules. When a small telecommunications utility receives such designation, it shall send bills and notices required under these rules to the representative, with duplicate copies of disconnect notices also served on the customer.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0080

##### Restrictions on Entering a Customer Residence

No employee of a small telecommunications utility shall enter the residence of a customer without proper authorization except in an emergency endangering life or property.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0090

##### Interruption of Utility Service

(1) Each small telecommunications utility shall keep a record of any interruption of service affecting its whole system, or a major section thereof, including a statement of the time, duration, and cause of interruption.

(2) Each small telecommunications utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur, shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(3) Each small telecommunications utility shall make all reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service, but such notice shall not be required in case of interruption due to emergency repairs or for repairs or maintenance work that results in an interruption of less than five minutes. In determining reasonable notice, the small telecommunications utility shall consider the length of the planned interruption, the type and number of customers affected, the potential impact of the interruption on customers, and other surrounding circumstances. Notice may be given in writing, either via US mail or a door hanger on the affected premises, or by contact with the customer or an adult at the residence by personal visit or by telephone.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-034-0095

##### Annual Fees Payable to the Commission by a Small Telecommunications Utility

(1) On statement forms prescribed by the Commission, each small telecommunications utility must provide the requested information for the subject year.

(2) Each small telecommunications utility must pay to the Commission:

(a) An annual fee of no less than \$100. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the gross retail intrastate revenue during the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350 and OAR 860-032-0008(1).

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) Each small telecommunications utility must:

(a) Collect the annual fee by charging an equitable amount to each retail customer, using apportionment methods that are consistently applied by the utility throughout Oregon; and

(b) Describe the amount of the apportioned charge upon each retail customer's bill.

(5) Each small telecommunications utility must:

(a) Maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services, as defined in OAR 860-032-0080;

(b) Follow the revenue allocation procedures in OAR 860-032-0090; and

(c) Make its revenue accounting records available to the Commission upon the Commission's request.

(6) For any year in which a small telecommunications utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

(7) If the Commission receives a public record request for the confidential information required by this rule, the Commission may assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 13-1999, f. & cert. ef. 12-7-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 8-2003, f. & cert. ef. 4-28-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-034-0097

##### Estimated Annual Fees Payable to the Commission

(1) For any year in which a small telecommunications utility fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-011-0080; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission must provide written notice of the proposed annual fee to the small telecommunications utility.

(3) Within 30 days after service of the notice of proposed annual fee, the small telecommunications utility may file a petition with the Commission for a hearing. In its petition, the utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the small telecommunications utility does not file a petition within the 30-day period, the proposed annual fee is and payable.

(5) During the 30-day period allowed for filing a petition, the small telecommunications utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 8-2003, f. & cert. ef. 4-28-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-034-0100

##### Temporary Utility Service

Each small telecommunications utility may render temporary service to a customer and may require the customer to bear all the cost of installing and removing the service in excess of any salvage realized. The length of temporary service shall be specified in the applicable tariffs on file with the Commission.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 15-2001, f. & cert. ef. 6-21-01

**860-034-0110**

**Due and Payable Period**

(1) Each small telecommunications utility shall establish procedures to ensure that the period from the billing transmittal for all current charges, including payment of final bills, to the due date, is not less than 15 days.

(2) If the bill is delivered by US mail, the due and payable period begins the day after the US Postal Service postmark or the day after the date of postage metering.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

**860-034-0120**

**Late-Payment Charge**

(1) A small telecommunications utility may apply a late-payment charge to customer accounts not paid in full each month, provided the utility has filed the late-payment charge in its rate schedule.

(2) The charge will be based on a monthly late-payment rate applied to overdue account balances at the time of preparing the subsequent month's bill for residential accounts or by the bill due date for all other accounts. The late-payment charge may not be applied to time-payment accounts that are current. The Commission will determine the late-payment rate based on a survey of prevailing market rates for late-payment charges of commercial enterprises and will advise all small telecommunications utilities of the changes in the rate they may use to determine late-payment charges on overdue customer accounts as needed. The current late-payment rate and the conditions for its application to customer accounts shall be specified on the utility bill.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 15-2001, f. & cert. ef. 6-21-01

**860-034-0130**

**Adjustment of Utility Bills**

(1) When an underbilling or overbilling occurs, the small telecommunications utility shall provide written notice to the customer detailing the circumstances, period of time, and amount of adjustment. If it can be shown that the error was due to some cause, the date of which can be fixed, the overcharge or undercharge shall be computed back to such date. If no date can be fixed, the small telecommunications utility shall refund the overcharge or rebill the undercharge for no more than six months' usage. In no event shall an overbilling or underbilling be for more than three years' usage.

(2) The small telecommunications utility may waive rebilling for underbillings when the costs to the utility of rebilling make it uneconomical.

(3) When a customer is required to repay an underbilling, the customer shall be entitled to enter into a time payment agreement without regard to whether the customer already participates in such an agreement. If the customer and small telecommunications utility cannot agree upon payment terms, the Commission shall establish terms and conditions to govern the repayment obligation. The small telecommunications utility shall provide written notice advising the customer of the opportunity to enter into a time-payment agreement and of the Commission's complaint process.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 15-2001, f. & cert. ef. 6-21-01

**860-034-0140**

**Establishing Credit for Residential Utility Service**

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous telecommunications utility service during the preceding 24 months and the small telecommunications utility can verify, either by contacting the former utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the small telecommunications utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the small telecommunications utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in section (1) of this rule, a small telecommunications utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of utility service from it or any Oregon telecommunications utility or telecommunications cooperative, as defined in ORS 759.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon telecommunications utility or telecommunications cooperative as defined in ORS 759.005, was found to have tampered with other telecommunications utility facilities, or was otherwise found to have diverted telecommunications utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the small telecommunications utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for telecommunications service shall be based upon two months' average or estimated bills for usage of the applicable telecommunications utility's tariff and price-listed services. Each deposit shall be rounded to the nearest whole dollar. For telecommunications service, applicants eligible for Oregon Telephone Assistance Program (OTAP) funding and who voluntarily elect to receive toll-blocked service, no deposit may be charged. The small telecommunications utility shall make toll blocking available at no charge to all applicants identified in OAR 860-033-0030.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The small telecommunications utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The small telecommunications utility discovers that the customer has stolen utility service, has tampered with the meter or other utility facilities, or was otherwise found to have diverted utility service; or

(c) If service records for the customer indicates unbilled intra-LATA toll activity under the small telecommunications utility's tariff and price list is greater than the basis of the prior deposit.

(7) Paying a deposit does not excuse a customer from complying with the small telecommunications utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A small telecommunications utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 759.045 & Ch. 290, OL 1987

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-034-0150

##### Payment Arrangements for Deposit and Installation Charges for Residential Utility Service

(1) Time payments for deposits and nonrecurring charges shall be limited to charges for residential utility service and intraLATA toll. When a small telecommunications utility requires deposits and/or nonrecurring charges to establish or reestablish utility service from an applicant, the applicant shall pay the deposit and/or nonrecurring charges in four installments. The first installment is due immediately; the remaining shall be paid in three installments which shall be due 30, 60, and 90 days, respectively, after the date the payment agreement is executed. Except for last payment, installments shall be the greater of \$20 or one-fourth of the deposit and/or nonrecurring charges. In communicating with an applicant to establish utility service or to require a deposit and/or nonrecurring charges, the small telecommunications utility shall inform the applicant of the availability of Link-Up America and Oregon Telephone Assistance Program benefits and inform the customer or applicant that details are available from the Commission.

(2) When a customer makes an installment payment or a deposit with a payment for utility service, the small telecommunications utility shall first apply the amount paid toward the amount due for deposit and/or nonrecurring charges.

(3) A customer who is required to pay an additional deposit shall pay one-fourth of the total deposit or \$20, whichever is greater, within five days to the small telecommunications utility. The remainder of the deposit is due under the terms of section (1) of this rule. If the customer has an existing deposit installment agreement, the remaining installment payments will be adjusted to include the additional deposit; however, two installment payments cannot be required within the same 30-day period.

(4) When a customer enters into an installment agreement for payment of a deposit and/or nonrecurring charges under section (1) of this rule, the small telecommunications utility shall provide written notice explaining its deposit and nonrecurring charges requirements. The notice shall specify the date each installment payment shall be due and shall include a statement printed in bold-face type informing the customer that utility service will be disconnected if the small telecommunications utility does not receive the payment when due.

(5) If a customer fails to abide by the terms of an installment agreement, the small telecommunications utility may disconnect local exchange service after providing a written five-day notice. The notice shall contain the information set forth in OAR 860-034-0260(3)(a) through (e) and shall be served as required by OAR 860-034-0260(4) and (5). In lieu of permanent disconnection, the small telecommunications utility may curtail service pursuant to OAR 860-034-0260(7).

(6) When good cause exists, the small telecommunications utility may provide or the Commission may require, more liberal arrangements for payment of deposits and/or nonrecurring charges than those set forth in this rule. The small telecommunications utility shall keep a written record of the reasons for such action.

(7) If disconnection for nonpayment of a deposit and/or nonrecurring charges occurs, the customer disconnected shall pay the full amount of the deposit and/or nonrecurring charges, any applicable reconnection fee, late-payment fee, and past due amount before service is restored. A customer may continue with an existing medical certificate time-payment agreement by paying all past-due installments.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 759.045 & Ch. 290, OL 1987  
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0160

##### Interest on Deposits for Residential and Nonresidential Utility Service

(1) Each year, the Commission shall establish an annual interest rate that must be paid on customer deposits. The Commission will base the rate upon consideration of the effective interest rate for new issues of one-year Treasury Bills issued during the last week of October, the

interest rate on the most recent issuance of one-year Treasury Bills, or the effective interest rate for the average yield of Treasury Bills of the closest term issued during the last week of October. This interest rate, rounded to the nearest one-half of one percent, shall apply to deposits held during January 1 through December 31 of the subsequent year. The Commission will advise all small telecommunications utilities of the changes in the rate to be paid on customer deposits held as needed.

(2) Upon payment of a deposit, the small telecommunications utility shall provide the customer documentation showing the date, name of the applicant or customer, the service address, the amount of deposit, a statement that the deposit will accrue interest at the rate prescribed by the Commission, and an explanation of the conditions under which the deposit will be refunded.

(3) If the deposit is held beyond one year, accrued interest will be paid by a credit to the customer's account. If held less than one year, interest will be prorated. A small telecommunications utility shall keep a detailed record of each deposit received until the deposit is credited or refunded.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 759.045 & Ch. 290, OL 1987  
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-034-0170

##### Refund of Deposits for Residential and Nonresidential Utility Service

(1) A small telecommunications utility shall promptly refund a customer's deposit with accrued interest when utility service is terminated, provided a refund due shall first be applied to any unpaid balance on the customer's account.

(2) A small telecommunications utility may continue holding a deposit until credit is satisfactorily established or reestablished. For purposes of this rule, credit shall be considered to be established or reestablished if one year after a deposit is made:

- (a) The account is current;
- (b) Not more than two five-day disconnection notices were issued to the customer during the previous 12 months; and
- (c) The customer was not disconnected for nonpayment during the previous 12 months.

(3) After satisfactory credit has been established or reestablished, the deposit plus any accrued interest shall be promptly refunded or credited to the customer's account. A customer shall be entitled to a refund upon request.

(4) When the customer moves to a new address within the small telecommunications utility's service area, the deposit, plus accrued interest, will be transferred to the new account.

(5) Deposits plus accrued interest may be refunded or credited, in whole or in part, to the customer's account at any time earlier than prescribed in this rule, provided that procedures followed by the small telecommunications utility are nondiscriminatory.

(6) Unless otherwise specified by the customer, a small telecommunications utility shall mail deposit refunds to the customer's last known address. The small telecommunications utility shall promptly honor a valid claim for payment of refund if the request is received within one year of the date utility service is terminated. Funds held beyond one year will be disposed of in accordance with ORS 98.316.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987  
Stats. Implemented: ORS 759.045  
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0180

##### Grounds for Disconnecting Utility Service

Utility service may be disconnected by a small telecommunications utility:

- (1) For failure to establish credit by:
  - (a) Failing to pay a deposit or make payments in accordance with the terms of a deposit payment arrangement (OAR 860-034-0150); or
  - (b) Providing false identification or verification of identity.
- (2) When facilities provided are unsafe or do not comply with state and municipal codes governing service or the rules and regulations of the small telecommunications utility (OAR 860-034-0250).

(3) Where a customer requests the small telecommunications utility to disconnect service or close an account (OAR 860-034-0190).

(4) When dangerous or emergency conditions exist at the service premises (OAR 860-034-0200).

(5) For failure to pay Oregon tariff or price listed charges due for services rendered (OAR 860-034-0260) or theft of service.

(6) For failure to abide by the terms of a time payment agreement (OAR 860-034-0270).

(7) Where the Commission approves the disconnection of service.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0190

##### Voluntary Disconnection of Utility Service

Every customer who is about to vacate any premises supplied with utility service by the small telecommunications utility, or who for any reason wishes to have such service discontinued, shall give five days' notice in advance of specified date of discontinuance of service to the small telecommunications utility. Until the small telecommunications utility shall have such notice, the customer shall be held responsible for all utility service rendered.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0200

##### Emergency Disconnection of Utility Service

In emergencies endangering life or property, a small telecommunications utility may terminate utility service without following the procedures set forth in division 034. However, the small telecommunications utility shall immediately thereafter notify the Commission. In such cases, where the necessity for emergency termination was through no fault of the customer, there will be no charge made for restoration of utility service.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0210

##### Disconnection of Utility Service on Weekends and Holidays

Utility service shall not be disconnected for nonpayment on or the day prior to a weekend or a state or utility-recognized holiday

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 9-2001, f. & cert. ef. 3-21-01

#### 860-034-0220

##### Accounts Not Related to Residential Utility Service

A small telecommunications utility may not deny or disconnect residential utility service due to the failure to pay for nonresidential utility service, or to meet obligations in connection with nonresidential utility service.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0230

##### Reconnection Fee for Utility Service

Where a utility service is disconnected pursuant to OAR 860-034-0180, the small telecommunications utility may charge the reconnection fee set forth in its tariff.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0240

##### Transfer Billings

(1) If a small telecommunications utility identifies a balance a customer owes the utility from the customer's prior account for Oregon utility service, the small telecommunications utility may transfer the amount to the customer's current account after giving the customer notice of the transfer, the amount due under the prior account, the period

of time during which the balance was incurred, and the service address or telephone number under which the bill was incurred. The notice must also meet the provisions of OAR 860-034-0260(3)(d) and (e). If the bill is identified at the time a customer changes residences, the provisions of this rule apply. A small telecommunications utility may pursue disconnection for nonpayment of a customer's current utility service only in compliance with OAR 860-034-0260.

(2) A small telecommunications utility shall make more liberal payment arrangements for customers on medical certificates who cannot reasonably be expected to pay the outstanding balance in the time otherwise applicable under this rule.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 4-1999, f. & cert. ef. 8-12-99; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0250

##### Refusal of Utility Service

(1) Refusal of utility service by a small telecommunications utility:

(a) A small telecommunications utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account except for residential utility service applicants who are eligible for OTAP.

(b) A small telecommunications utility may refuse to provide utility service to a residential customer or applicant who is eligible for OTAP until the utility receives full payment of any overdue amount relating to a prior account for tariffed local exchange and price-listed utility services, excluding any toll charges.

(2) A small telecommunications utility may refuse to provide utility service until the utility receives payment when all the following circumstances exist:

(a) An overdue balance has been incurred by a residential customer or applicant at a service address;

(b) A residential applicant for utility service resided at the service address described in subsection (2)(a) of this rule during the time the overdue balance was incurred; and

(c) The residential customer or applicant described in subsection (2)(a) of this rule will reside at the location to be served under the new application.

(3) Any small telecommunications utility shall refuse to provide utility service if a customer or applicant has not complied with state and city codes and regulations governing service and with the small telecommunications utility's rules and regulations.

(4) A small telecommunications utility shall not provide utility service or materially change service to a customer if, in the utility's best judgment, the desired service is likely to unfavorably affect service to other customers.

(5) A small telecommunications utility shall refuse to serve a customer or applicant if, in the best judgment of the utility, the facilities of the customer or applicant cannot provide safe and satisfactory utility service.

(6) When the small telecommunications utility refuses to provide utility service, the small telecommunications utility shall notify the customer or applicant of the reasons for refusal and of the Commission's complaint process.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 22-2002, f. & cert. ef. 12-9-02

#### 860-034-0260

##### Disconnection Procedures for Commercial and Residential Utility Customers

(1) This rule applies to the involuntary termination of all utility service provided by a small telecommunications utility.

(2) At least five days before a small telecommunications utility disconnects service for nonpayment for utility services rendered, the utility must provide the customer a written notice of the disconnection.

(3) The notice must be printed in boldface type and must state in easy to understand language:

(a) The reasons for the proposed disconnection;

(b) The earliest date for disconnection;

(c) The small telecommunications utility shall prominently identify the amount necessary to be paid to avoid disconnection of utility services;

(d) An explanation of the Commission's complaint process and the Commission's toll-free number; and

(e) An explanation of the availability of an emergency medical certificate for local exchange residential service customers under OAR 860-034-0270.

(4) The small telecommunications utility may not send the notice before the due date for payment for the utility services billed.

(5) The small telecommunications utility may serve the notice of disconnection in person or send it by first-class mail to the last known addresses of the customer and the customer's designated representative. Notice is served on the date of personal delivery or, if delivery is by U S Mail, on the day after the U S Postal Service postmark or the day after the date of postage metering.

(6) If a premises visit is required to complete disconnection, the small telecommunications utility must make a good-faith effort to personally contact the customer or a resident at the service address to be disconnected. If the small telecommunications utility's attempt to make personal contact fails, the utility must leave a notice in a conspicuous place at the premises informing the customer that service has been disconnected.

(7) In lieu of permanent disconnection, a small telecommunications utility may temporarily curtail utility service by preventing the transmission of incoming telephone messages and/or outgoing toll messages while continuing to let the customer make outgoing local messages. Temporary curtailment of utility service, as defined in this section, shall be permitted only upon five days' written notice as set forth in section (3) of this rule. The notice shall state that permanent disconnection will follow within ten days unless the customer makes full payment of any overdue amount or any other obligation.

(8) Except for utility service provided by a small telecommunications utility to its customers served by an office incapable of restricting toll service, a small telecommunications utility shall not disconnect or deny local exchange service for an applicant's or customer's failure to pay for utility services not under the local exchange utility's tariff or price list. A small telecommunications utility may limit access to toll and special services using the "9XX" prefix or Numbering Plan Area (NPA) for the failure to pay for such services.

(9) A small telecommunications utility may not disconnect or deny local service to customers or applicants, who are eligible to receive OTAP, for failure to pay toll charges.

(10) A small telecommunications utility may request a limited waiver of the requirement of section (9) of this rule upon meeting all the following conditions:

(a) Showing the small telecommunications utility would incur substantial costs in complying with the requirement;

(b) Demonstrating the small telecommunications utility offers toll-blocking services to customers identified in section (9) of this rule; and

(c) Showing that telecommunications subscribership among low-income customers in its service area in Oregon is at least as high as the national subscribership level for low-income customers.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 759.045 & Ch. 290, OL 1987

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 15-2001, f. & cert. ef. 6-21-01

## 860-034-0270

### Emergency Medical Certificate for Residential Utility Service

(1) A small telecommunications utility shall not disconnect local exchange residential service if the customer submits certification from a qualified medical professional stating that disconnection would significantly endanger the physical health of the customer or a member of the customer's household. "Qualified medical professional" means a licensed physician, nurse-practitioner, or physician's assistant authorized to diagnose and treat the medical condition described without direct supervision by a physician.

(2) An oral certification must be confirmed in writing within 14 days by the qualified medical professional prescribing medical care. A written certification must include:

(a) The name of the person to whom the certificate applies and relationship to the customer;

(b) A complete description of the health conditions;

(c) An explanation of how the person's physical health will be significantly endangered by terminating the utility service;

(d) A statement indicating how long the health condition is expected to last;

(e) A statement specifying the particular type of utility service required (for example, access to medical facility for telemonitoring); and

(f) The signature of the qualified medical professional prescribing medical care.

(3) If an emergency medical certificate is not submitted in compliance with section (2) of this rule, the small telecommunications utility may disconnect local exchange service after providing five days' notice to the customer. The notice shall contain the information set forth in OAR 860-034-0260(3)(a) through (d) and shall be served as required by OAR 860-034-0260(4) and (5).

(4) An emergency medical certificate shall be valid only for the length of time the health endangerment is certified to exist, but no longer than six months without renewal.

(5) A customer submitting an emergency medical certificate:

(a) Remains responsible for payment of telecommunications services provided by the small telecommunications utility; and

(b) Must enter into a time payment agreement with the small telecommunications utility pursuant to OAR 860-034-0276 if the customer has an overdue balance. This time payment agreement must be entered into within 10 days after submission of the certificate.

(6) A small telecommunications utility may verify the accuracy of an emergency medical certificate. If the small telecommunications utility believes a customer does not qualify, or no longer qualifies for an emergency medical certificate, the utility may apply to the Commission for permission to disconnect utility service to the customer.

(7) After notice to the Commission, a small telecommunications utility may terminate local exchange residential service if the utility providing the service lacks the technical ability to terminate toll telecommunications service without also terminating local exchange service.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 759.045 & Ch. 290, OL 1987

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 3-2006, f. & cert. ef. 2-27-06

## 860-034-0275

### Termination of Local Exchange Residential Service for Telecommunications Customers at Significant Risk

(1) "At significant risk" means:

(a) At risk of domestic violence, as defined in ORS 135.230;

(b) At risk of unwanted sexual contact, as defined in ORS 163.305;

(c) A person with disabilities, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS 124.005(1)(a), (1)(d), or (1)(e);

(d) An elderly person, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS 124.005(1)(a), (1)(d), or (1)(e); or

(e) A victim of stalking, as described in ORS 163.732.

(2) To establish that termination of local exchange residential service would significantly endanger the customer, or a person in the household of the customer, the customer must give the small telecommunications utility:

(a) A copy of an order issued under ORS 30.866, 107.700 to 107.732, 124.005 to 124.040, or 163.738 that restrains another person from contact with the customer, or a person in the household of the customer, at significant risk; or

(b) A copy of any other court order that restrains another person from contact with the customer, or a person in the household of the customer, due to a significant risk; and

(c) An affidavit signed by the customer stating that termination would place the customer, or a person in the household of the customer, at significant risk. The affidavit must include the name of the person to whom the court order applies, the relationship of the person to the customer, and the expiration date of the order.

(3) A small telecommunications utility must establish and maintain procedures for receiving affidavits and orders from customers.

(4) A customer submitting an affidavit under section (2) of this rule:

(a) Remains responsible for payment of telecommunication services provided by the small telecommunications utility; and

(b) Must enter into a time payment agreement with the small telecommunications utility pursuant to OAR 860-034-0276 if the customer has an overdue balance. This time payment agreement must be made within 10 days after submission of the affidavit.

(5) If a customer who has submitted an affidavit and order fails to enter into or abide by the terms of a time payment agreement pursuant to OAR 860-034-0276, the small telecommunications utility may disconnect local exchange service after complying with all provisions of OAR 860-034-0260. Five days' notice of disconnection must also be provided to the Commission's Consumer Services Section.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: Ch. 290, OL 2005

Hist.: PUC 4-2005(Temp), f. 8-22-05, cert. ef. 9-1-05 thru 2-27-06; PUC 2-2006, f. & cert. ef. 2-27-06

#### 860-034-0276

##### Time Payment Agreements for Small Telecommunications Utilities

(1) A time payment agreement must contain, at a minimum, the following terms:

(a) An initial customer down payment of \$10 or 25 percent of the balance owing for tariffed or price-listed small telecommunications utility services on file with the Commission, whichever is greater;

(b) Full payment of the overdue balance within 90 days of the date of the agreement; and

(c) Customer agreement to keep subsequent bills current.

(2) The small telecommunications utility must send a letter to the customer confirming the terms of the time payment agreement.

(3) Payments must be made on a monthly basis. The small telecommunications utility cannot require more frequent payments unless agreed to by the customer. The customer cannot extend the time payment agreement beyond 90 days without the consent of the small telecommunications utility.

(4) The small telecommunications utility may not accelerate payments under a time payment agreement when the customer changes residences. The customer must pay tariff charges associated with the change in residence.

(5) The small telecommunications utility may terminate the customer's local exchange residential service pursuant to OAR 860-034-0260 if the customer refuses to enter into or fails to abide by the terms of the time payment agreement. The small telecommunications utility must provide five days' notice to the Commission's Consumer Services Section.

(6) Nothing in this rule prevents a small telecommunications utility and a customer from entering into a time payment agreement for other charges.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 2005

Stats. Implemented: ORS 756.040, 757.750, 757.760, 757.755, Ch. 290, OL 1987 & Ch. 290, OL 2005

Hist.: PUC 3-2006, f. & cert. ef. 2-27-06

#### 860-034-0280

##### Telephone Solicitation Notices by Small Telecommunications Utilities

Each small telecommunications utility shall notify its residential customers of the provisions of ORS 646.561, 646.563, 646.567 through 646.578, and 646.608. The notice shall include a statement that a customer not wishing to be solicited may file a request, together with the required fees, with the telephone solicitation program administrator contracted by the State Attorney General. The notice shall include the address and the telephone number for the customer to contact the telephone solicitation program administrator. The notice shall be provided in the following manner and a copy shall be forwarded to the Commission:

(1) Annual inserts in the billing statements mailed to parties; or

(2) Conspicuous publication of the notice in the consumer information pages of local telephone directories.

Stat. Auth.: ORS 183, 646, 756 & 759

Stats. Implemented: ORS 646.578 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-2001, f. & cert. ef. 1-24-01; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0290

##### Customer Notification and Information Delivery Services for Small Telecommunications Utilities

(1) As used in this rule:

(a) "Information provider" means any person, company, or corporation that operates an information delivery service on a pay-per-call basis;

(b) "Information delivery service" means any telephone-recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code. When a preexisting written contract exists between the customer and the information provider, this definition does not apply.

(2) A small telecommunications utility providing billing services for information providers shall inform customers:

(a) Of the availability of blocking for information delivery services if and when it is technically available;

(b) That a customer's local and long distance service shall not be suspended or terminated for nonpayment of information delivery service charges;

(c) That any customer who suffers damage from a violation of ORS 646.608, 646.639, and 759.700 through 759.720 by an information provider has a cause of action against such information provider and a court may award the greater of three times the actual damages or \$500, order an injunction or restitution and award attorney fees and court costs to a prevailing plaintiff;

(d) That when an information provider has failed to comply with any provision of ORS 646.608, 646.639, and 759.700 through 759.720 any obligation by a customer that may have arisen from dialing a pay-per-call telephone number is void and unenforceable;

(e) That any obligation that may have arisen from the dialing of a pay-per-call telephone number by an unemancipated child under 18 years of age; or

(f) For a person whose physician substantiates the following conditions, the obligation is void and unenforceable:

(A) The person has a mental or emotional disorder generally recognized in the medical or psychological community that makes the person incapable of rational judgments and comprehending the consequences of the persons' action; and

(B) The disorder was diagnosed before the obligation was incurred; and

(g) Upon written notification to the information provider or the billing agent for the information provider that a bill for information delivery services is void and unenforceable under subsections (2)(d), (2)(e), or (2)(f) of this rule, no further billing or collection activities shall be undertaken in regard to that obligation.

(3) The notice shall include text prepared by the Commission's Consumer Services Division or prepared by the small telecommunications utility and approved by the Commission. The notice shall be provided in the following manner:

(a) An annual insert in the billing statements mailed to customers or conspicuous publication of the notice in the consumer information pages of local telephone directories; and

(b) Including the notice in the letters setting out the rights and responsibilities of customers sent to all new customers.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 15-2001, f. & cert. ef. 6-21-01

#### Utility Rates

#### 860-034-0300

##### Tariffs of Small Telecommunications Utilities

(1) Small telecommunications utilities not subject to ORS 759.175 must, upon the Commission's request, provide copies of any schedules showing rates, tolls, and charges, including all rules and regulations that in any manner affect the rates charged or to be charged for any service.

(2) Small telecommunications utilities subject to ORS 759.175 must file tariffs in accordance with the following provisions:

(a) Form and style of tariffs:

(A) All tariffs must be in loose-leaf form so changes can be made by reprinting and inserting a single leaf;

(B) Each small telecommunications utility must designate the initial tariff as PUC Oregon No. 1, and thereafter designate successive tariffs with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(C) The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used. Blank forms will be furnished upon request;

(b) Size of tariffs and required:

(A) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(B) Small telecommunications utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. The utility must supplement the filing with an exact copy of the tariff in electronic form as required in OAR 860-013-0036. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.

(c) Tariffs must explicitly state the rates and charges for each class of service rendered, designating the area or district to which they apply;

(d) The small telecommunications utility's rules and regulations that in any manner affect the rates charged or to be charged or that define the extent or character of the service to be given must be included with each tariff;

(e) Changes in tariffs may be made by filing an entirely new tariff or by filing revised sheets which must refer to the tariffs on file. Additions to the tariff on file may be made by filing additional sheets;

(f) Each small telecommunications utility filing tariffs or schedules changing existing tariffs or schedules must submit in the advice letter or other document the following information:

(A) A statement plainly indicating the increase, decrease, or other change thereby made in existing rates, charges, tolls, or rules and regulations;

(B) A statement setting forth the number of customers affected by the proposed change and the resulting change in annual revenue; and

(C) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed change;

(g) All tariff changes must be made applicable with service rendered on and after the effective date of the changes, unless the Commission by order provides otherwise. As used in this rule, "service rendered" means units of toll calls connected, basic service provided, or likewise as the context requires;

(h) Small telecommunications utilities entering into special contracts with certain customers prescribing and providing rates, services, and practices not covered by or permitted in the general tariffs, schedules, and rules filed by such utilities are in legal effect tariffs and are subject to supervision, regulation, and control to the extent not exempted under ORS 759.040; and

(i) All special agreements designating service to be furnished at rates other than those shown in tariffs now on file in the Commission's office are rate schedules. A true and certified copy must be filed pursuant to requirements of this Division.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.175

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-034-0310

##### Announcement of Rate Increases by Small Telecommunications Utilities

(1) A small telecommunications utility which increases any rate for intrastate telecommunications services shall notify its affected customers at least 45 days before the proposed effective date of the increase. A copy of such notification shall at the same time be provided to the Commission.

(2) The small telecommunications utility shall notify its customers by:

(a) Inserting an announcement in the small telecommunications utility's regular billing to its customers; or

(b) Mailing an announcement to each customer.

(3) The announcement shall contain the following information:

(a) The list of services subject to increase, current and proposed rates, and amount and percentage of increase for each service;

(b) The reasons for the proposed rate increase;

(c) The effective date of the proposed rate increase;

(d) The Commission's toll-free telephone number and address; and

(e) The following statement: "Customers may petition the Public Utility Commission of Oregon to investigate the rate increase. The Commission will investigate the rate increase if it receives petitions signed by customers (10 percent of customers or 500, whichever is the lesser), on or before (ten days before the proposed effective date). If the Commission does not receive sufficient petitions by (ten days before the proposed effective date), the proposed rates will become effective on (the proposed effective date) without Commission review. Petitions should be sent to the Commission's Consumer Services Division. The Company will provide a current copy of the local exchange directory and its service territory map within ten days of a request from any customer."

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 11-2003, f. & cert. ef. 7-3-03

#### 860-034-0320

##### Notice to Interested Persons of Tariffs Filed Under ORS 759.175 by Small Telecommunications Utilities

(1) This rule applies to any tariff filed under ORS 759.175.

(2) Any person who requests of the Commission, in writing, to be notified of a small telecommunications utility's tariff filings covered under section (1) of this rule must be included on a notice list.

(3) The Commission must notify all persons on the notice list referred to in section (2) of this rule of any applicable tariff filing. The notice will be given within ten days of any tariff filing under section (1) of this rule that complies with OAR 860-034-0300.

(4) The Commission may periodically delete names of persons from the notice list who do not demonstrate a continued interest in receiving the notices set forth in section (2) of this rule. No person's name may be deleted from the list without 20 days' notice before deletion.

(5) The notice must include the following information:

(a) Name of the filing small telecommunications utility;

(b) Subject;

(c) Advice number;

(d) Filing date;

(e) Effective date;

(f) Customer classes affected, if readily ascertainable from the small telecommunications utility's advice letter; and

(g) Whether the tariff schedule is primarily related to price competition or a service alternative, if readily ascertainable from the small telecommunications utility's advice letter.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-034-0325

##### Requests to Abandon, Exempt from Regulation, or Price-List Regulated Telecommunications Services

A small telecommunications utility is subject to the requirements set forth in OARs 860-032-0020, 860-032-0023, 860-032-0025, and 860-032-0035.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.030, 759.035, 759.045, 759.050, 759.190 & 759.195

Hist.: PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0330

##### Relating to City Privilege Taxes, Fees, and Other Assessments Imposed Upon a Small Telecommunications Utility or Type 2 Cooperative

(1) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a company, as defined in section (2) of this

rule, by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, whether applied to regulated revenues, net income, or other bases, shall be allowed as operating expenses of the company for rate-making purposes, subject to sections (2) through (4) of this rule.

(2) As used in this rule:

(a) "Company," as used in this rule, means a small telecommunications utility or Type 2 cooperative, as defined in OAR 860-034-0010;

(b) "Fees and other assessments" means business or occupation taxes or licenses; franchise or operating permit fees; sales, use, net income, gross receipts, and payroll taxes, levies, or charges; and other similar exactions imposed by cities, other than ad valorem taxes, upon revenues or income received from regulated telecommunications services by a company;

(c) "Local access revenues" means those revenues derived from exchange access services within the city, as defined in ORS 401.710, less related net uncollectibles;

(d) "Privilege taxes" means taxes levied and collected by cities from a company for use and occupancy of city streets, alleys, or highways, as provided under ORS 221.515;

(e) "Regulated revenues" means those revenues derived from regulated telecommunications services within the city less related net uncollectibles. Regulated revenues include, but are not limited to, local access revenues.

(3) Separate fees for street opening, installations, construction, and maintenance of fixtures or facilities to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in the exercise of its police powers shall be allowed as operating expenses of a company for rate-making purposes. Such fees shall not be deducted in computing the percentage level set forth in section (4) of this rule.

(4) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a small telecommunications utility by a city, which does not exceed 4 percent of local access revenues, shall be allowed as operating expenses for rate-making purposes and shall not be itemized or billed separately. All privilege taxes and fees and other assessments in excess of 4 percent of local access revenues shall be charged pro rata to users of local access services within the city and the aggregate excess amount shall be separately itemized on customers' bills or billed separately.

(5) The aggregate amount of all privilege taxes and fees and other assessments imposed upon a Type 2 cooperative by a city, which does not exceed 4 percent of local access revenues, shall be allowed as operating expenses for rate-making purposes and shall not be itemized or billed separately. All privilege taxes and fees and other assessments in excess of 4 percent of local access revenues shall not be included in joint rates and rates for through services.

(6) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the company.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 7-1998, f. & cert. ef. 4-8-98; PUC 17-2001, f. & cert. ef. 6-21-01; PUC 14-2003, f. & cert. ef. 7-24-03

#### 860-034-0340

#### Relating to Local Government Fees, Taxes, and Other Assessments Imposed Upon a Small Telecommunications Utility or Type 2 Cooperative

(1) "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) For a Type 2 cooperative: If any county in Oregon, other than a city-county, should impose upon a Type 2 cooperative any taxes or license, franchise, or operating permit fees, the Type 2 cooperative may not collect such assessments from joint rates or rates for through services.

(3) For a small telecommunications utility:

(a) If any county in Oregon, other than a city-county, should impose upon a small telecommunications utility any new taxes or license, franchise, or operating permit fees, or increase any such taxes or fees, the small telecommunications utility required to pay such taxes or fees shall collect from its customers within the county imposing such taxes or fees the amount of the taxes or fees, or the amount of

increase in such taxes or fees. However, if the taxes or fees cover the operations of a small telecommunications utility in only a portion of a county, then the affected utility shall recover the amount of the taxes or fees or increase in the amount thereof from customers in the portion of the county which is subject to the taxes or fees;

(b) The amount collected from each small telecommunications utility customer pursuant to section (3)(a) of this rule shall be separately stated and identified in all customer billings;

(c) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date;

(d) If any county, small telecommunications utility, or customer affected by this rule deems the rule's application in any instance to be unjust or unreasonable, it may apply for a waiver of this rule by petition to the Commission, setting forth the reasons why the rule should not apply.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045 & 759.500 - 759.675

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 7-1998, f. & cert. ef. 4-8-98; PUC 17-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-034-0350

#### Forced Conversion of Communication Facilities for Small Telecommunications Utilities and Type 2 Cooperatives

(1) As used in this rule:

(a) "Convert," "converting," or "conversion" means the removal of overhead communication facilities and the replacement of those facilities with underground communication facilities at the same or different locations.

(b) "Conversion cost" means the difference in cost between constructing an underground system and retaining the existing overhead system. This difference is equal to the cost of all necessary excavating, road crossings, trenching, backfilling, raceways, ducts, vaults, transformer pads, other devices peculiar to underground service, and "overhead retirement costs." However, if the conversion is required in conjunction with a public project which would necessitate the relocation of the company's facilities at the company's expense, "conversion costs" shall not include any "overhead retirement costs."

(c) "Communication facilities" means any works or improvements used or useful in providing communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances, and all related facilities required for the acceptance of communication services. However, "Communication facilities" excludes facilities used or intended to be used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones; or facilities owned or used by or provided for a railroad or pipeline and located upon or above the right-of-way of the railroad or pipeline.

(d) "Company," as used in this rule, means a small telecommunications utility or Type 2 cooperative, as defined in OAR 860-034-0010.

(e) "Local government" includes cities; counties; authorities and agencies created pursuant to ORS Chapters 456 and 457; special districts of the type described in ORS 198.010 and 198.180; and all other political subdivisions of Oregon.

(f) "Overhead communication facilities" means communication facilities located above the surface of the ground.

(g) "Overhead retirement cost" means the original cost, less depreciation, less salvage value, plus removal costs, of existing overhead distribution facilities no longer used or useful by reason of the conversion.

(h) "Underground communication facilities" means communication facilities located below the surface of the ground exclusive of those facilities such as service terminals, pedestal terminals, splice closures, apparatus cabinets and similar facilities which normally are above the surface in areas where company facilities are underground in accordance with standard underground practices.

(2) This rule does not apply if the total conversion cost incurred by the company during one calendar year does not exceed five-one hundredths of 1 percent (.05 percent) of the company's annual revenues derived from customers residing within the boundaries of the local government.

(3) When a local government requires a company to convert communications facilities at the company's expense:

(a) A small telecommunications utility shall collect the conversion costs from customers located within the boundaries of the local government.

(b) A Type 2 cooperative may not collect the conversion costs from customer located outside the boundaries of the local government for purposes of joint rates and through services.

(4) The local government may direct the company to collect conversion costs from only a portion of the customers located within the boundaries of the local government.

(5) Conversion costs incurred by the small telecommunications utility shall be accumulated in a separate account in the small telecommunications utility's books. Interest shall accrue from the date the small telecommunications utility incurs the cost. The rate of such interest shall be equal to the effective cost of the senior security issue which most recently preceded the incurrence of the cost.

(6) The small telecommunications utility shall collect the conversion costs and interest over a reasonable period of time subject to approval by the Commission. However, the pay-back period shall not exceed the depreciable life of the new facilities. Collection shall begin as soon as practical after the end of the year in which the conversion costs are incurred.

(7) The conversion cost to be recovered from each customer of a small telecommunications utility shall be calculated by applying a uniform percentage to each customer's total monthly bill for service rendered within the boundaries of the local government. The amount collected shall be separately stated and identified on each bill.

(8) This rule applies to conversions upon which construction is commenced on or after August 13, 1984.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 10-2001, f. & cert. ef. 4-18-01

#### 860-034-0380

##### Maintenance of Plant and Equipment by Small Telecommunications Utilities

Each small telecommunications utility shall have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service. Each small telecommunications utility shall inspect its plant distribution system and facilities in such manner and with such frequency as may be needed to ensure a reasonably complete knowledge about their condition and adequacy at all times. The small telecommunications utility shall keep such records of the conditions found as the utility considers necessary to properly maintain its system, unless in special cases the Commission requires a more complete record.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 15-2001, f. & cert. ef. 6-21-01

#### Service Standards for Utilities

#### 860-034-0390

##### Retail Telecommunications Service Standards for Small Telecommunications Utilities

Every small telecommunications utility must adhere to the following standards:

(1) Definitions.

(a) "Access Line" — A facility engineered with dialing capability to provide retail telecommunications service that connects a customer's service location to the Public Switched Telephone Network;

(b) "Average Busy Season Busy Hour" — The hour that has the highest average traffic for the three highest months, not necessarily consecutive, in a 12-month period. The busy hour traffic averaged across the busy season is termed the average busy season busy hour traffic;

(c) "Blocked Call" — A properly dialed call that fails to complete to its intended destination except for a normal busy (60 interruptions per minute);

(d) "Customer" — Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity that has applied for, been accepted, and is currently receiving local exchange telecommunications service;

(e) "Exchange" — Geographic area defined by maps filed with and approved by the Commission for the provision of local exchange telecommunications service;

(f) "Final Trunk Group" — A last-choice trunk group that receives overflow traffic and that may receive first-route traffic for which there is no alternative route;

(g) "Force Majeure" — Circumstances beyond the reasonable control of a small telecommunications utility, including but not limited to, delays caused by:

(A) A vendor in the delivery of equipment, where the small telecommunications utility has made a timely order of equipment;

(B) Local, state, federal, or tribal government authorities in approving easements or access to rights of way, where the small telecommunications utility has made a timely application for such approval;

(C) The customer, including but not limited to, the customer's construction project or lack of facilities, or failure to provide access to the customer's premises;

(D) Uncontrollable events, such as explosion, fire, floods, frozen ground, tornadoes, severe weather, epidemics, injunctions, wars, acts of terrorism, strikes or work stoppages, and negligent or willful misconduct by customers or third parties, including but not limited to, outages originating from introduction of a virus onto the provider's network;

(h) "Held Order for Lack of Facilities" — Request for access line service delayed beyond the initial commitment date due to lack of facilities. An access line service order includes an order for new service, transferred service, additional lines, or change of service;

(i) "Initial Commitment Date" — The initial date pledged by the small telecommunications utility to provide a service, facility, or repair action. This date is within the minimum time set forth in these rules or a date determined by good faith negotiations between the customer and the small telecommunications utility;

(j) "Network Interface" — The point of interconnection between the small telecommunications utility provider's communications facilities and customer terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface must be located on the customer's side of the small telecommunications utility's protector;

(k) "Retail Telecommunications Service" — A telecommunications service provided for a fee to customers. Retail telecommunications service does not include a service provided by a small telecommunications utility to another telecommunications utility or competitive telecommunications provider, unless the telecommunications utility or competitive telecommunications provider receiving the service is the end user of the service;

(l) "Tariff" — A schedule showing rates, tolls, and charges that the small telecommunications utility has established for a retail service;

(m) "Trouble Report" — A report of a malfunction that affects the functionality and reliability of retail telecommunications service on existing access lines, switching equipment, circuits, or features made up to and including the network interface, to a small telecommunications utility by or on behalf of that small telecommunications utility's customer;

(n) "Wire Center" — A facility where local telephone subscribers' access lines converge and are connected to switching equipment that provides access to the Public Switched Telephone Network, including remote switching units and host switching units. A wire center does not include collocation arrangements in a connecting small telecommunications utility's wire center or broadband hubs that have no switching equipment.

(2) Measurement and Reporting Requirements. A small telecommunications utility that maintains 1,000 or more access lines on a statewide basis must take the measurements required by this rule and report them to the Commission as specified. Reported measurements must be reported to the first significant digit (i.e., one number should be reported to the right of the decimal point). A telecommunications utility that maintains fewer than 1,000 access lines on a statewide basis need not take the required measurements and file the required reports unless ordered to do so by the Commission. The service quality objective service levels set forth in sections 4 through 8 of this rule apply only to normal operating conditions and do not establish a level of performance to be achieved during force majeure events.

(3) Additional Reporting Requirements. The Commission may require a small telecommunications utility to submit additional reports on any item covered by this rule.

(4) Provisioning and Held Orders for Lack of Facilities. The representative of the small telecommunications utility must give a retail customer an initial commitment date of not more than six business days after a request for access line service, unless a later date is determined through good faith negotiations between the customer and the small telecommunications utility. The small telecommunications utility may change the initial commitment date only if requested by the customer. When establishing the initial commitment date, the small telecommunications utility may take into account the actual time required for the customer to meet prerequisites; e.g., line extension charges or trench and conduit requirements. If a request for service becomes a held order for lack of facilities, the serving small telecommunications utility must, within five business days, send or otherwise provide the customer a written commitment to fill the order.

(a) Measurement:

(A) Commitments Met — A small telecommunications utility must calculate the monthly percentage of commitments met for service, based on the initial commitment date, across its Oregon service territory. Commitments missed for reasons solely attributed to customers, another telecommunications utility or competitive telecommunications provider may be excluded from the calculation of the “commitments met” results;

(B) Held Orders for Lack of Facilities — A small telecommunications utility must determine the total monthly number of held orders, due to lack of facilities, not completed by the initial commitment date during the reporting month and the number of primary (initial access line) held orders, due to lack of facilities, over 30 days past the initial commitment date.

(b) Objective Service Level:

(A) Commitments Met — Each small telecommunications utility must meet at least 90 percent of its commitments for service.

(B) Held Orders:

(i) The number of held orders for the lack of facilities for each small telecommunications utility must not exceed the greater of two per wire center per month averaged over the small telecommunications utility’s Oregon service territory, or five held orders for lack of facilities per 1,000 inward orders; and

(ii) The total number of primary held orders for lack of facilities in excess of 30 days past the initial commitment date must not exceed 10 percent of the total monthly held orders for lack of facilities within the small telecommunications utility’s Oregon service territory.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission the percentage of commitments met for service, total number of held orders for lack of facilities, and the total number of primary held orders for lack of facilities over 30 days past the initial commitment date.

(d) Retention Requirement: Each small telecommunications utility must maintain records about held orders for lack of facilities for one year. The record must explain why each order is held and the initial commitment date.

(5) Trouble Reports. Each small telecommunications utility must maintain an accurate record of all reports of malfunction made by its customers.

(a) Measurement: A small telecommunications utility must determine the number of customer trouble reports that were received during the month. The small telecommunications utility must relate the count to the total working access lines within a reporting wire center. A small telecommunications utility need not report those trouble reports that were caused by circumstances beyond its control. The approved trouble report exclusions are:

(A) Cable Cuts: A small telecommunications utility may take an exclusion if the “buried cable location” (locate) was either not requested or was requested and was accurate. If a small telecommunications utility or a utility’s contractor caused the cut, the exclusion can only be used if the locate was accurate and all general industry practices were followed;

(B) Internet Service Provider (ISP) Blockage: If an ISP does not have enough access trunks to handle peak traffic;

(C) Modem Speed Complaints: An exclusion may be taken if the copper cable loop is tested at the subscriber location and the objective service levels in section 10 of this rule were met;

(D) No Trouble Found: Where no trouble is found, one exemption may be taken. If a repeat report of the same trouble is received within a 30-day period, the repeat report and subsequent reports must be counted;

(E) New Feature or Service: Trouble reports related to a customer’s unfamiliarity with the use or operation of a new (within 30 days) feature or service;

(F) No Access: An exclusion may be taken if a repair appointment was kept and the copper based access line at the nearest accessible terminal met the objective service levels in section 10 of this rule. If a repeat trouble report is received within the following 30-day period, the repeat report and subsequent reports must be counted;

(G) Subsequent Tickets/Same Trouble/Same Access Line: Only one trouble report for a specific complaint for the same access line should be counted within a 48-hour period. All repeat trouble reports after the 48-hour period must be counted;

(H) Non-Regulated or Deregulated Equipment: Trouble associated with such equipment should not be counted;

(I) Trouble with Other Telecommunications Utilities or Competitive Telecommunications Providers: A trouble report caused solely by another telecommunications utility or competitive telecommunications provider;

(J) Lightning Strikes: Trouble reports received for damage caused by lightning strikes can be excluded if all accepted grounding, bonding, and shielding practices were followed by the small telecommunications utility at the damaged location; and

(K) Other exclusions: As approved by the Commission.

(b) Objective Service Level: A small telecommunications utility must maintain service so that the monthly trouble report rate, after approved trouble report exclusions, does not exceed:

(A) For wire centers with more than 1,000 access lines: two per 100 working access lines per wire center more than three times during a sliding 12-month period.

(B) For wire centers with 1,000 or less access lines: three per 100 working access lines per wire center more than three times during a sliding 12-month period.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission:

(A) The trouble report rate by wire center;

(B) The reason(s) a wire center meeting the standard (did not exceed the trouble report rate threshold for more than three of the last 12 months) exceeded a trouble report rate of 3.0 per 100 working access lines during the reporting month;

(C) The reason(s) a wire center not meeting the standard, after the exclusion adjustment, exceeded the trouble report rate threshold per 100 access lines during the reporting month; and

(D) The access line count for each wire center.

(d) Retention Requirement: Each small telecommunications utility must maintain a record of reported trouble in such a manner that it can be forwarded to the Commission upon the Commission’s request. The small telecommunications utility must keep all records for a period of one year. The record of reported trouble must contain as a minimum the:

(A) Telephone number;

(B) Date and time received;

(C) Time cleared;

(D) Type of trouble reported;

(E) Location of trouble; and

(F) Whether or not the present trouble was within 30 days of a previous trouble report.

(6) Repair Clearing Time. This standard establishes the clearing time for all trouble reports from the time the customer reports the trouble to the small telecommunications utility until the trouble is resolved. The small telecommunications utility must provide each customer making a network trouble report with a commitment time when the small telecommunications utility will repair or resolve the problem.

(a) Measurement: The small telecommunications utility must calculate the percentage of trouble reports cleared within 48 hours for each repair center.

(b) Objective Service Level: A small telecommunications utility must monthly clear at least 95 percent of all trouble reports within 48 hours of receiving a report.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission the percentage of trouble reports cleared within 48 hours by each repair center.

(d) Retention Requirement: None.

(7) Blocked Calls. A small telecommunications utility must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of levels listed in subsection (7)(b) of this rule.

(a) Measurement:

(A) A small telecommunications utility must collect traffic data; i.e., peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups.

(B) System blockage is determined by special testing at the wire center. Commission Staff or a small telecommunications utility technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percentage of calls completed must be calculated.

(b) Objective Service Level:

(A) A small telecommunications utility must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P.01 grade of service); and

(B) A small telecommunications utility must maintain its switch operation so that 99 percent of the calls do not experience blockage during the normal busy hour.

(C) When a small telecommunications utility fails to maintain the interoffice final trunk group P.01 grade of service for four or more consecutive months, it will be considered out-of-standard until the condition is resolved. A single repeat blockage within two months of restoring the P.01 grade of service will be considered a continuation of the original blockage.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission:

(A) Local and extended area service (EAS) final trunk groups that do not meet the objective service level for trunk group blockage, measured from each of its switches, regardless of the ownership of the terminating switch;

(B) Its tandem switch final trunk group blockages associated with EAS traffic;

(C) Any known cause for the blockage and actions to bring the trunks into standard; and

(D) Identity of the telecommunications utility or competitive telecommunications provider, if other than the reporting small telecommunications utility, responsible for maintaining those final trunk groups not meeting the standard.

(d) Retention Requirement: Each small telecommunications utility must maintain records for one year.

(8) Access to Small Telecommunications Utility Representatives. Small telecommunications utilities are not required to measure or report repair center and sales office access times to the Commission.

(9) Interruption of Service Notification. A small telecommunications utility must report significant outages that affect customer service. These interruptions could be caused by switch outage, electronic outage, cable cut, or construction.

(a) Measurement: A small telecommunications utility must notify the Commission when an interruption occurs that exceeds any of the following thresholds:

(A) Cable cuts, excluding service wires and wires placed in lieu of cable, or electronic outages lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(B) Toll or Extended Area Service isolation lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(C) Isolation of a central office (host or remote) from the E 9-1-1 emergency dialing code or isolation of a Public Safety Answering Position (PSAP).

(D) Isolation of a wire center for more than 15 minutes.

(E) Outage of the business office or repair center access system lasting longer than 15 minutes in those instances where the traffic cannot be re-routed to a different center.

(b) Objective Service Level: Not applicable.

(c) Reporting Requirement: A small telecommunications utility must report service interruptions to the Commission engineering staff by telephone, by facsimile, by electronic mail, or personally within two hours during normal work hours of the business day after the company becomes aware of such interruption of service. Interim reports will be given to the Commission as significant information changes (e.g., estimated time to restore, estimated impact to customers, cause of the interruption, etc.) until it is reported that the affected service is restored.

(d) Retention Requirement: None.

(10) Customer Access Line Testing. All customer access lines must be designed, installed, and maintained to meet the levels in subsection (b) of this section.

(a) Measurement: Each small telecommunications utility must make all loop parameter measurements at the network interface, or as close as access allows.

(b) Objective Service Level: Each access line must meet the following levels:

(A) Loop Current: The serving wire center loop current, when terminated into a 400-ohm load, must be at least 20 milliamperes;

(B) Loop Loss: The maximum loop loss, as measured with a 1004-hertz tone from the serving wire center, must not exceed 8.5 decibels (dB);

(C) Metallic Noise: The maximum metallic noise level, as measured on a quiet line from the serving wire center, must not exceed 20 decibels above referenced noise level - C message weighting (dBmC); and

(D) Power Influence: As a goal, power influence, as measured on a quiet line from the serving wire center, must not exceed 80 dBmC.

(c) Reporting Requirement: A small telecommunications utility must report measurement readings as directed by the Commission.

(d) Retention Requirement: None.

(11) Customer Access Lines and Wire Center Switching Equipment. All combinations of access lines and wire center switching equipment must be capable of accepting and correctly processing at least the following network control signals from the customer premises equipment. The wire center must provide dial tone and maintain an actual measured loss between interoffice and access trunk groups.

(a) Measurement: Each small telecommunications utility must make measurements at or to the serving wire center;

(b) Objective Service Level:

(A) Dial Tone Speed. Ninety-eight percent of originating average busy hour call attempts must receive dial tone within three seconds; and

(B) A small telecommunications utility must maintain all interoffice and access trunk groups so that the actual measured loss (AML) in no more than 30 percent of the trunks deviates from the expected measured loss (EML) by more than 0.7 dB and no more than 4.5 percent of the trunks deviates from EML by more than 1.7 dB.

(c) Reporting Requirement: None.

(d) Retention Requirement: None.

(12) Special Service Access Lines. All special service access lines must meet the performance requirements specified in applicable small telecommunications utility tariffs or contracts.

(13) Small Telecommunications Utility Interconnectivity. A small telecommunications utility connected to the facilities of another telecommunications utility or competitive telecommunications provider must operate its system in a manner that will not impede either company's ability to meet required standards of service. A small telecommunications utility must report interconnection operational problems promptly to the Commission.

(14) Alternatives to These Telecommunications Standards. A small telecommunications utility whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules if it specifically indicates the alternative standards to be applied or indicates which standards would be waived.

(15) Remedies for Violation of This Standard.

(a) If a small telecommunications utility subject to this rule fails to meet a minimum service quality standard, the Commission must require the small telecommunications utility to submit a plan for improving performance as provided in ORS 759.450(5). If a small telecommunications utility does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission,

sion, the Commission may assess penalties in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that a small telecommunications utility subject to this rule has violated one or more of its service standards, the Commission must give the small telecommunications utility notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the small telecommunications utility to provide the following relief to the affected customers:

(A) An alternative means of telecommunications service for violations of paragraph (4)(b)(B) of this rule;

(B) Customer billing credits equal to the associated non-recurring and recurring charges of the small telecommunications utility for the affected service for the period of the violation; and

(C) Other relief authorized by Oregon law.

(16) Exemption From These Rules.

(a) A small telecommunications utility may petition the Commission for an exemption, in whole or in part, from these rules.

(b) The Commission may grant an exemption, including but not limited to, the following circumstance: If the Commission determines that effective competition exists in one or more exchange(s), it may exempt all telecommunications utilities or competitive telecommunications providers providing telecommunications services in the exchange(s) from the requirements of this rule, in whole or in part. In making this determination, the Commission will consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Number of suppliers;

(F) Price to cost ratios;

(G) Demand side substitutability (e.g., customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(c) When a small telecommunications utility petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications utilities and competitive telecommunications providers providing the applicable service(s) in the exchange(s) in question. The Commission will provide such notified small telecommunications utilities and competitive telecommunications providers an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in paragraphs (16)(b)(A) through (H), the commenting telecommunications utilities and competitive telecommunications providers be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) The Commission may grant a small telecommunications utility's petition for an exemption from service quality reporting requirements if the small telecommunications utility meets all service quality objective service levels set forth in sections (4) through (8) of this rule for the 12 months prior to the month in which the petition is filed.

[Publications: Publications referenced are available from the agency]

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 759.035 & 759.240

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 23-1985, f. & ef. 12-11-85 (Order No. 85-1171); PUC 4-1997, f. & cert. ef. 1-7-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 13-2000, f. & cert. ef. 6-9-00; PUC 13-2001, f. & cert. ef. 5-25-01; PUC 7-2002, f. & cert. ef. 2-26-02; PUC 10-2005, f. & cert. ef. 12-27-05

## Finance, Accounting, and Annual Reports for Utilities

### 860-034-0392

#### Accounting for Directors' Fees by Small Telecommunications Utilities

Directors' fees paid by a small telecommunications utility to members of its board of directors, who are also paid as officers of the utility, shall not be recognized as a charge to operating expenses in Oregon.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 3-1999, f. & cert. ef. 8-10-99, Renumbered from 860-034-0500; PUC 15-2001, f. & cert. ef. 6-21-01

### 860-034-0393

#### Uniform System of Accounts for Small Telecommunications Utilities

(1) The Uniform System of Accounts for Telecommunications Companies, Part 32, adopted by the Federal Communications Commission (FCC) on October 11, 2001, is hereby adopted and prescribed for all small telecommunications utilities except as modified for intrastate purposes in sections (2) through (5) of this rule.

(2) A small telecommunications utility may follow Class B accounting except when Class A accounting is needed to complete intrastate depreciation and jurisdictional separation studies, to provide the details requested in annual reports under OAR 860-034-0395, and to comply with other Oregon rules and statutes.

(3) The allocation rules in Part 32, Section 32.27, are replaced by OAR 860-034-0394(3).

(4) For construction work in progress and property held for future use, each small telecommunications utility shall maintain subsidiary records consistent with ORS 759.285.

(5) Each small telecommunications utility shall maintain subsidiary records sufficient to identify the following deferred taxes, revenues, and expenses:

(a) Federal and state net noncurrent deferred operating income taxes (Account 4340).

(b) Interstate and intrastate switched access revenue (Account 5082).

(c) Interstate and intrastate special access revenue (Account 5083).

(d) [Reserved].

(e) Universal Service Fund (USF) revenues and expenses:

(A) Collections from customers for federal USF and Oregon USF;

(B) Contributions to the federal USF and Oregon USF; and

(C) Distributions from the federal USF and the Oregon USF.

(D) Depreciation expenses related to telecommunications plant in service, depreciation expense related to property held for future use, and amortization expense.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 6-1998, f. & cert. ef. 3-13-98; PUC 3-1999, f. & cert. ef. 8-10-99, Renumbered from 860-034-0510; PUC 3-2000, f. & cert. ef. 2-9-00; PUC 9-2000, f. & cert. ef. 5-26-00; PUC 16-2000, f. & cert. ef. 9-12-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 14-2002, f. & cert. ef. 3-26-02

### 860-034-0394

#### Allocation of Costs by Small Telecommunications Utilities

(1) As used in this rule:

(a) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a small telecommunications utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single small telecommunications utility;

(b) "Asset" means any tangible or intangible property of a small telecommunications utility or other right, entitlement, business opportunity, or other thing of value to which a utility holds claim;

(c) "Cost" means fully distributed cost, including the small telecommunications utility's authorized rate of return and all overheads;

(d) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a non-affiliated entity, as determined by commonly accepted valuation principles;

(e) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(f) "Net book value" means original cost less accumulated depreciation; and

(g) "Nonregulated service" means a service that is not a telecommunications service as defined by ORS 759.005(2)(g), or a service that the Commission has determined to be exempt from regulation.

(2) A small telecommunications utility that provides both regulated and nonregulated intrastate service shall:

(a) Allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements, which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule;

(b) Part 64, Subpart I, Allocation of Costs, adopted by the Federal Communications Commission on October 11, 2001, is hereby adopted and prescribed.

(3) For intrastate purposes, FCC rules governing affiliate transactions (Section 32.27) are replaced as follows:

(a) When an asset is transferred to regulated accounts from non-regulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value;

(b) When an asset is transferred from regulated accounts to non-regulated accounts, the transfer shall be recorded in regulated accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value;

(c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The small telecommunications utility shall the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding;

(d) When services or supplies are sold by a regulated activity to a nonregulated activity, sales shall be recorded in regulated revenue accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in regulated revenue accounts at the small telecommunications utility's cost;

(e) When services or supplies are sold to a regulated activity by a nonregulated activity, sales shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the small telecommunications utility's most recently authorized rate of return; and

(f) Income taxes shall be allocated among the regulated activities of the small telecommunications utility, its nonregulated divisions, and members of an affiliated group. When income taxes are determined on a consolidated basis, the small telecommunications utility shall record income tax expense as if it were determined for the small telecommunications utility separately for all time periods.

(4) If a small telecommunications utility is subject to ORS 759.120 through 759.130 and provides both regulated and nonregulated intrastate service, the utility shall maintain a current intrastate cost allocation manual on file with the Commission. If the FCC requires the small telecommunications utility to file an interstate cost allocation manual, the utility shall also maintain a current copy of its interstate manual with the Commission.

(5) An intrastate cost allocation manual shall contain the following:

(a) A description of each of the small telecommunications utility's nonregulated intrastate activities;

(b) A list of all intrastate activities to which the small telecommunications utility now accords incidental accounting treatment, and the justification for treating each as incidental;

(c) A chart showing the small telecommunications utility's affiliates;

(d) A statement identifying affiliates that engage in or will engage in transactions with the small telecommunications utility for the purpose of providing nonregulated intrastate service and describing the nature, terms, and frequency of such transactions; and

(e) A detailed specification of the cost categories to which amounts in each account and subaccount of Part 32 will be assigned, and a detailed specification of the basis on which each cost category will be apportioned between regulated and nonregulated activities.

(6) A cost allocation manual cannot be used to satisfy any other reporting requirement established by the Commission.

(7) The initial cost allocation manual filed by a small telecommunications utility pursuant to this rule must be filed with the Commission no less than 90 days before the manual's effective date. The manual shall go into effect unless rejected by the Commission before the manual's effective date.

(8) When a small telecommunications utility proposes any change to a cost allocation manual previously filed with the Commission, the utility shall file the proposed change with the Commission no less than 60 days before the effective date of the change. The changes shall go into effect unless rejected by the Commission before the effective date of the change.

(9) After the Commission has issued an order to exempt from regulation a telecommunications service provided by a small telecommunications utility that is subject to ORS 759.120 through 759.130, the affected utility shall file with the Commission either an initial cost allocation manual or a change to its previously filed manual.

(10) A small telecommunications utility that is required to file annual independent cost allocation audits with the FCC shall at the same time file copies of the annual audits with the Commission.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99, Renumbered from 860-034-0520; PUC 10-2000, f. & cert. ef. 5-26-00; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 24-2002, f. & cert. ef. 12-20-02

#### 860-034-0395

##### Annual Report Requirements for Small Telecommunications Utilities

Small telecommunications utilities shall submit annual reports. The report Form O for the previous calendar year shall be submitted on or before April 1, using the most current forms approved by the Commission. The intrastate report Form I for the previous calendar year shall be submitted on or before October 31, using the most current form approved by the Commission.

[ED. NOTE: Forms referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 3-1995, f. & cert. ef. 6-19-95 (Order No. 95-516); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99, Renumbered from 860-034-0530; PUC 19-2000, f. & cert. ef. 12-28-00; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0396

##### Reporting of Affiliated Transactions by Small Telecommunications Utilities

(1) By April 1, on forms approved and provided by the Commission, all small telecommunications utilities shall file with the Commission a list of all affiliated interest contracts executed during the period from January 1 through December 31 of the immediately preceding year. The list shall consist of the names of the parties to the contracts, the dollar amounts of the contracts, and the dates of execution of the contracts.

(2) As used in this rule, "affiliated interest transactions" mean transactions between affiliated interests as defined by ORS 757.015 and 759.010.

[ED. NOTE: Forms referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99, Renumbered from 860-034-0550; PUC 8-2001, f. & cert. ef. 3-21-01; PUC 18-2001, f. & cert. ef. 6-21-01

#### 860-034-0397

##### Use of Deferred Accounting by Small Telecommunications Utilities

(1) Definitions: As used in this rule:

(a) "Amortization" means the inclusion in rates of an amount which has been deferred under ORS 759.200 and is designed to eliminate, over time, the balance in an authorized deferred account. Amortization excludes the normal positive and negative fluctuations in a balancing account; and

(b) "Deferred accounting" means recording an amount, as allowed by ORS 759.200, in a balance sheet account for later reflection in rates.

(2) Expiration: Any authorization to use a deferred account shall expire 12 months from the date the deferral is authorized to begin. If

a deferral under ORS 759.200 is reauthorized, the reauthorization shall expire 12 months from the date the reauthorization becomes effective.

(3) Contents of Application: Application for deferred accounting, by a small telecommunications utility or a customer, shall include:

(a) A description of the small telecommunications utility expense or revenue for which deferred accounting is requested;

(b) The reason(s) deferred accounting is being requested and a reference to the section(s) of ORS 759.200 under which deferral may be authorized;

(c) The account proposed for recording of the amounts to be deferred and the account which would be used for recording the amounts in the absence of approval of deferred accounting;

(d) An estimate of the amounts to be recorded in the deferred account for the 12-month period after the application; and

(e) A copy of the notice of application for deferred accounting and list of persons served with the notice.

(4) Reauthorization: Application for reauthorization to use a deferred account shall be made not more than 60 days before the expiration of the previous authorization for the deferral. Application for reauthorization shall include the requirements in subsections (3)(a) through (3)(e) of this rule and the following information:

(a) A description and explanation of the entries in the deferred account to the date of the application for reauthorization; and

(b) The reason(s) for continuation of deferred accounting.

(5) Exceptions: Authorization under ORS 759.200 to use a deferred account is necessary only to add amounts to an account, not to retain an existing account balance and not to amortize amounts which have been entered in an account under an authorization by the Commission. Interest, once authorized to accrue on unamortized balances in an account, may be added to the account without further authorization by the Commission, even though authorization to add other amounts to an account has expired.

(6) Notice of Application: The applicant shall serve a notice of application upon all persons who were parties in the small telecommunications utility's last general rate case. If the applicant is other than a small telecommunications utility, the applicant shall serve a copy of the application upon the affected utility. A notice of application shall include:

(a) A statement that the applicant has applied to the Commission for authorization to use deferred accounting, or for an order requiring that deferred accounting be used by a small telecommunications utility;

(b) A description of the utility expense or revenue for which deferred accounting is requested;

(c) The way an interested person can obtain a copy of the application;

(d) A statement that any person may submit to the Commission written comment on the application by the date in the notice, which may be no sooner than 25 days from the date of the application; and

(e) A statement that the granting of the application will not authorize a change in rates, but will permit the Commission to consider allowing such deferred amounts in rates in a subsequent proceeding.

(7) Public Meetings: Unless otherwise ordered by the Commission, applications for use of deferred accounting will be considered at the Commission's Public Meetings.

(8) Reply Comments: Within ten days after the due date for comments on the application from interested persons, the applicant, and the small telecommunications utility if the utility is not the applicant, reply comments may be filed with the Commission and served on persons who filed the initial comments on the application.

(9) Amortization: Amortization in rates of a deferred amount shall only be allowed in a rate proceeding, whether initiated by the small telecommunications utility or another party. The Commission may authorize amortization of such amounts only for utility expenses or revenues for which the Commission previously has authorized deferred accounting. Upon request for amortization of a deferred account, the small telecommunications utility shall provide the Commission with its financial results for a 12-month period or for multiple 12-month periods to allow the Commission to perform an earnings review. The period selected for the earnings review will encompass all or part of the period when the deferral took place or must be reasonably representative of the deferral period. Unless authorized by the Commission to do otherwise:

(a) A small telecommunications utility shall request that amortizations of deferred accounts commence no later than one year from the date that deferrals cease for that particular account; and

(b) In the case of ongoing balancing accounts, the small telecommunications utility shall request amortization at least annually, unless amortization of the balancing account is then in effect.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99, Renumbered from 860-034-0560; PUC 15-2001, f. & cert. ef. 6-21-01

## Construction and Safety Standards for Utilities and Telecommunications Cooperatives, General

### 860-034-0400

#### Maps and Records of Small Telecommunications Utilities and Telecommunications Cooperatives

(1) Each small telecommunications utility and telecommunications cooperative shall keep on file current maps and records of the entire plant showing size, location, character, and date of installation of major plant items.

(2) Upon request, each small telecommunications utility and telecommunications cooperative shall file with the Commission an adequate description or maps to define the territory served. All maps and records, which the Commission may require the small telecommunications utility or telecommunications cooperative to file, shall be in a form satisfactory to the Commission.

Stat. Auth.: ORS 183, 756, 758 & 759

Stats. Implemented: ORS 756.040, 758.215 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 3-1999, f. & cert. ef. 8-10-99; PUC 13-2002, f. & cert. ef. 3-26-02

### 860-034-0420

#### Location of Underground Facilities

A small telecommunications utility or telecommunications cooperative and its customers shall comply with requirements of chapter 952 regarding the prevention of damage to underground facilities.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 757.542 - 757.562 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 23-2001, f. & cert. ef. 10-11-01

### 860-034-0430

#### Construction, Safety, and Reporting Standards for Small Telecommunications Utilities and Telecommunications Cooperatives

Every small telecommunications utility and telecommunications cooperative shall comply with the construction, safety, and reporting standards set forth in OAR chapter 860, division 024.

Stat. Auth.: ORS 183, 654, 756, 757 & 759

Stats. Implemented: ORS 654.715, 757.035 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 3-1994, f. & cert. ef. 1-14-94 (Order No. 94-074); PUC 13-1994, f. & cert. ef. 8-31-94 (Order No. 94-1243); PUC 7-1997, f. & cert. ef. 2-6-97; PUC 23-2001, f. & cert. ef. 10-11-01

## Regulations to Prevent Duplication of Facilities for Utilities and Telecommunications Cooperatives

### 860-034-0440

#### Applicability and Formal Requirements for Small Telecommunications Utilities and Telecommunications Cooperatives

(1) The rules contained in this division are auxiliary to and supplemental to the rules contained in divisions 011 through 014 of this chapter, Practice and Procedure, and all applications or petitions for approval of contracts or amendments thereto, allocations of territory, assignment or transfer of rights acquired pursuant to an allocation of territory, and all other pleadings filed with the Commission pursuant to ORS 759.500 to 759.595 inclusive, are governed by the rules in divisions 011 through 014 of this chapter, Practice and Procedure, except as provided in sections (2) and (3) of this rule.

(2) All applications and petitions must contain the full and correct name and business address of the applicant or petitioner.

(3) An original and three conformed of all applications and petitions, as well as supplemental electronic copies, must be filed with the Commission.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045 & 759.500 - 759.675

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 13-2002, f. & cert. ef. 3-26-02; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-034-0450

##### Applications for Approval of Contracts to Avoid or Eliminate Duplicate Utility Service for Small Telecommunications Utilities and Telecommunications Cooperatives

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500(3). An application under ORS 759.500 through 759.595 for an order of the Commission approving a contract authorized thereunder shall contain in addition to the contract, if not contained therein, the following information:

(1) A map or maps, to appropriate scale, showing the general location and boundaries of the respective applicant's service areas.

(2) A map or maps, to appropriate scale, showing the location of customers who are being served by either or both of the parties, or who could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto, who are covered by the contract.

(3) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, designating the boundaries of the territory to be served by each party to the contract. Such legal description of boundary lines may be drawn and described:

(a) To eliminate minor irregularities in the boundary of each party when to do so will include within each party's territory, only that unserved area which may be economically served by the then existing facilities of the respective parties or by reasonable and economic extensions thereto; and

(b) In the case of persons providing utility service who have entered into exchange boundary agreements before May 31, 1961, to define mutually exclusive exchange service areas, the area affected by such agreement may be described by reference to the exchange area map in that agreement. However, the applicant shall not be relieved by such reference from showing that it can economically serve the unserved areas within the exchange area map with its existing facilities or by a reasonable and economic extension thereto.

(4) A description of the equipment and facilities of each party, which are the subject of sale, exchange, transfer, or lease pursuant to the contract and the consideration to be paid therefore.

(5) Facts showing that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility service systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.500 - 759.595

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 13-2002, f. & cert. ef. 3-26-02

#### 860-034-0460

##### Applications for Approval of Amendments to Contracts to Avoid or Eliminate Duplicate Utility Service for Small Telecommunications Utilities and Telecommunications Cooperatives

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500(3). An application under ORS 759.530 for a Commission order approving an amendment to a contract approved pursuant to ORS 759.510 to 759.520, inclusive, shall contain the amendatory contract and such information required by OAR 860-034-0450 as is pertinent to the Commission in making a decision thereon.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.530

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 13-2002, f. & cert. ef. 3-26-02

#### 860-034-0470

##### Applications for Allocation of Exclusively Served Territory by Small Telecommunications Utilities and Telecommunications Cooperatives

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500(3). An application under ORS 759.535 for an order of the Commission to allocate territory to a person providing exclusive utility service in a territory shall contain the following information:

(1) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the applicant's service area.

(2) A map or maps, drawn to appropriate scale, showing the location of the applicant's customers and facilities in the vicinity of the boundaries of the territory applied for in sufficient detail to enable the Commission to determine the boundaries of that territory served exclusively by applicant.

(3) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, of the boundaries of applicant's exclusive service area. Such map and legal description of boundary lines may be drawn and described to eliminate minor irregularities in the boundary.

(4) Facts showing that applicant is lawfully and in good faith providing exclusive utility service within the area described in the application and that no other person is providing a similar utility service within such territory.

(5) Such additional information as needed for a full understanding of the situation.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.535

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 13-2002, f. & cert. ef. 3-26-02

#### 860-034-0480

##### Applications for Allocation of Unserved Territory for Small Telecommunications Utilities and Telecommunications Cooperatives

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500(3). An application under ORS 759.535, for an order of the Commission to allocate territory to a person providing exclusive utility service in a territory and adjacent unserved territory, shall contain the following information:

(1) The information required under OAR 860-034-0470.

(2) A map or maps similar to that required by OAR 860-034-0470(2), and description comparable to that required by OAR 860-034-0470(3), showing and describing the boundary of the adjacent unserved territory covered by the application.

(3) The names and addresses of all persons providing similar utility service in proximity to the unserved area applied for who may have an interest in or be affected by an approval or disapproval of the application.

(4) Facts showing that it is more economical and feasible to serve the adjacent unserved territory by an extension of the applicant's existing facilities than by an extension of the facilities of another person, including but not limited to the following:

(a) A map or maps, drawn to appropriate scale, showing location and capability of equipment, plant, or facilities including the capability, location, and route of proposed facilities, if any, which relate to the applicant's ability to extend utility service into the adjacent unserved area.

(b) Copies of such franchises or permits as the appropriate public authorities may require for extending service into the adjacent unserved area, or a statement that they will be filed at the hearing or a statement that no such authority is required by said public authorities.

(c) The kind or nature and extent of the need or demand, or reasonably anticipated need or demand, for utility service within the unserved area.

(d) The estimated construction, operating, and related costs of and revenues from providing the proposed utility service within the unserved area.

(5) Such additional information as needed for a full understanding of the situation.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.535

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 13-2002, f. & cert. ef. 3-26-02

#### 860-034-0490

##### Applications to Transfer Rights to Allocated Territory for Small Telecommunications Utilities and Telecommunications Cooperatives

For purposes of this rule, "utility service" means telecommunications utility service as defined in ORS 759.500(3). An application

under ORS 759.560 for an order of the Commission to approve the transfer of rights acquired by an allocation of territory shall contain the following information:

(1) A statement of the purposes for the transfer, the supporting reasons therefore and a detailed explanation thereof justifying why the transfer will not be contrary to the public interest.

(2) A copy of all written evidence and a statement of all oral understanding comprising the agreement between the transferor and transferee covering the transfer of the territory described in the application and sought to be transferred.

(3) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the allocated territory sought to be transferred and the transferor's and transferee's adjacent service areas.

(4) A map or maps, drawn to appropriate scale, showing:

(a) The number and, as practicable, the location of customers and equipment or facilities of the transferor with a detailed description of such equipment or facilities within the territory sought to be transferred; and

(b) The location of equipment or facilities of the transferor and transferee, with a detailed description of the same, which are in the territory immediately adjacent to that sought to be transferred and which are or will be interconnected therewith.

(5) A legal description comparable to that required in OAR 860-034-0470(4) of the boundaries of the territory sought to be transferred.

(6) A legal description comparable to that required in OAR 860-034-0470(4) of the resulting boundaries of the remaining allocated portion of the parcel of the transferor's territory where the territory sought to be transferred is only part of a parcel of transferor's allocated territory and a similar description of the resulting boundaries of the transferee's allocated territory where the territory sought to be transferred will be contiguous to a parcel of transferee's allocated territory.

(7) A copy of each franchise and permit, as the appropriate public authorities may require, authorizing the transferee to serve in the territory sought to be transferred, or evidence of the approval of the appropriate public authorities of the transfer to the transferee of the transferor's franchise or permit to serve the territory sought to be transferred.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 756.040, 759.045 & 759.560  
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 13-2002, f. & cert. ef. 3-26-02

#### 860-034-0495

##### Application by an Unserved Person for Service from a Small Telecommunications Utility

An application under ORS 759.590 for an order of the Commission directing another telecommunications utility to provide local exchange service to an unserved person shall comply with OAR 860-032-0220.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 756.040, 759.045, 759.580, 759.585, 759.590 & 759.595  
Hist.: PUC 13-2002, f. & cert. ef. 3-26-02

#### 860-034-0505

##### Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities

Pole and conduit attachments shall comply with the rules set forth in OAR chapter 860, division 028.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stat. Implemented: ORS 756.040, 757.270 - 757.290, 759.045 & 759.650 - 759.675  
Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

##### Reports and Records for Utilities and Telecommunications Cooperatives

#### 860-034-0580

##### Preservation and Destruction of Records for Small Telecommunications Utilities and Type 2 Cooperatives

The Regulations to Govern the Preservation of Records of Communication Common Carriers, Part 42, 47 Code of Federal Regulations Chapter 1 (October 1, 2003, edition) is hereby adopted and prescribed by the Commission for all small telecommunications utilities and Type 2 telecommunications cooperatives.

[Publications: Publications referenced are available from the Agency.]  
Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.225  
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 3-1999, f. & cert. ef. 8-10-99; PUC 8-2000, f. & cert. ef. 5-26-00; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 15-2004, f. & cert. ef. 10-28-04

##### Rules Relating to Establishment of and Exceptions to Depreciation Guidelines for Utilities and Type 2 Cooperatives

#### 860-034-0600

##### Definitions for Depreciation Guidelines for Small Telecommunications Utilities and Type 2 Cooperatives

As used in OARs 860-034-0600 through 860-034-0670:

(1) "Exception" means a rate for the depreciation of an investment made by a small telecommunications utility or Type 2 cooperative that exceeds the guideline rate. "Exception" also includes a rate for amortization of retired investment if the rate of amortization exceeds the otherwise applicable guideline rate for depreciation of that investment.

(2) "File" means compliance with Commission rules.

(3) "Guidelines" means the standards used by this Commission to determine rates for the depreciation of investment made by a small telecommunications utility or Type 2 cooperative to provide a through service.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 756.040, 759.135, 759.220 & 759.225  
Hist.: PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-034-0610

##### Revision of Depreciation Guidelines

During February of 1995 and every three years thereafter, the Commission will open a docket to consider changes to the guidelines. The Commission will hold a prehearing conference to establish dates to resolve the issues.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 756.040, 759.135, 759.220 & 759.225  
Hist.: PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98

#### 860-034-0620

##### Filing Deadlines for a Request for an Exception by a Small Telecommunications Utility or Type 2 Cooperatives

(1) A small telecommunications utility or Type 2 cooperative requesting an exception from the depreciation guidelines for one or more calendar years shall file a request for an exception on or before June 1 of the year preceding the first calendar year for which it seeks an exception.

(2) A small telecommunications utility or Type 2 cooperative may file a request for an exception after June 1 only if the Commission grants a motion to file out of time. The Commission may grant such a motion if the small telecommunications utility or Type 2 cooperative shows good cause for its failure to file timely and if the Commission concludes it has sufficient time to rule on the request on or before December 31 of the year preceding the first calendar year for which the small telecommunications utility or Type 2 cooperative seeks an exception.

(3) If the Commission grants a motion to file out of time, the time line set forth in OARs 860-034-0640 through 860-034-0660 shall begin on the date of the order granting the motion.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 756.040, 759.220 & 759.225  
Hist.: PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0630

##### Information to be Included With a Request for an Exception Filed Under OAR 860-034-0620

Information included with filing a request for an exception, at a minimum, shall:

(1) State the account(s) for which the small telecommunications utility or Type 2 cooperative seeks the exception;

(2) State the number of calendar years for which the small telecommunications utility or Type 2 cooperative seeks the exception; and

(3) Include an engineering analysis, economic analysis, or both, or other support for the exception.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0640

##### Review by Staff of a Request for an Exception Filed Under OAR 860-034-0620

On or before the 30th day following the filing of a request for an exception, staff shall issue a written response to the small telecommunications utility or Type 2 cooperative stating whether staff recommends approval or denial of the request.

(1) If staff recommends approval, it shall, within 15 days of notifying the small telecommunications utility or Type 2 cooperative of the recommendation, place on a Public Meeting agenda a recommendation that the Commission approve the request.

(2) If staff recommends denial, it shall provide written notice to the small telecommunications utility or Type 2 cooperative of such recommendation, specify the reason(s) therefore, and provide to the small telecommunications utility or Type 2 cooperative all documents, including, but not limited to, workpapers, studies, calculations, and internal memoranda which support its recommendation.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0650

##### Petition to Open Depreciation Docket

If staff recommends denial of a request for an exception, a small telecommunications utility or Type 2 cooperative may file a petition with the Commission requesting that the Commission open a docket to determine whether to grant the exception. The small telecommunications utility or Type 2 cooperative shall file its petition with both the Administrative Hearings Division and staff on or before the 20th day following the small telecommunications utility's or Type 2 cooperative's receipt of staff's notification of recommended denial.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0660

##### Review Procedure and Schedule for a Request for an Exception Filed Under OAR 860-034-0650

(1) A small telecommunications utility or Type 2 cooperative filing a petition pursuant to OAR 860-034-0650 shall include as exhibits to the petition:

(a) Its request for exception and any material submitted in support of that request;

(b) Staff's notification of recommended denial of the request for exception and all material provided by staff to the small telecommunications utility or Type 2 cooperative in support of staff's recommended denial; and

(c) Any other arguments or evidence the small telecommunications utility or Type 2 cooperative chooses to submit.

(2) The petition and exhibits shall constitute the entire record unless, within 20 days following the small telecommunications utility's or Type 2 cooperative's filing, the staff files objections to the petition or exhibits or files supplemental evidence.

(3) If staff files an objection to the petition or exhibits or files supplemental evidence, the small telecommunications utility or Type 2 cooperative may file its response within 20 days from the date of the staff's filing.

(4) Within ten days after the date when the small telecommunications utility or Type 2 cooperative is to respond, either staff or the small telecommunications utility or Type 2 cooperative may request a hearing. If neither staff nor the small telecommunications utility or Type 2 cooperative requests a hearing, then the record shall be closed.

(5) The Administrative Law Judge (ALJ) shall establish a schedule for the filing of briefs, upon request of either the small telecommunications utility or Type 2 cooperative or staff.

(6) The ALJ shall have discretion, for cause, to modify the schedule, but in no event may modify the schedule so as to prevent the Commission from issuing an order on or before December 31.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0670

##### Extension of Time for a Request for an Exception

The Commission or a Hearings Officer may grant, upon a showing of good cause, a request to modify the filing dates set forth in OARs 860-034-0640 through 860-034-0660.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 12-1994, f. & cert. ef. 8-31-94 (Order No. 94-1242); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 9-2001, f. & cert. ef. 3-21-01

##### Joint Rates or Rates Charged for Through Services by Type 2 Cooperatives

#### 860-034-0710

##### Extension of Time for a Request for an Exception Filed Under OAR 860-034-0650

Type 2 cooperatives shall, upon the Commission's request, provide copies of any schedules showing rates, tolls, and charges, including all rules and regulations that in any manner affect any joint rates or rates charged for through services.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 9-2001, f. & cert. ef. 3-21-01

#### 860-034-0720

##### Announcement of Rate Increases for Joint Rates or Rates Charged for Through Services by Type 2 Cooperatives

A Type 2 cooperative that increases any joint rate or rate charged for a through service shall notify its affected customers, who have requested notice, at least 30 days before the proposed effective date of the increase, or as ordered by the Commission. The Type 2 cooperative shall file a copy of such notification at the same time with the Commission.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 15-2001, f. & cert. ef. 6-21-01

#### 860-034-0725

##### Telephone Solicitation Notices by Telecommunications Cooperatives

Each telecommunications cooperative shall notify its residential customers of the provisions of ORS 646.561, 646.563, 646.567 through 646.578, and 646.608. The notice shall include a statement that a customer not wishing to be solicited may file a request, together with the required fees, with the telephone solicitation program administrator contracted by the State Attorney General. The notice shall include the address and the telephone number for the customer to contact the telephone solicitation program administrator. The notice shall be provided in the following manner and a copy shall be forwarded to the Commission:

(1) Annual inserts in the billing statements mailed to parties; or

(2) Conspicuous publication of the notice in the consumer information pages of local telephone directories.

Stat. Auth.: ORS 183, 646, 756 & 759

Stat. Implemented: ORS 646.578 & 756.040

Hist.: PUC 3-2001, f. & cert. ef. 1-24-01; PUC 15-2001, f. & cert. ef. 6-21-01

##### Finance, Accounting, and Annual Reports for Type 2 Cooperatives

#### 860-034-0730

##### Uniform System of Accounts for Type 2 Cooperatives

(1) The Uniform System of Accounts for Telecommunications Companies, Part 32, adopted by the Federal Communications Commission (FCC) on October 11, 2001, is hereby adopted and prescribed for all Type 2 cooperatives utilities except as modified for intrastate purposes in sections (2) through (11) of this rule.

(2) A Type 2 cooperative may follow Class B accounting except when Class A accounting is needed to complete intrastate depreciation and jurisdictional separation studies, to provide the details requested in annual reports under OAR 860-034-0750, and to comply with other Oregon rules and statutes.

(3) The allocation rules in Part 32, Section 32.27, are replaced by OAR 860-034-0740(3).

(4) For construction work in progress and property held for future use, each Type 2 cooperative shall maintain subsidiary records consistent with ORS 759.285.

(5) Each Type 2 telecommunications cooperative shall maintain subsidiary records sufficient to identify the following revenues and expenses:

- (a) [Reserved].
- (b) Interstate and intrastate switched access revenue (Account 5082).
- (c) Interstate and intrastate special access revenue (Account 5083).
- (d) [Reserved].
- (e) Universal Service Fund (USF) revenues and expenses:
  - (A) Collections from customers for federal USF and Oregon USF;
  - (B) Contributions to the federal USF and Oregon USF; and
  - (C) Distributions from the federal USF and the Oregon USF.
- (f) Depreciation expenses related to telecommunications plant in service, depreciation expense related to property held for future use, and amortization expense.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 3-2000, f. & cert. ef. 2-9-00; PUC 9-2000, f. & cert. ef. 5-26-00; PUC 16-2000, f. & cert. ef. 9-12-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 14-2002, f. & cert. ef. 3-26-02

#### 860-034-0740

##### Allocation of Costs by Type 2 Cooperatives

- (1) As used in this rule:
  - (a) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for services for which a joint rate is charged or for through services offered by a Type 2 cooperative and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the Type 2 cooperative owns a controlling interest;
  - (b) "Asset" means any tangible or intangible property of a Type 2 cooperative or other right, entitlement, business opportunity, or other thing of value to which a Type 2 cooperative holds claim;
  - (c) "Cost" means fully distributed cost, including all overheads and rate of return as defined in section (1)(h) of this rule;
  - (d) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a non-affiliated entity, as determined by commonly accepted valuation principles;
  - (e) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;
  - (f) "Net book value" means original cost less accumulated depreciation;
  - (g) "Nonregulated service" means a service that is neither a through service nor a service for which a joint rate is charged, as defined by OAR 860-034-0015; and
  - (h) "Rate of return" means the rate or return established by the Commission for the calculation of a rate for a through service or for which a joint rate is charged.

(2) A Type 2 cooperative that provides both regulated and non-regulated intrastate service shall:

(a) Allocate intrastate investments, expenses, and revenues between regulated activities and nonregulated activities according to principles, procedures, and accounting requirements, which the Federal Communications Commission (FCC) adopted December 23, 1986, and amended on reconsideration September 17, 1987, in CC Docket No. 86-111, except as otherwise provided in this rule.

(b) Part 64, Subpart I, Allocation of Costs, adopted by the Federal Communications Commission on October 11, 2001, is hereby adopted and prescribed.

(3) For intrastate purposes, FCC rules governing affiliate transactions (Section 32.27) are replaced as follows:

(a) When an asset is transferred to regulated accounts from non-regulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value;

(b) When an asset is transferred from regulated accounts to non-regulated accounts, the proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value;

(c) When an asset is transferred from a regulated account to a nonregulated account at a fair market value that is greater than net book value, the difference shall be considered a gain to the regulated activity. The Type 2 cooperative shall record the gain in a manner that will enable the Commission to determine the proper disposition of the gain in a subsequent rate proceeding;

(d) When services or supplies are sold by a regulated activity to a nonregulated activity, sales shall be recorded in regulated revenue accounts at the Type 2 cooperative's cost; and

(e) When services or supplies are sold to a regulated activity by a nonregulated activity, sales shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the Type 2 cooperative's most recently authorized rate of return.

(f) Income taxes shall be allocated among the regulated activities of the Type 2 cooperative, its nonregulated divisions, and members of an affiliated group. When income taxes are determined on a consolidated basis, the Type 2 cooperative shall record income tax expense as if it were determined for the Type 2 cooperative separately for all time periods.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 10-2000, f. & cert. ef. 5-26-00; PUC 24-2002, f. & cert. ef. 12-20-02

#### 860-034-0750

##### Annual Report Requirements for Type 2 Cooperatives

Annual reports will be submitted by Type 2 cooperatives. The total company Form O report for the previous calendar year shall be submitted on or before April 1, using the most current forms approved by the Commission. The Form I report for the previous calendar year shall be submitted on or before October 31, using the most current forms approved by the Commission.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 19-2000, f. & cert. 12-28-00

### DIVISION 36

#### WATER UTILITIES AND ASSOCIATIONS

##### General

#### 860-036-0001

##### Scope and Applicability of Rules

(1) Adoption of these rules shall in no way preclude the Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any water utility subject to these rules. Furthermore, these rules shall not in any way relieve any water utility subject to them from any of its duties under the laws of this State. Upon application by a water utility, the Commission may relieve it of any obligations under these rules.

(2) The rules contained in division 036 are applicable to public utilities, as defined in OAR 860-036-0010, providing service in the State of Oregon.

(3) The rules contained in division 036 do not restrict the authority of the Commission to require service improvements incorporating standards other than those set forth in this division when, after investigation, the Commission determines that such improvements are necessary.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0005

##### Applicability and Formal Requirements

All applications or petitions filed under the rules contained in Division 036 must also comply with all other applicable Commission rules.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02

**860-036-0010**

**Definitions for Water Utilities and Associations**

As used in division 036:

(1) "Actual cost" means the direct cost of parts, materials and labor of a specific item or project separated from indirect costs.

(2) "Applicant" means a person who:

(a) Applies for service with a utility; or

(b) Reapplies for service at a new or existing location after service has been discontinued.

(3) "Association" means an incorporated or homeowner association providing water service, as defined in ORS 757.005.

(4) "Co-customer" means a person who meets the definition of "customer" and is jointly responsible with another person for payments for water utility service on an account with the water utility. If only one of the co-customers discontinues service in his/her name, the remaining co-customer shall retain customer status only if he/she reapplies for service in his/her own name within 20 days of such discontinuance provided the water utility contacts the co-customer or mails a written request for an application to the remaining co-customer within one business day of the discontinuance.

(5) "Commercial customer" means a customer who performs or produces a service or product that is a source of revenue, income or livelihood to the customer or others using the premises.

(6) "Commission" means the Public Utility Commission of Oregon.

(7) "Contributions in aid of construction" means any money, services or property received by a water utility to fund capital investments at no cost to the company with no obligation to repay.

(8) "Construction work in progress (CWIP)" means account 105 in the utility plant section of the balance sheet representing the costs of utility plant under construction but not yet placed in service.

(9) "Cooperative" means a cooperative corporation as defined in ORS Chapter 62.

(10) "Cost-based" means the direct and indirect costs of a specific item or project, including overhead and a reasonable expected return on investment.

(11) "Customer" means a person who has applied for, been accepted, and is currently receiving service unless otherwise noted. Notwithstanding section (1) of this rule, a customer who voluntarily disconnects service and subsequently asks for service with the same water utility at a new or existing location within 20 days after disconnection retains customer status.

(12) "District" means a corporation as defined under ORS Chapter 198.

(13) "Emergency" means an extraordinary interruption of the usual course of water service by a natural cause, an unforeseen event, or a combination of unexpected circumstances; an urgent need for assistance or relief; or the resulting state that calls for immediate action.

(14) "End-user" means a domestic water user.

(15) "Exempt water company" means a water company that meets the definition of a public utility in ORS 757.005, but is exempt from regulation as provided in ORS 757.005(1)(b)(E).

(16) "Forced connection" means a water utility or its customers being required by law, regulation, rule, or company policy to retrofit, improve, or change the original service connection. All retrofits, improvements, additions or changes to the original service connection will be the operational and financial responsibility of the company, with the following exceptions (1) any national or state laws or rules clearly assigning such costs to the customer, or (2) the Commission otherwise approves as provided in OAR 860-036-0105(1) and (2).

(17) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(18) "Large commercial customer" means a commercial customer with a meter or pipe diameter of two inches or larger.

(19) "Mainline extension" means the extension of a main line to an area not previously served. If the main line extension is required at the request of a potential customer to receive service, the cost of such extension shall comply with the water utility's main line extension policy.

(20) "Meter set" means the parts, material, and labor necessary to install a meter. The meter set assembly is owned, installed, and maintained by the utility. The meter set does not include any components of the service connection required to provide unmetered service.

(21) "People's utility district" (PUD) means a corporation as defined in ORS Chapter 261.

(22) "Public utility" has the meaning given the term in ORS 757.005 and 757.061. The term does not include districts, People's Utility Districts (PUDs), cooperatives, or municipalities.

(23) "Rate-regulated utility" means a water utility that is not exempt from certain financial regulations and conditions under ORS 757.061.

(24) "Registered dispute" means an unresolved issue between a customer or applicant and a water utility that is under investigation by the Commission's Consumer Services, but is not the subject of a formal complaint.

(25) "Residential customer" means a customer who receives domestic or irrigation water in residential areas and is not considered a commercial customer.

(26) "Small commercial customer" means a commercial customer with a meter or pipe diameter of less than two inches.

(27) "System development fee or charge" is the proportionate fee charged by a water company prior to service being initiated that encompasses the cost of the system allocated to all potential customers.

(28) "Utility" means any water utility, except when a more limited scope is explicitly stated.

(29) "Water utility" has the same meaning as public utility in section (22) of this rule, except if a more limited scope is explicitly stated.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 756.105

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 9-2001, f. & cert. ef. 3-21-01; PUC 22-2001(Temp), f. & cert. ef. 9-26-01 thru 3-24-02; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

**860-036-0015**

**Information for Customers and Applicants**

(1) Upon request, the water utility shall furnish a customer or applicant with an application for service and such information as is reasonable to permit them to secure efficient service.

(2) Upon request, the water utility providing metered service shall inform its customers or applicants how to read meters, either in writing or by explanation at the water utility's office(s).

(3) A water utility shall keep on file and open for public inspection at its office(s): complete rate schedules, service application forms, contract forms, rules and regulations of the utility, and a copy of the Commission's rules and regulations.

(4) Upon request, the water utility shall supply a copy of its approved tariffs or statement of rates applicable to the type or types of service furnished to the customer.

(5) Upon application for new service, or upon later request, the water utility shall assist the customer or applicant in selecting the most advantageous rate to meet individual service requirements. The customer or applicant shall be responsible for making the final selection of an applicable rate schedule.

(6) When service is initiated and not less than once each year thereafter, a water utility shall give its customers a written summary of their rights and responsibilities as they relate to the water utility providing service. If service is initiated without a personal contact between the utility and the customer, the utility shall mail the summary to the customer no later than when the first bill statement is mailed. The summary shall include the text approved by the Commission's Consumer Services and describe:

(a) The customer's option to designate a third party to receive bills and notices and the availability of notices in languages other than English;

(b) Special payment options such as equal payment plans. Any late-payment charges shall be explained, along with the availability of any preferred billing date option;

(c) Procedures for conflict resolution, including how to register a dispute with the utility and with the Commission and the toll-free number of the Commission's Consumer Services.

(7) Water utilities exempt from rate regulation pursuant to ORS 757.061 and serving less than 500 customers shall annually notify their customers of the customers' right to petition the Commission for rate regulation provided the utility charges exceed the threshold levels established by the Commission in OAR 860-036-0030.

(8) When service is initiated, the water utility shall inquire if the customer would like to receive notices in a language other than English and will inform the customer of the types of notices and translations currently available. If the language chosen is not available, the utility will inform the customer or applicant that the translated version does not yet exist, but that the customer's or applicant's interest will be recorded for the Commission. Each utility shall report to the Commission the number of requests for notices and summaries in non-English languages. The report shall specify the number of requests for each language.

(a) The Commission will translate the Rights and Responsibilities Summary for Oregon Utility Consumers into the designated non-English languages and provide copies to water utilities. The information published by a water utility pursuant to OAR 860-036-0015 shall prominently display the following statement in the designated non-English languages at the beginning of the summary and be printed in boldface: A version of the Rights and Responsibilities Summary for Oregon Utility Consumers printed in this language is available by calling (name of utility) at (phone number).

(9) Each water utility shall maintain a business location and a regular telephone number at which it may be contacted directly by customers, applicants, or the Commission during its regular business hours. The water utility shall respond to nonemergency customer inquiries, complaints, and service problems within a reasonable time period. For purposes of this rule, a reasonable time period is considered to be within 24 hours.

(10) The water utility shall provide a means by which it may be contacted at any hour in the event of a service failure or emergency or at which a customer or applicant may leave a message reporting such failure or emergency. The water utility shall respond to emergency calls or messages within one hour of the time of the call or message, unless extenuating circumstances exist that prevent such response. The water utility may be required to justify extenuating circumstances to the Commission's satisfaction.

(11) In the event of an emergency involving all customers, a major portion of customers, or a specific geographical area of customers, the water utility shall use its best efforts to communicate and provide information to all affected customers as soon as possible.

(12) Notices approved by the Commission shall be posted in a conspicuous place in each water utility office where credit matters are transacted, setting forth the rights and responsibilities of customers under these rules. The notices shall be printed and shall be written in language that is easy to understand.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 22-2001(Temp), f. & cert. ef. 9-26-01 thru 3-24-02; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03

## 860-036-0020

### Designation of Third Party to Receive Notices

A water utility shall offer its customer or applicant the option to designate a third party to receive bills and notices set forth in these rules. When a water utility receives such designation, it shall send bills and notices required under these rules to the customer's representative, with duplicate copies of disconnect notices also served on the customer.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98

## 860-036-0025

### Dispute Resolution

(1) When a dispute occurs between a customer or applicant and a water utility about any bill, charge, or service, the water utility shall thoroughly investigate the matter and promptly report the results of its investigation to the customer or applicant. The water utility shall prepare a written record showing the name and address of the customer or applicant involved, the date and character of the dispute, and the disposition of the matter. The utility shall retain records of the dispute pursuant to OAR 860-036-0760.

(2) The water utility shall inform the customer or applicant of the right to a water utility supervisory review of any dispute, including but not limited to, establishment of credit and termination of service. If a dispute is not resolved, the water utility shall notify the customer or

applicant of the Commission's dispute resolution procedure and its toll-free telephone number.

(3) A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services at:

(a) 1-800-522-2404; TTY 711;

(b) The Commission's mailing address: PUBLIC UTILITY COMMISSION OF OREGON, CONSUMER SERVICES, PO BOX 2148, SALEM OR 97308-2148; or

(c) The Commission's street address: Public Utility Commission of Oregon, 550 Capitol Street NE Suite 215, Salem, OR 97301-2551. The Commission shall notify the water utility upon receipt of such a request.

(4) The Commission's Consumer Services shall assist the complainant and the water utility in an effort to reach an informal resolution of the dispute.

(5) If a registered dispute cannot be resolved informally, the Commission's Consumer Services shall advise the complainant of the right to file a formal written complaint with the Commission. The complaint shall state the facts of the dispute and the relief requested. The water utility shall answer the complaint within 15 days of service of the complaint. The matter shall then be set for hearing. A hearing may be held on less than 10 days' notice when good cause is shown.

(6) Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.

(7) A customer who has a registered dispute or formal complaint pending with the Commission shall be entitled to continued or restored service provided:

(a) Service was not terminated for theft of service or failure to establish credit;

(b) A bona fide dispute exists in which the facts asserted by the customer entitle the customer to service;

(c) When termination is based on nonpayment, the customer makes adequate arrangement to avoid future loss to the water utility, such as prepaying estimated monthly water utility charges; and

(d) The customer or applicant diligently pursues conflict resolution under the Commission's rules.

(8) If the conditions in section (7) of this rule are not satisfied, the water utility has no obligation to provide continued service. A water utility discontinuing service because of a failure to meet the conditions of subsections (7)(c) or (7)(d) of this rule shall give the customer a five-business-day disconnect notice. The notice shall be served in the same manner as provided by OAR 860-036-0245, except that it need only describe the defect in performance, the date and time when water utility service will terminate and the toll-free number of the Commission's Consumer Services. In deciding whether the conditions are met, the water utility shall consult with the Commission's Consumer Services. The customer who has filed a formal complaint, the water utility, or the Commission's Consumer Services may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the water utility, and the Commission's Consumer Services at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.500 & 756.512

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 18-2003, f. & cert. ef. 10-6-03

## 860-036-0030

### Threshold Levels of Rates and Charges for Water Utilities Serving Fewer than 500 Customers

(1) Pursuant to ORS 757.061(2) the Commission adopts the following maximum rates and charges for water utilities serving fewer than 500 customers:

(a) \$24 annual average monthly residential or small commercial service rate;

(b) \$85 annual average monthly service rate for large commercial customers; and

(c) \$450 for standard service connection charge.

(d) Any system development fee, facilities charge, or other like charge shall be cost based and demonstrated as such to the Commission's satisfaction upon request of the Commission.

(2) A standard service connection is defined in OAR 860-036-0060.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.061

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 7-2004, f. & cert. ef. 4-9-04

### 860-036-0035

#### Applications for Water Utility Service

(1) An application for water utility service must be made when:

(a) Service is requested by an applicant who has not previously been served by the water utility;

(b) Service has been involuntarily discontinued in accordance with these rules and the customer or applicant later seeks to have service restored; or

(c) Service has been voluntarily discontinued and a request to restore service has not been made within 20 days.

(2) An application is a request for water utility service. The water utility shall not accept an application for service until the applicant establishes credit as set forth in OAR 860-036-0040. However, the water utility may refuse a service application under OAR 860-036-0080.

(3) A water utility may require an applicant to provide the following information when applying for service:

(a) The name of person(s) responsible for payment on the account;

(b) The name to be used to identify the account, if different than the actual name;

(c) The birth date of person(s) responsible for payment on the account;

(d) The social security number of person(s) responsible for payment on the account;

(e) A current valid Oregon driver license number of the person(s) responsible for payment on the account;

(f) The service address;

(g) The billing address, if different than service address; and

(h) Any available telephone numbers where the applicant can be reached night and day.

(4) In lieu of providing a valid social security number or current valid Oregon driver license number under section (3) of this rule, an applicant may provide:

(a) A valid state or federal identification containing name and photograph of the person(s) responsible for payment on the account;

(b) A combination of:

(A) An original or certified true copy of his or her birth certificate;

(B) A current identification from school or employer containing a photograph; and

(C) The name, address, and telephone number of a person who can verify the applicant's identity, such as a teacher, employer, or case-worker; or

(c) Other information deemed sufficient by the utility to establish an applicant's identification.

(5) If an applicant is denied service for failure to provide an acceptable form of identification, the applicant may pursue conflict resolution under the Commission's rules.

(6) Upon request, the water utility shall protect the account from access by others through the use of a personalized password or other means acceptable to both the water utility and the customer.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-036-0040

#### Establishing Credit for Residential Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous water utility service during the preceding 24 months and the water utility can verify, either by contacting the former water utility or through an authorized letter pro-

vided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the water utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the water utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in section (1) of this rule, a water utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of water utility service from it or any Oregon water utility, as defined in ORS 757.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon water utility as defined in ORS 757.005, was found to have tampered with the meter or other water utility facilities, or was otherwise found to have diverted water utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the water utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same water utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for water utility service shall not exceed one-sixth the amount of reasonable billing for one year at the rates then in effect. The estimate shall be based on the use of the service at the premises during the prior year or on the type and size of the customer's equipment that will use the service. Each deposit shall be rounded to the nearest whole dollar.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The water utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The water utility discovers that the customer has stolen water utility service, has tampered with the meter or other water utility facilities, or was otherwise found to have diverted water utility service; or

(c) A customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(7) Paying a deposit does not excuse a customer from complying with the water utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A water utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 11-2004, f. & cert. ef. 6-2-04; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-036-0045

#### Deposit Payment Arrangements for Residential Water Service

(1) When a water utility requires a deposit, the customer or applicant may pay the deposit in full or in three installments. Installments

shall be one-third the deposit. The first installment is due immediately; the remaining installments are due 30 days and 60 days after the first installment payment.

(2) When an installment payment for a deposit or a deposit is made with a payment for water utility service, the amount paid shall first be applied toward payment of the amount due for deposit.

(3) A customer who is required to pay an additional deposit shall pay one-third of the total deposit within five days. The remainder of the deposit is due under the terms of section (1) of this rule. If the customer has an existing deposit installment agreement, the remaining installment payments will be adjusted to include the additional deposit; however, two installment payments cannot be required within the same 30-day period.

(4) If a customer is disconnected by the water utility for theft of service, the water utility may require the customer to pay a deposit in addition to any overdue charges on the customer's account and repair charges as explained in OAR 860-036-0250. This deposit may be paid in one payment or in two equal installments. The deposit or first deposit installment is due upon restoration of service and the second installment is due within 30 days of the restoration of service.

(5) When a customer enters into an installment agreement for payment of a deposit under section (1) of this rule, the water utility shall provide written notice explaining the deposit requirements. The notice shall specify the date each installment payment shall be due and shall include a statement printed in bold-face type informing the person that water service will be disconnected if payment is not received when due.

(6) If a customer or applicant fails to abide by the terms of a deposit installment agreement, the water utility may disconnect service after providing a written five-business-day disconnect notice. The notice shall comply with the requirements of OAR 860-036-0245.

(7) When good cause exists, the water utility may provide, or the Commission may require, more liberal arrangements for payment of deposits than those set forth in this rule. The water utility shall keep a written record of the reasons for such action.

(8) If disconnection for nonpayment of a deposit occurs, the customer or applicant disconnected shall pay the full amount of the outstanding deposit, any applicable reconnection fee, late-payment fee, and past due amount before service is restored. A customer may continue with an existing time-payment agreement by paying all past-due installments.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 18-2003, f. & cert. ef. 10-6-03

#### 860-036-0050

##### Interest on Deposits for Residential and Nonresidential Service

(1) Each year, the Commission shall establish an annual interest rate that must be paid on customer deposits. The Commission will base the rate upon consideration of the effective interest rate for new issues of one-year Treasury Bills issued during the last week of October, the interest rate on the most recent issuance of one-year Treasury Bills, or the effective interest rate for the average yield of Treasury Bills of the closest term issued during the last week of October. This interest rate, rounded to the nearest one-half of one percent, shall apply to deposits held during January 1 through December 31 of the subsequent year. The Commission will advise all water utilities of the changes in the rate to be paid on customer deposits held as needed.

(2) Upon payment of a deposit, the water utility shall provide the customer documentation showing the date, name of the customer or applicant, the service address, the amount of deposit, a statement that the deposit will accrue interest at the rate prescribed by the Commission, and an explanation of the conditions under which the deposit will be refunded.

(3) If the deposit is held beyond one year, accrued interest will be paid by a credit to the customer's account. If held less than one year, interest will be prorated. A water utility shall keep a detailed record of each deposit received until the deposit is credited or refunded.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-036-0055

##### Refund of Water Utility Deposits for Residential and Nonresidential Service

(1) A water utility shall promptly refund a customer's deposit with accrued interest when service is terminated, provided a refund due shall first be applied to any unpaid balance on the customer's account.

(2) A water utility may continue holding a deposit until credit is satisfactorily established or reestablished. For purposes of this rule, credit is considered established or reestablished one year after a deposit is made if:

(a) The account is current;

(b) Not more than two five-day disconnection notices were issued to the customer during the previous 12 months; and

(c) The customer was not disconnected for nonpayment during the previous 12 months.

(3) After satisfactory credit has been established or reestablished, the deposit plus any accrued interest shall be promptly refunded or credited to the customer's account. A customer shall be entitled to a refund upon request.

(4) When the customer moves to a new address within the water utility's service area, the deposit and accrued interest will be transferred to the new account.

(5) Deposits plus accrued interest may be refunded or credited, in whole or in part, to the customer's account at any time earlier than prescribed in this rule, provided the water utility's procedures are nondiscriminatory.

(6) Unless otherwise specified by the customer, a water utility shall mail deposit refunds to the customer's last known address. The water utility will honor valid claims for payment of refunds if received within one year of the date service is terminated. Funds held beyond one year after the date service is terminated will be disposed of in accordance with ORS 98.316.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 98.316 & 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98

#### 860-036-0060

##### Installation of Water Service Connection

(1) A water utility will, with the exceptions listed below, furnish and install at its own expense all necessary trenching, pipe, valves and fittings between its main line and the customer service line. Such installation shall be designated as "service connection." The water utility shall own, operate, maintain, repair, and replace the service connection when needed.

(2) A water utility may require the customer to pay a reasonable service connection charge to offset its expenses listed in section (1) of this rule. Such charge shall not include the cost or installation of the meter, nor exceed the threshold level established in OAR 860-036-0030. The meter is not considered to be a component of the service connection.

(3) A standard service connection charge that exceeds the threshold level established in OAR 860-036-0030 may be deemed unreasonable and may be subject to refund, unless exempted below.

(4) Notwithstanding section (2) of this rule, a water utility may charge a service connection charge in excess of the threshold level if:

(a) Circumstances exist that cause the service connection to be nonstandard;

(b) Such charge is based on actual cost and is reasonable; and

(c) The water utility and the customer agree on the amount of the charge prior to actual installation.

(5) The water utility shall bear the burden of proof to justify that the charge in excess of the threshold is necessary, reasonable and at actual cost.

(6) Any connection longer than the width of the street, or public highway, or the width of a privately granted easement, located adjacent to the customer property will not be considered a service connection but will be treated as a main line extension. See OAR 860-036-0065.

(7) The customer shall furnish and install the necessary parts and materials to make the connection from the customer's premise to the water utility's service connection at the customer property line. Such installation shall be designated as the "customer service line." The customer shall own, maintain, repair, and replace the customer service line when needed.

(8) A customer service line shall extend to that point on the customer's property line of easiest access to the water utility from its distribution system, or requiring least extension of the system. In any case, where a reasonable doubt exists as to the proper location for the customer service line, the water utility should be consulted and a location agreed upon. If agreement cannot be reached, the water utility and customer shall pursue dispute resolution pursuant to OAR 860-036-0025.

(9) All construction and installation of water service connections shall comply with all applicable rules, regulations, codes, and best practices and standards of the water industry.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03

#### 860-036-0065

##### Installation of Main Line Extension

(1) A water utility shall develop a Commission-approved uniform policy governing the amount of main extension and applicable charges that will be made to connect a new customer. This policy shall be related to the investment that can prudently be made for the probable revenue.

(2) Customers may be required to pay a reasonable, cost-based charge for any necessary main line extension to provide a service connection in accordance with the water utility main line extension policy. Such policy and charges must be filed as tariffs with the Commission or be included in the water utility's rules, whichever is applicable.

(3) Each water utility shall establish a main line extension policy that includes the following:

(a) Schedule of cost-based charges;

(b) Advance and refund provisions that describe the mechanism for collecting main line extension charges and rebating main line extension charges to customers that equitably distributes the cost of the main line extension among customers of the line who contributed to the payment of the cost of the line; and

(c) Time period during which advance and rebate provisions will be in effect.

(4) All main line extension policies shall be applied uniformly among the water utility's customers and must be on file with the Commission, if required, or contained within the water utility's rules and made available to the public.

(5) All construction and installation of main lines and extensions shall comply with all applicable rules, regulations, codes, and best practices and standards of the water industry.

(6) The water utility will restore the surrounding area disturbed during utility construction or installation to its previous or better condition. The customer has the burden of demonstrating that the area has not been restored to its previous or better condition.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0070

##### Temporary Service

A water utility may render temporary service to a customer and may require the customer to bear all the cost of installing and removing the service in excess of any salvage realized. The length of temporary service shall be specified in the applicable tariffs approved by the Commission or contained within the water utility's rules.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97

#### 860-036-0075

##### Interruption of Service

(1) A water utility shall keep a record of any interruption of service affecting its whole system, or a major section thereof, including a statement of the time, duration, and cause of interruption.

(2) A water utility shall make all reasonable efforts to prevent interruptions of service. When such interruptions occur, the water utility shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(3) Each water utility shall make all reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service, but such notice shall not be required in case of inter-

ruption due to emergency repairs or for repairs or maintenance work that results in an interruption of less than five minutes. All scheduled interruptions shall be made at a time causing minimum inconvenience to customers. In determining reasonable notice, the water utility shall consider the length of the planned interruption, the type and number of customers affected, the potential impact of the interruption on customers, and other surrounding circumstances. Notice may be given in writing, either via US mail or a door hanger on the affected premises, or by contact with the customer or an adult at the residence by personal visit or by telephone.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-036-0080

##### Refusal of Water Utility Service

(1) A water utility may refuse to provide service to a customer or applicant until it receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account except as provided below:

(a) Except for residential customers or applicants who were disconnected for theft of service, a water utility shall provide service to a residential applicant upon receipt of payment equal to at least one-half of any overdue amount. The balance of the amount owed to the utility shall be paid within 30 days of the date service is initiated. Except for the last payment, installments shall be the greater of \$30 or one-half the overdue amount.

(b) Upon failure to pay, the water utility may disconnect service after providing a written five-day notice. The notice shall contain the information and be served in the manner prescribed as provided in OAR 860-036-0245. When a customer whose service was terminated applies for service within 20 days of the termination, the provisions of this rule apply.

(2) If water service is disconnected for failure to comply with the payment terms set forth in section (1)(a) of this rule, the water utility may refuse to restore service until it receives full payment of any overdue obligation of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, including any reconnection fee, late payment fee, and past due bill.

(3) A water utility may refuse to provide service until payment is received when the following circumstances exist:

(a) A residential customer has incurred an overdue balance at a service address;

(b) A residential applicant for service resided at the service address described in subsection (1)(a) of this rule during the time the overdue balance was incurred; and

(c) The residential customer described in subsection (1)(a) of this rule will reside at the location to be served under the new application.

(4) Any water utility shall refuse to provide service if a customer or applicant has not complied with state and municipal codes and regulations governing service and with the rules and regulations of the water utility.

(5) A water utility shall refuse to serve a customer or applicant, if, in the best judgment of the water utility, the facilities of the customer or applicant are of such a character that safe and satisfactory service cannot be given.

(6) If service is refused, the water utility shall provide written notification within 10 working days to the customer or applicant of the reasons for refusal and of the Commission's complaint process. A copy of the notice shall also be sent to the Commission unless service was refused for nonpayment.

(7) A water utility shall not accept an application for service or materially change service to a customer if it does not have adequate facilities or water resources to render the service applied for, if the desired service is of a character that is likely to unfavorably affect service to other customers, or if it is prohibited by law from providing the service. If a water utility refuses service on the grounds of inadequate facilities or water resources, the water utility shall provide the customer or applicant with a written letter of refusal, a copy of which shall be sent to the Commission. The letter must:

(a) Provide the reason for the refusal;

(b) Inform the customer or applicant that he/she may request the details upon which the water utility's decision was based, including

but not limited to current capacity and load measured in gallons or cubic feet per minute and pounds per square inch (psi);

(c) When capacity does not exist, provide the costs to provide capacity for the customer or applicant; and

(d) Inform the customer or applicant that he/she may challenge the water utility's refusal of service through the Commission's dispute resolution process pursuant to OAR 860-036-0025.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.035 & 757.225

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 22-2002, f. & cert. ef. 12-9-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 21-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PUC 8-2004, f. & cert. ef. 4-9-04

#### 860-036-0085

##### Restrictions on Entering a Customer Residence

No water utility employee shall enter the residence of a customer without proper authorization except in an emergency endangering life or property.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97

#### 860-036-0095

##### Annual Fees Payable to the Commission by a Water Utility

(1) On statement forms prescribed by the Commission, each water utility must provide the requested information for the subject year.

(2) Each water utility must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the Oregon revenue during the prior calendar year.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) For any year in which a water utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 11-1999, f. & cert. ef. 11-18-99; PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-036-0097

##### Estimated Annual Fees Payable to the Commission by a Water Utility

(1) For any year in which a wastewater utility fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-011-0080; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission will provide written notice of the proposed annual fee to the wastewater utility.

(3) Within 30 days after service of the notice of proposed annual fee, the wastewater utility may file a petition with the Commission for a hearing. In its petition, the utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the wastewater utility has not filed a petition by the end of the 30-day period, the proposed annual fee is due and payable.

(5) During the 30-day period allowed for filing a petition, the wastewater utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 757

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

#### Water Meters and Billing

#### 860-036-0105

##### Use of Water Meters

(1) Unless otherwise authorized by the Commission, each water utility will own, maintain, and operate all equipment needed to regulate and measure water to its customers. When the water utility furnishes additional meters or relocates meters for the customer's convenience, the water utility may make a reasonable charge for such meters and installation.

(2) No water utility shall charge for furnishing, installing, or maintaining any meter or other appliance for measurement purposes except by the Commission's permission, or as provided in OARs 860-036-0060 and 860-036-0070.

(3) If the Commission determines that refunds are appropriate, the amount paid shall be refunded to the customer by allowing a credit of one-half of the monthly bill until the amount has been paid, provided such refund payments do not run for more than three years from the date when the refund began.

(4) No rental fee shall be charged by any water utility for any meter or appliance installed by the water utility and used as a basis for the rendering of bills, except when an additional meter or appliance is requested by the customer for his/her convenience.

(5) The water utility shall have the right to set meters or other devices for detecting and preventing fraud or waste, without notifying the customer.

(6) No water utility shall use prepayment meters except in special cases or for clearly defined special classes of service authorized by the Commission.

(7) If damage results to the meter from tampering or willful neglect by the customer, the water utility shall repair or replace the meter and may bill the customer for the reasonable cost.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.250

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03

#### 860-036-0110

##### Testing Water Meters

(1) All meters shall be tested before installation, or within 30 days thereafter. No meter will be placed in service or be allowed to remain in service that has an error in registration in excess of 2 percent under conditions of normal operation. The water utility may seek Commission approval for a waiver of this requirement if it can demonstrate to the satisfaction of the Commission a suitable random sampling technique for testing new meters.

(2) New meters, repaired meters, and meters that have been removed from service shall be correct to within 2 percent fast or slow before being installed or reinstalled.

(3) Each water utility shall adopt schedules for periodic tests and repairs of meters. The length of time meters may be allowed to remain in service before receiving periodic tests and repairs is to be deter-

mined from periodic analysis of the accuracy of meters tested. The schedules adopted shall be subject to the Commission's approval.

(4) Whenever any meter is tested, the water utility shall prepare a test record, including the information needed for identifying the meter, the reason for making the test, the reading of the meter, the result of the test, and all data taken at the time of the test in complete form to permit the convenient checking of methods employed. The water utility shall retain the current and immediately prior test records for all meters tested.

(5) Each water utility shall provide such laboratory meter-testing equipment and other equipment and facilities as needed to make the tests required of it by these rules or other orders of the Commission. The apparatus and equipment so provided may be subject to the Commission's approval.

(6) All meters used for measuring the quantity of water to a customer shall be in good working condition. They shall be adequate in size and design for the type of service measured and shall be accurate to register no more than 2 percent fast or slow under conditions of normal operation. The water utility is responsible for repairing or replacing inaccurate or substandard meters at its own cost. Any such repair or replacement will be completed promptly at the water utility's expense and, until such completion, the customer water service bill must be adjusted to compensate for the inaccuracy.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.250

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0115

##### Customer Requested Meter Test

(1) Any customer may ask the water utility to test the water meter used to measure the customer's service. The water utility shall make such test within 20 working days of the request at no cost to the customer. If a customer requests more than one meter test within any 12-month period, the water utility may charge the customer to recover the reasonable cost of the test. The water utility may not charge the customer if the meter is found to register outside the 2 percent accepted tolerance standard under normal operating conditions.

(2) A customer or a designated representative shall have the right to be present at any meter test. The test shall be conducted at a mutually acceptable time during regular business hours.

(3) The water utility must provide a written report to the customer within 10 working days from the date the meter test showing the customer's name, the request date, the address where the meter is installed, the meter's identification number, the date tested, and the test result.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-036-0120

##### Meter Readings and Bill Forms

(1) Every water utility providing metered service shall indicate clearly on the meter the units of service for which the charge is made to the customer, except when automatic meter reading systems preclude such facilities.

(2) All water service bills shall show the beginning and ending meter readings for the period the bills are rendered, the date of the meter readings, the number of units of service supplied clearly stated (gallons or cubic feet), the schedule number under which the bill was computed, and any other information needed to compute the bill. Each bill shall bear on its face the delinquent date of the bill and the water utility's telephone number. When there is good reason for so doing, estimated bills may be submitted. Any estimated reading shall be clearly designated as such on the bill.

(3) As a matter of general practice, all service meters shall, as nearly as possible, be read at monthly intervals on the corresponding day of each meter reading period. Meters may be read at other than monthly intervals, if the Commission is given notice and does not object to the water utility's meter reading proposal. The water utility shall provide each customer a written statement that explains the disadvantages of having the meter read and billed less often than monthly. If at any time the Commission determines that circumstances war-

rant, a water utility may be required to return to monthly meter reading.

(a) When access to a meter is difficult due to the meter location or other circumstance, the water utility shall seek the customer's cooperation in obtaining monthly meter readings (for example, having the customer complete and return a meter reading form). Any customer reading shall be subject to actual verification by the water utility not less than once every four months;

(b) Each customer shall provide the water utility with regular access to the meter on the customer's property. Failure to permit the water utility access at reasonable times and after reasonable written notice of requested access is grounds for disconnection.

(4) Upon written request by a customer, the water utility shall cause the meter reader, when the customer's meter is read, to leave on such meter or with such customer, a card showing the actual meter reading and the date and time such reading was made.

(5) Water utilities shall make reasonable efforts to prepare opening and closing bills from actual meter readings.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.250

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 7-2004, f. & cert. ef. 4-9-04

#### 860-036-0125

##### Due and Payable Period; Time-Payment Agreements for Residential Service

(1) Each water utility shall establish procedures to ensure that the period from the billing transmittal for all current charges, including payment of the final bill, to the due date is not less than 15 days. If the bill is delivered by US mail, the due and payable period begins the day after the US Postal Service postmark or the day after the date of postage metering.

(2) A water utility may not disconnect residential service for non-payment if a customer enters into a written time-payment plan. A water utility will offer customers a choice of payment agreements. At a minimum, the customer may choose between a levelized-payment plan and an equal-pay arrearage plan.

(3) A customer who selects a levelized-payment plan will pay a down payment equal to the average annual bill including the account balance, divided by 12, and a like payment each month for 11 months thereafter:

(a) The monthly installment plan shall be reviewed by the water utility periodically. If necessary, due to changing rates or variations in the amount of service used by the customer, the installment amount may be adjusted in order to bring the account into balance within the time period specified in the original agreement.

(b) If a customer changes service address at any time during the period of a time-payment agreement, provided that payments are then current and the customer pays other scheduled or tariffed charges associated with the change in residence, the water utility shall recalculate the customer's deposit or monthly installment. The recalculated amount shall reflect the balance of the account at the previous service address and the average annual bill at the new service address for the months remaining in the original time-payment agreement. When installments on a time-payment agreement have not been kept current, a customer shall be required to pay all past-due installments, together with any other applicable charges before service is provided at the new residence.

(4) A customer who selects an equal-pay arrearage plan will pay a down payment equal to 1/12 the amount owed for past water utility service (including the overdue amount and any amounts owed for a current bill or a bill being prepared but not yet delivered to the customer). Each month, for the next 11 months, an amount equal to the down payment will be added to, and payable with, the current charges due for water utility service. If a customer changes service address at any time during the period of an equal-pay arrearage plan, the plan continues. However, the customer must pay any past-due charges and all other applicable charges before the water utility provides service at the new address.

(5) The water utility and customer may agree in writing to an alternate payment arrangement, provided the water utility first informs the customer of the availability of the payment terms set forth in sections (3) and (4) of this rule.

(6) If a customer fails to abide by the time-payment agreement, the water utility may disconnect service after serving a 15-day discon-

nect notice. The notice shall comply with OAR 860-036-0245, except that subsection (5)(d) shall not be applicable. Such customers shall not be eligible for a renewal or renegotiation of a time-payment plan.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-036-0130

#### Late-Payment Charge

(1) Except as provided in section (2) of this rule, a water utility may apply a late-payment charge to customer accounts not paid in full each month, provided the water utility has filed the late-payment charge in its tariffs or statement of rates.

(2) The charge will be based on a monthly late-payment rate applied to only overdue account balances at the time of preparing the subsequent month's bill for residential accounts or by the bill due date for all other accounts. The late-payment charge may not be applied to time-payment or equal-payment accounts that are current. The Commission will determine the late-payment rate based on a survey of prevailing market rates for late-payment charges of commercial enterprises and will advise all water utilities of the changes in the rate they may use to determine late-payment charges on overdue customer accounts as needed. The current late-payment rate and the conditions for its application to customer accounts shall be specified on the utility bill.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 4-2001, f. & cert. ef. 1-24-01

### 860-036-0135

#### Adjustment of Bills

(1) When an underbilling or overbilling occurs, the water utility shall provide written notice to the customer detailing the circumstances, period of time, and amount of adjustment. If it can be shown that the error was due to an identifiable cause, and the date can be fixed, then the overcharge or undercharge shall be computed back to such date. If no date can be fixed, the water utility shall refund the overcharge or rebill the undercharge for no more than six months' usage. In no event shall an overbilling or under billing be for more than three years' usage.

(2) When a customer is required to repay an under billing, the customer shall be entitled to enter into a time-payment agreement without regard to whether the customer already participates in such an agreement. If the customer and water utility cannot agree upon payment terms, the Commission shall establish terms and conditions to govern the repayment obligation. The water utility shall provide written notice advising the customer of the opportunity to enter into a time-payment agreement and of the Commission's complaint process.

(3) No billing adjustment due to meter error shall be allowed if a water meter registers less than 2 percent error under conditions of normal operation.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.250  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00

### 860-036-0140

#### Transfer Billings

(1) If a water utility identifies a balance a customer owes the water utility from the customer's prior account for Oregon service, the water utility shall have the option to transfer the amount to the customer's current account. The water utility must give the customer prior notice of the transfer, including the amount due under the prior account, the period when the balance was incurred, and the service address under which the bill was incurred; or the water utility may send a separate notice to the customer giving the same information as included in the transfer, but collecting the amount due separately from the customer's current account. If the bill is identified when a customer changes residences, the provisions of this rule apply.

(2) If the customer has an amount remaining on an existing time-payment agreement, the customer may enter into a new time-payment agreement to include the transfer.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.225  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98

## Disconnection of Water Service

### 860-036-0205

#### Grounds for Disconnecting Water Utility Service

Water utility service may be disconnected:

- (1) For failure to establish credit by:
  - (a) Failing to pay a deposit or make payments in accordance with the terms of a deposit payment arrangement (OAR 860-036-0045); or
  - (b) Providing false identification or verification of identity.
- (2) When facilities provided are unsafe or do not comply with state and municipal codes governing service or the water utility's rules and regulations; or
- (3) When the customer does not cooperate in providing reasonable access to the meter (OAR 860-036-0120) or necessary inspections of the premises. Necessary in this context means required by law or to determine if a health or safety hazard exists.
- (4) When a customer requests the water utility to disconnect service or close an account (OAR 860-036-0210) or when a co-customer fails to reapply for service within 20 days after a joint account is closed by the other co-customer, so long as the water utility has provided a notice of pending disconnection.
- (5) When dangerous or emergency conditions exist at the service premises (OAR 860-036-0215).
- (6) For failure to pay Oregon tariffed rates, or applicable statement of rate charges, due for services rendered.
- (7) For meter-tampering, diverting service, or other theft of service.
- (8) When the Commission approves the disconnection of service.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.035, 757.225 & 757.760  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98

### 860-036-0210

#### Voluntary Disconnection

(1) A customer who wishes to have service discontinued will provide the water utility a five-business-day notice in advance of the requested date of discontinuance of service. Until the water utility receives such notice, the customer shall be held responsible for all service rendered.

(2) A water utility is not required to implement seasonal water service rates.

(3) Nonseasonal water service rates are calculated based on continuous service throughout a 12-month period. A water utility is entitled to charge monthly base rates to any customer requesting disconnection and reconnection of water service during the same 12-month period prior to reconnection.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 18-2003, f. & cert. ef. 10-6-03

### 860-036-0215

#### Emergency Disconnection

A water utility may terminate service in emergencies endangering life or property without following the procedures set forth in OAR 860-036-0245. However, the water utility shall immediately thereafter notify the customer and the Commission. In such cases, when the necessity for emergency termination was through no fault of the customer, the water utility will not make a charge to restore service.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.035  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98

### 860-036-0220

#### Disconnection of Service on Weekends and Holidays

Water utility service shall not be disconnected for non-emergencies on a weekend or a state- or water utility-recognized holiday. Water utility service shall not be disconnected for non-emergencies on a Friday or the day before a state- or water utility-recognized holiday unless mutually agreed upon by the customer, the water utility, and the Commission's Consumer Services Division.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.760  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97

**860-036-0225**

**Accounts Not Related to Residential Service**

A water utility may not deny or disconnect residential service due to the failure to pay for nonresidential service, or to meet obligations in connection with nonresidential service.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97

**860-036-0230**

**Disconnection of Water Service to Tenants**

(1) If a water utility's records show that a residential billing address is different from the service address, the water utility must provide a duplicate of the five-day disconnect notice required under OAR 860-036-0245 to the occupants of the service address in the manner described in OAR 860-036-0245(2) unless the water utility has evidence that the service address is occupied by the customer. Serving a notice addressed to "Tenants," as required in OAR 860-036-0245, satisfies this requirement. The notice to occupants need not include the dollar amount owing.

(2) When a water utility's records show that a residence is a master-metered multi-unit dwelling (including rooming houses), the water utility must notify the Commission's Consumer Services Division at least five business days before disconnecting the service. The water utility will use reasonable efforts to notify occupants of the impending disconnection and alternatives available to them.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.760  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02

**860-036-0235**

**Multilingual Disconnection Notice**

(1) Except as provided in section (2) of this rule, all disconnect notices shall contain the following information translated into Spanish, Vietnamese, Cambodian, Laotian, and Russian (translations are available from the Consumer Services Division):

IMPORTANT NOTICE: Your water services will be shut off because of an unpaid balance on your account. You must act immediately to avoid shut-off. Important information about how you can avoid shut-off is printed in English in the enclosed notice. If you cannot understand English, please find someone to translate the notice. If translation assistance is unavailable, please contact (name) at (phone number) who will try to help you. Information on customer's rights and responsibilities printed in this language is also available by calling that number. YOU MUST ACT NOW TO AVOID SHUT-OFF.

(2) Upon petition by a water utility, the Commission shall waive the requirement to provide multilingual notice for two calendar years, which may be renewed upon a showing that the lesser of 5 percent or 500 of the water utility's Oregon customers would benefit from use of multilingual notification or show other reasons why such notices are not necessary.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98

**860-036-0240**

**Reconnection Fee**

When a water utility service is disconnected pursuant to OAR 860-036-0245 or 860-036-0250, the water utility may charge the reconnection fee in its tariff or in its statement of rates.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.225  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 18-2003, f. & cert. ef. 10-6-03

**860-036-0245**

**Disconnection Procedures for All Customers of Water Utility Services**

(1) Involuntary termination of water utility service for all customers shall be under the provisions of this rule.

(2) Notice Requirements:

(a) At least five business days before a water utility disconnects service, a written disconnect notice must be provided to the customer to be disconnected;

(b) Before a water utility disconnects service due to a customer's failure to abide by a time-payment agreement, the water utility will provide the customer with a written 15-business-day disconnect notice and a written five-business-day disconnect notice;

(c) The disconnection notice shall inform the customer that service will be disconnected on or after a specific date and shall explain the alternatives. The specified date must conform to OAR 860-036-0220, disconnection of service on Fridays, weekends and holidays.

(3) The water utility may serve the notice of disconnection in person or send it by first class mail to the last known addresses of the customer and the customer's designated representative. Service is complete on the date of mailing or personal delivery. If notification is made by delivery to the residence, the water utility shall attempt personal contact. If personal contact cannot be made with the customer or an adult resident, the water utility shall leave the notice in a conspicuous place at the residence.

(4) When a written notice is given under these rules:

(a) The notice shall conform to the requirements of OAR 860-036-0235 concerning multilingual requirements and service on any designated representative; and

(b) The notice shall conform to the requirements of OAR 860-036-0230 if the water utility's records show that the billing address is different than the service address or that the premises is a master-metered multi-unit dwelling. The notice may be addressed to "Tenant." The envelope shall bear a bold notice stating, "Important notice regarding disconnection of utility service," or words to that effect.

(5) The notice shall be printed in bold face type and shall state in easy to understand language:

(a) The reason for the proposed disconnection;

(b) The amount to be paid to avoid disconnection;

(c) The earliest date for disconnection;

(d) An explanation of the time-payment agreement provisions of OAR 860-036-0125; and

(e) An explanation of the Commission's dispute resolution process and toll-free number.

(6) A notice of disconnection may not be sent prior to the due date for payment of a bill.

(7) At least five-business-days before the proposed disconnection date, the water utility must mail or deliver a written disconnection notice to the customer.

(8) A fee in an amount approved by the Commission may be charged whenever a water utility is required to visit a residential service address in order to serve a disconnection notice.

(9) On the day that the water utility expects to disconnect service and prior to disconnection, the water utility must make a good faith effort to personally contact the customer or an adult at the residence to be disconnected.

(a) If the contact is made, the water utility shall advise the person of the proposed disconnection; or

(b) If contact is not made, the water utility must leave a notice in a conspicuous place at the residence informing the customer that service has been, or is about to be, disconnected.

(10) Where personal contact is made by a water utility under this rule, and the circumstances are such that a reasonable person would conclude that the customer does not understand the consequences of disconnection, the water utility must:

(a) Notify the Department of Human Services and the Commission; and

(b) Delay the proposed disconnection date for five additional business days.

(11) When personal contact is made by the water utility under this rule, the representative of the water utility making contact shall be authorized to accept reasonable partial payment of the overdue balance in accordance with the time-payment provisions.

(12) A water utility must document its efforts to provide notice under this rule and shall make that documentation available to the customer and the Commission upon request.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.750 & 757.755  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 18-2003, f. & cert. ef. 10-6-03

**860-036-0250**

**Unapproved Diversion of Irrigation Water by Tampering with or Damaging Water Utility Equipment**

(1) A customer may not tamper with or damage water utility equipment in order to divert irrigation water flow without written permission of the water utility.

(2) If the water utility's equipment is tampered with or damaged by a customer, it may take any of the following actions:

(a) Replace or repair the equipment and require the customer to reimburse the water utility for the actual reasonable cost to replace or repair.

(b) Require the customer to pay a reconnection fee in compliance with OAR 860-036-0240.

(c) Require the customer pay a deposit up to \$250 for the restoration of irrigation service. The payment of this deposit will be made in compliance with OAR 860-036-0045(4) and 860-036-0055(4).

(d) For repeat offenses, require the customer to pay an additional deposit of \$250. Notwithstanding the requirements of OAR 860-036-0045, no installment payment plan will be available to the customer to restore services. Such additional deposits must be made immediately at the time irrigation service is restored.

(e) Refuse irrigation service to the customer pursuant to OAR 860-036-0080.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.105, 757.120, 757.125 & 757.135

Hist.: PUC 9-2003, f. & cert. ef. 5-15-03

**Service Quality**

**860-036-0301**

**Quality of Water Service**

(1) No water utility shall purposely or willfully provide substandard service or inadequate service where the water utility has the capacity to provide adequate service as determined by the Commission.

(2) The Commission may impose additional requirements notwithstanding that the water utility meets the standards set forth in OAR Division 036.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.020 & 757.250

Hist.: PUC 22-2001(Temp), f. & cert. ef. 9-26-01 thru 3-24-02; PUC 8-2002, f. & cert. ef. 2-26-02

**860-036-0305**

**Maintenance and Repair of Plant and Equipment**

(1) A water utility shall have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service.

(2) A water utility shall inspect its plant, distribution system, and facilities in such manner and with such frequency as necessary to ensure a reasonably complete knowledge about the condition and adequacy of the entire system at all times.

(3) A water utility will keep maintenance and repair records consistent with the Commission's Guide for the Preservation of Records for Public Water Utilities, except when the Commission specifies a more complete record.

(4) A water utility shall flush dead end mains or other low flow portions of the distribution system as needed or at reasonable intervals to eliminate or minimize complaints from customers or applicants arising from an objectionable condition of water. A water utility must:

(a) Provide prior notification to the customers of all routine (nonemergency) flushings. The notice must include:

(A) The date, time, and approximate duration of the flushings; and

(B) A statement cautioning customers to avoid using water during flushing to prevent debris in the customers' service lines.

(b) Keep a record of the date, place, time, and duration of all routine and emergency flushings.

(5) A water utility shall inspect, exercise, and maintain valves and hydrants as necessary to ensure they are operable. A water utility shall keep records of all inspections, maintenance, repairs, and exercise of each valve and hydrant.

(6) A water utility shall make repairs and perform maintenance to its water system in a timely manner to prevent future damage to the water system; to reduce wear and tear on equipment and water plant;

and to minimize customers' inconvenience, loss of water flow, low water pressure, or inadequate service.

(7) A water utility shall communicate with the customer(s) or person(s) reporting service problems, informing the customer(s) or person(s) of:

(a) The source or suspected source of the service problem;

(b) The expected date and time of the repair;

(c) The length of time the repair is expected to take; and

(d) The effect the repairs may have on the customer's service.

(8) All customers whose service is or may be affected by the service problem will be notified by the water utility in the same manner as stated in section (7) of this rule.

(9) The water utility shall make repairs in a timely manner. In case of a dispute, the Commission will determine the reasonable amount of time necessary to make the repair. If the water utility repair is determined to have taken longer than reasonably necessary, the water utility shall provide affected customers with service credits according to OAR 860-036-0330.

(10) The water utility will restore the surrounding area disturbed during utility repairs, maintenance, construction, or installation to its previous or better condition. The customer has the burden of demonstrating that the area has not been restored to its previous or better condition.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.020

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 22-2001(Temp), f. & cert. ef. 9-26-01 thru 3-24-02; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03

**860-036-0310**

**Purity of Water Supply for Domestic Purposes**

(1) A water utility delivering water for domestic purposes shall furnish a supply that shall at all times be free from bodily injurious physical elements and disease-producing bacteria. A water utility shall make such tests and take precautions as will ensure the constant purity of its water supply. A water utility shall keep a record of all such tests and reports.

(2) A water utility delivering water for domestic purposes shall furnish a supply that shall be reasonably free from elements that cause physical damage to customer's or applicant's property including but not limited to pipes, valves, appliances, and personal property. A water supply that causes such damage must be remedied within a reasonable time unless the conditions are such as to not reasonably justify the necessary investment. The water utility shall bear the burden of demonstrating that remedying the condition is not reasonably justified.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.020

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 13-1997, f. & cert. ef. 11-12-97; Renumbered from 860-023-0060; PUC 8-2002, f. & cert. ef. 2-26-02

**860-036-0315**

**Adequate Water Pressure Required**

(1) The standard for all water pressure is adequacy as determined by the Commission.

(2) As used in this rule, "customer" means an individual residential dwelling or commercial unit served by the water utility.

(3) Except as provided in section (7) of this rule, each water utility shall maintain pressure at a minimum of 20 pounds per square inch (psi) for health reasons to each customer at all times and not exceed a maximum of 125 psi. The 20 psi and 125 psi standards are not presumed to be adequate service and do not restrict the authority of the Commission to require improvements where water pressure or flow is inadequate.

(4) In general, 40 psi of water pressure in the water mains is usually adequate for the purposes of this rule. Adequate pressure may vary depending on each individual water system and its customers' circumstances. In the case of a dispute, the Commission will determine the appropriate water pressure for the water utility.

(5) Each water utility shall maintain pressure recording gauges in good operating condition, test periodically for accuracy, and replace when necessary.

(6) The Commission, either upon its own motion or upon customer complaints may investigate the operations and capacity of the water utility to provide adequate service. When necessary, the Commission may appoint a competent person or entity to monitor a water

utility's water pressure at various points throughout the system and test the water utility's recording or measuring devices for accuracy.

(7) Each water utility may temporarily reduce or increase water pressure for fire flows, announced scheduled repairs, emergency repairs, and outages.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.020 & 757.250  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 13-1997, f. & cert. ef. 11-12-97; Renumbered from 860-023-0065; PUC 22-2001(Temp), f. & cert. ef. 9-26-01 thru 3-24-02; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0320

##### Pressure Surveys

(1) Every water utility shall have permanently-placed pressure gauges located at various locations on main lines and/or distribution lines that are representative of the entire system's water pressures. A portable gauge in good working condition shall be available for checking pressure conditions in any part of the distribution area.

(2) Any customer may request the water utility to perform a water pressure test. Such test shall be made within 20 working days of the request at no cost to the customer. If a customer requests more than one pressure test within any 12-month period, a deposit to recover the reasonable cost of the additional test may be required of the customer. The deposit shall be returned if the pressure is not considered adequate according to OAR 860-036-0315.

(3) A customer or a designated representative shall have the right to be present at the water pressure test. The test shall be conducted at a mutually agreeable time during regular business hours.

(4) Pressure tests shall be performed as follows:

(a) For metered service, the pressure will be measured at a point adjacent to the meter on the customer service line.

(b) For non-metered service, the pressure will be measured at the customer service line or hose bibb or other reasonable point likely to best reflect the actual service pressure.

(5) The water utility shall provide a written report to the customer within 10 working days after completion of the pressure test showing the name of the customer, the date of the request, the address where tested, the actual test site(s), the date of the test, and the result of the test.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.020 & 757.250  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 13-1997, f. & cert. ef. 11-12-97; Renumbered from 860-023-0070; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0325

##### Water Supply

(1) Every water utility shall exercise due diligence to furnish a continuous and adequate supply of water to its customers.

(2) If a water utility finds that it is necessary to conserve or restrict the customers' use of water, it must provide written notice to its customers and the Commission before such restriction becomes effective. Such notifications shall specify:

(a) The reason for the restriction;

(b) The nature and extent of the restriction, for example, on outdoor use of water, use by certain classes of customers, etc.;

(c) The date such restriction is to go into effect; and

(d) The probable date of termination of such restriction.

(3) The Commission may formally or informally investigate the water utility's conservation or water restriction plan either on its own motion or by customer complaint. During or after such investigation, the Commission may change or alter the water utility's water conservation or restriction plan as it deems necessary.

(4) During times of water shortage, the water utility shall equitably apportion its available water supply among its customers with due regard to public health and safety.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0335

##### Maps and Records

(1) A water utility shall keep on file current maps and records of the entire plant showing size, location, character, and date of installation of major plant items, including but not limited to main lines, distribution lines, pressure release valves, and shut-off valves.

(2) Upon request, a water utility shall file with the Commission maps as described above in section (1) of this rule. All maps and

records filed with the Commission shall be in a form satisfactory to the Commission.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.020  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0340

##### Master Plan

A water utility that is required to develop and submit a master plan to the Oregon Health Division pursuant to OAR 333-061-0060(5) shall also submit a copy of such plan to the Commission. All amendments, changes, or updates to the plan shall also be provided to the Commission within a reasonable time period.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97

#### 860-036-0345

##### Location of Underground Facilities

A water utility and its customers shall comply with requirements of OAR chapter 952 regarding the prevention of damage to underground facilities.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.542 - 757.562  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-036-0350

##### Construction, Safety, and Reporting Standards for Water Utilities

If a water utility engages in the management, operation, ownership, or control of gas pipelines or communication, signal, or electrical supply lines within Oregon, the water utility shall comply with the construction, safety, and reporting standards set forth in OAR chapter 860, division 024.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.020, 757.035 & 757.039  
Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-036-0360

##### Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities

Pole and conduit attachments shall comply with the rules set forth in OAR chapter 860, division 028.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.270 - 757.290 & 759.650 - 757.675  
Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-036-0365

##### Compliance Enforcement by Commission Appointment of Regent(s) to Operate and Manage a Water System

(1) In extreme circumstances when the water utility owner, operator, or representative demonstrates to the Commission's satisfaction an unwillingness or incapacity or refusal to effectively operate and manage the water system to provide safe and adequate service to its customers in compliance with Oregon statutes, rules, and standards, the Commission may appoint a regent(s) to operate and manage the water system. This procedure will be accomplished under an Interim Operating Agreement until long-term water provision can be ensured.

(2) The regent(s) appointed to operate, maintain, and repair the system must be a certified operator(s) or a qualified water utility(ies).

(3) The appointment of the regent(s) may also include responsibility for billing and collection, customer service, and administration of the system.

(4) If the Commission authorizes an operating account for receiving and dispersing funds by the regent(s), a Commission staff member will be a signator on such account to monitor all transactions.

(5) The regent will record all transactions in a general ledger and shall supply a copy of the ledger and bank statement to Commission staff member each month.

(6) At the end of the Interim Operating Agreement, Commission staff will make a final accounting of all monies received and transacted. Disbursement of surplus funds will be determined by the Commission.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.105, 757.120, 757.125 & 757.135  
Hist.: PUC 9-2003, f. & cert. ef. 5-15-03

**860-036-0370**

**Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs**

(1) The Commission may use up to \$5,000 per biennium of the fees collected under ORS 756.310 to make emergency repairs for water utilities. The Commission may expend monies under the provisions of this rule if the Commission determines that:

- (a) Customers of a utility are without service and are likely to remain without service for an unreasonable period of time;
- (b) The utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and
- (c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The Commission shall promptly attempt to recover fees used under this rule from the utility providing water service. No interest shall accrue on the outstanding balance.

(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the fees are expended.

Stat. Auth.: ORS 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

**860-036-0380**

**Commission-Assessed Civil Penalties for Noncompliance**

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 for each violation of state statutes, Oregon administrative rules, or Commission orders related to water utilities.

(2) Prior to assessing civil penalties, the Commission may send a warning letter to the water utility by registered or certified mail. The warning letter must include, but not be limited to, the following:

- (a) A statement that the water utility is in violation of state statutes, Oregon administrative rules, or Commission orders;
- (b) The time allowed for correcting the violation(s); and
- (c) A statement that, if the violations are not corrected within the time allowed, staff may make a recommendation to the Commission to assess civil penalties.

(3) The Commission must give notice of civil penalties by registered or certified mail to the water utility incurring the penalties. The notice must include, but is not limited to the following:

- (a) The section of the statute, rule, or order violated;
- (b) A concise statement of the violation(s) asserted or charged;
- (c) A statement of the amount of civil penalties that may be assessed;
- (d) A statement of the water utility's right to request a hearing within 20 calendar days of the date of service of the notice; and
- (e) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) Within 20 calendar days of the date of service of the notice, the water utility incurring the penalties may request a hearing. Such request must be in writing and shall state what actions, if any, have been made to correct the violation(s) stated in the notice. If the water utility does not request a hearing within the time allowed, or if the water utility requesting a hearing fails to appear, the Commission may issue a final order imposing the penalty.

(5) The Commission may require that penalties imposed under this rule be used for the benefit of the customers of water utilities affected by the violation(s).

Stat. Auth.: ORS 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 183.090, 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

**Changes in Regulatory Status**

**860-036-0405**

**Notice of Customer's Right to Petition for Full Rate Regulation**

(1) At least 60 days before a water utility or otherwise exempt water utility serving less than 500 customers increases its residential rates or charges to a level that exceeds the threshold levels established in OAR 860-036-0030, it shall provide a written notice to all customers. The water utility must provide the Commission with a copy of the notice and a complete and current list of its customers' names and mailing addresses. The notice will advise customers of their right

to file a petition to initiate full regulation of the water utility and, at a minimum, must include the following information:

- (a) Name of water utility;
- (b) A statement that the water utility intends to increase its residential rates and charges;
- (c) Current rates and charges to residential customers;
- (d) Proposed rates and charges to residential customers;
- (e) Date the proposed rates are to become effective (minimum of 60 days);
- (f) The reason(s) the water utility is seeking the rate increase;
- (g) A statement informing customers of their right to petition the Commission to request that the proposed increase be investigated;
- (h) A statement that all customers may submit petitions to the Commission for 45 days from the date of the customer notice;
- (i) A statement informing customers that if 20 percent or more of total customers petition, the water utility will be subject to rate regulation by the Commission;
- (j) A statement that customer petitions should state the purpose for the petition and include each customer's name, address, telephone number, and signature;
- (k) A statement that customer petitions filed with the Commission requesting rate regulation of a water utility may not be withdrawn or rescinded;

(l) A statement that the water utility will provide a complete customer list within 10 days of a request from any customer; and

(m) The Commission's toll-free telephone number (1-800-522-2404; TTY 711) and address. The Commission's street address is: Public Utility Commission of Oregon, 550 Capitol St NE Suite 215, Salem, OR 97301-2551. The Commission's mailing address is: PUBLIC UTILITY COMMISSION OF OREGON, CONSUMER SERVICES, PO BOX 2148, SALEM OR 97308-2148.

(2) Any water utility that fails to provide the notice required in section (1) of this rule prior to increasing rates or charges above the threshold level shall be required to reduce such rates or charges to threshold levels and provide notification as required in section (1) of this rule. Failure to reduce rates or charges and provide notice as required may result in refunds of customer charges, civil penalties, or both.

(3) At least seven business days prior to sending notice to the customers, the water utility must provide the Commission with a draft copy of the customer notice referred to in sections (1) and (2) of this rule.

(4) The same time the water utility sends notice to its customers, it must provide the Commission with a final copy of the customer notice and a complete and current customer list including names and addresses.

Stat. Auth.: ORS 183, 757 & 757

Stats. Implemented: ORS 756.040, 757.750 & 757.755

Hist.: PUC 14-1989, f. & cert. ef. 11-3-89 (Order No. 89-1464; PUC 13-1997, f. & cert. ef. 11-12-97; Renumbered from 860-022-0028; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03

**860-036-0407**

**Notice of Commercial and Other Water Customers' Right to Petition for Full Rate Regulation**

(1) At least 60 days before a public utility or otherwise exempt water utility serving less than 500 customers increases its commercial rates or charges to a level that exceeds the threshold levels established in 860-036-0030, it shall provide a written notice to all customers of the customers' right to petition the Commission to initiate rate regulation. Petitions may be submitted to the Commission for 45 days from the date of the customer notice.

(2) At least seven business days prior to sending notice to the customers, the water utility must provide the Commission with a draft copy of its customer notice referred to in section 1 of this rule.

(3) The same time the water utility sends notice to its customers, it must provide the Commission with a final copy of the customer notice and a complete and current customer list including names and addresses.

(4) At a minimum, the notice to the customers must include the following information:

- (a) Name of water utility;
- (b) A statement that the water utility intends to increase rates and charges;
- (c) Current customer rates and charges;

- (d) Proposed customer rates and charges;
- (e) Date the proposed rates are to become effective (minimum of 60 days);
- (f) The reason(s) the water utility is seeking the rate increase;
- (g) A statement informing the customer of their right to petition the Commission to request that the proposed increase be investigated;
- (h) A statement informing the customer that if 20 percent or more of total customers petition, the water utility will be subject to rate regulation by the Commission;
- (i) A statement that customer petitions should state the purpose for the petition and include each customer's name, address, telephone number, and signature;
- (j) A statement that customers may petition the Commission for rate regulation for 45 days from the date of the customer notice;
- (k) A statement that customer petitions filed with the Commission requesting rate regulation of a water utility may not be withdrawn or rescinded;
- (l) A statement that the water utility will provide a complete customer list within 10 days of a request from any customer; and
- (m) The Commission's toll-free telephone number (1-800-522-2404; TTY 711) and address. The Commission's street address is: Public Utility Commission of Oregon, 550 Capitol St NE Suite 215, Salem, OR 97301-2551. The Commission's mailing address is: PUBLIC UTILITY COMMISSION OF OREGON, PO BOX 2148, SALEM OR 97308-2148.

Stat. Auth.: ORS 183, 757 & 757  
 Stats. Implemented: ORS 756.040, 757.750 & 757.755  
 Hist.: PUC 18-2003, f. & cert. ef. 10-6-03

#### 860-036-0410

##### Relating to Rate Regulation of Water Utility by Customer Petition

- (1) As used in this section, "customer" means individual residential dwelling or commercial unit served by the water utility. Hotels, motels, and recreational vehicle (RV) parks shall be deemed one commercial customer, except those individuals who use such facilities as a primary residence shall also be counted as customers.
- (2) Once a water utility has exceeded a threshold level, as defined in OAR 860-036-0030, and if the Commission did not receive a petition from 20 percent or more of the customers, the customers may submit a petition to the Commission at any time for full rate regulation. Petitioners must be current customers of the water utility. Such petitions are in effect for six months. Petitions older than six months must be resubmitted to the Commission.
- (3) Petitions must be in writing, state the purpose of the petition, and include the customer's name, address, telephone number, and signature.
- (4) Individual customer letters may be submitted in lieu of a petition.
- (5) If 20 percent of customers petition the Commission, the water utility will be notified by the Commission, in writing, of its change in status to a rate-regulated water utility.
- (6) The water utility must file appropriate tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.
- (7) If the water utility fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.
- (8) Customer petitions filed with the Commission requesting rate regulation of a water utility may not be withdrawn or rescinded.
- (9) Existing nonpetitioned rates and charges will be deemed interim rates and may be subject to refund during the pendency of the tariff filing application. The period of refund will begin on the date of the notice requiring a tariff filing sent by the Commission, unless the date the water utility began serving 500 customers can be reasonably determined, and end on the issuance date of the Commission order establishing new rates. Refunds may be limited to those charges and fees, or a portion thereof, paid by customers determined by the Commission to be unreasonable, excessive, or not justified by the water utility's cost. At the discretion of the Commission, any such refund may include interest.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040  
 Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 7-2004, f. & cert. ef. 4-9-04

#### 860-036-0412

##### Request for Rate Regulation of an Association by Members

- (1) For purposes of this rule, "association" means any association of individuals that furnishes water to members of the association, even if the association does not furnish water directly to or for the public. This rule does not apply to any cooperative formed under ORS Chapter 62 or to any public body as defined by ORS 174.109.
- (2) Association members may submit a petition to the Commission at any time for regulation of a water system owned, operated, managed, or controlled by an association. Petitioners must be current members of the water association.
- (3) Petitions must be in writing, state the purpose of the petition, and include the member's name, address, telephone number, and signature.
- (4) The Commission will consider individual letters submitted by association members, which meet the criteria of subsection (3), as petitions for the purposes of calculating the 20 percent requirement.
- (5) If 20 percent of association members petition the Commission, the Commission must issue an order notifying the association of its change in regulatory status to a regulated water utility.
- (6) If required by the regulatory change, the association must file tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.
- (7) If the association fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.
- (8) Petitions filed with the Commission may not be withdrawn or rescinded and are valid for six months.

Stat. Auth.: ORS 183, 756 & Ch. 202, OL 2003  
 Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003  
 Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

#### 860-036-0415

##### Relating to Rate Regulation of Water Company by Customer Count

- (1) As used in this section, "customer" means individual residential dwelling or commercial unit served by the water utility. Hotels, motels, and RV parks shall be counted as one commercial customer, except those individuals who use such facilities as a primary residence shall also be counted as customers. Multiple user units such as, but not limited to, apartment complexes, duplexes, triplexes, condominiums, and town houses shall be counted as the number of individual units within the building. For example, a duplex shall be counted as two customers and a 14-unit apartment complex shall be counted as 14 customers.
- (2) The Commission may require a customer count as specified in this section from any water utility.
- (3) If the Commission determines a water utility has a customer count of over 500 customers, it shall notify the water utility in writing of its change in regulatory status and require the water company to file tariffs with the Commission within 60 days pursuant to ORS 757.205.
- (4) If the water utility fails to file appropriate tariffs within 60 days of notification, the Commission may initiate a tariff filing proceeding to establish rates for the water utility.
- (5) Existing rates and charges will be deemed interim rates subject to refund during the pendency of the rate filing application. Refund may be limited to those charges and fees paid by customers determined by the Commission to be unreasonable, excessive, or not justified by the water utility's costs. At the discretion of the Commission, any such refund may include interest. The period of refund will begin on the date of the notice requiring a tariff filing sent by Commission staff, unless the date the water utility began serving 500 customers can be reasonably determined, and end on the issuance date of the Commission order establishing new rates.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040  
 Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0420

##### Request for Rate Regulation by a Water Utility

- (1) Any water utility serving fewer than 500 customers may, at any time, file a petition with the Commission for full rate regulation of the water utility.

(2) When the water utility files the petition with the Commission requesting rate regulation, the water utility must also provide written notification to its customers. The water utility must provide the Commission with a copy of the notice. At a minimum, the notice must include the following information:

- (a) Name, address, and telephone number of the water utility;
- (b) Purpose of the notice;
- (c) The reason(s) the water utility is seeking rate regulation;
- (d) The Commission's toll-free telephone number, TTY number, and its mailing and location addresses. The information is available on the Commission website or by calling the Commission; and
- (e) A statement informing customers that ORS 757.061 was amended in 2003 to allow water utilities to petition the Commission for rate regulation.

(3) Within 30 days after the water utility files its petition requesting rate regulation, the Commission must issue an order notifying the water utility of its change in regulatory status to a rate-regulated water utility.

(4) Within 60 days after the Commission notifies the water utility of its change in regulatory status, the water utility must file appropriate tariffs pursuant to ORS 757.205.

Stat. Auth.: ORS 183, 756 & Ch. 082, OL 2003  
 Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003  
 Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

### New Water Utilities

#### 860-036-0505

##### Relating to New Water Utilities

(1) This rule applies to newly constructed water utilities that have not previously offered water service to the public during the past 12 months. This rule does not apply to remodeled, renamed, new additions, or new ownership of existing water supply systems.

(2) A new water utility may initially establish a monthly residential rate exceeding the threshold level established in OAR 860-036-0030 provided it notifies each customer in writing at the time of connection, or earlier, of the customer's right to petition the Commission for rate regulation. The notice shall comply with OAR 860-036-0405. All subsequent rate increases will comply with the requirements of OAR 860-036-0405.

(3) If the Commission receives petitions from 20 percent or more of the new water utility's customers and the water utility charges or proposes to charge for services in excess of the threshold levels established in OAR 860-036-0030, the rules contained in OAR 860-036-0410 will become applicable.

(4) Customer count will be made pursuant to OAR 860-036-0415. The 20 percent calculation of customers will be based upon the total number of customers existing in the month the Commission receives the petition. Petitions will carry over month to month and will be cumulative. Petitioners need not file petitions monthly in order to be counted for any particular month.

(5) Petitions are valid for six months, after which they must be resubmitted to the Commission.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040 & 757.205  
 Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 7-2004, f. & cert. ef. 4-9-04

### Tariffs

#### 860-036-0605

##### Tariff Specifications

(1) Form and style of tariffs:

(a) All tariffs must be in loose-leaf form so that changes can be made by reprinting and inserting a single leaf;

(b) Each wastewater utility must designate the initial tariff as PUC Oregon No. 1, and designate successive tariffs with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(c) The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insuff-

ficient, two or more pages should be used. Blank forms will be furnished by the Commission upon request; and

(d) Separate tariffs must be filed for wastewater service or for any other service entered.

(2) Size of tariffs and required:

(a) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(b) Wastewater utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040 & 757.205  
 Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-036-0610

##### Tariff Contents

This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061:

(1) Tariffs must explicitly state the rates and charges for each type of service rendered, designating the area or district to which they apply.

(2) Rules and regulations of the water utility that in any manner affect the rates charged or to be charged or that define the extent or character of the service to be given shall be included with each tariff filing.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040 & 757.205  
 Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0615

##### Tariff Changes Require 30 Days' Notice to the Commission

(1) This rule applies to rate-regulated water utilities as defined in ORS 757.005 and ORS 757.061.

(2) Except as hereinafter provided in this Division, a water utility must file with the Commission all tariffs, rate schedules, revisions, or supplements thereto containing any change in rates, charges, or rules and regulations at least 30 days before the effective date of such changes. The Commission will reject tariffs or schedules not conforming with the rules in this Division.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040, 757.007 & 757.220  
 Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-036-0620

##### Announcement to Customers of Tariff Changes

(1) This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061.

(2) Within 15 days of filing new or revised tariff schedules with the Commission that constitute a general rate revision, a water utility shall inform its customers of the filing. A "general rate revision" is a filing by a water utility that affects all or most of the water utility's rate schedules. "General rate revision" does not include changes in an automatic adjustment clause under ORS 757.210(1) or similar changes in one rate schedule, such as for an amortization, that affect other rate schedules.

(3) A water utility filing a general rate revision shall inform its customers of its filing by:

(a) Insertion of a display announcement, not less than a three column standard advertising unit (SAU) by 10 inch advertisement, at least once in a newspaper of general circulation in the communities served by the water utility; or

(b) An announcement inserted in the water utility's regular billing to its customers; or

(c) An announcement mailed to each customer.

(4) At a minimum, the announcement must include the following information:

(a) The approximate current and proposed average monthly rate for each customer class expressed in dollar terms;

(b) A brief statement of the reasons why the change is sought;

(c) Notification that copies of the water utility's application, testimony, and exhibits are available at its main office;

(d) The mailing address and telephone number customers may use to contact the water utility to receive additional information about the filing;

(e) The water utility's office mailing address and office telephone number;

(f) The Commission's toll-free telephone number (1-800-522-2404; TTY 711) and mailing address (PUBLIC UTILITY COMMISSION OF OREGON, ADMINISTRATIVE HEARINGS DIVISION, P.O. BOX 2148, SALEM OR 97308-2148) where customers may request to receive notice of the time and place of any hearing on the matter;

(g) A statement that the purpose of the announcement is to provide customers with general information regarding the water utility's proposed tariffs and the effect the tariff filing may have on the customers; and

(h) A statement that "the calculations and statements contained in the water utility's announcement and filing are not binding on the Commission."

(5) At least seven business days prior to sending the announcement to the customers, the water utility must provide the Commission with a draft copy of the announcement referred to in sections (2), (3), and (4) of this rule.

(6) Within 20 days of issuance of the announcement, the water utility shall file an affidavit with the Commission that notice has been given and include a copy of the announcement.

(7) The Commission may waive the requirements of this rule upon a showing by the water utility that the announcement required by this rule has been given with respect to a particular general rate revision, and upon a further showing that additional notice with respect to that rate revision would be duplicative, confusing to customers, and burdensome to the water utility.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03

#### 860-036-0625

##### Applications to Make Tariffs or Rate Schedules Effective on Less than Statutory Notice

A water utility seeking authority to make tariffs or rate schedules effective on less than statutory notice must use application forms approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.220  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-036-0630

##### Requirements for Filing Tariffs or Schedules Changing Rates

This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061.

(1) A water utility may make tariff changes by filing an entirely new tariff or by filing revised sheets that shall refer to the sheets of the tariffs currently on file with the Commission. Additions to the tariff on file may be made by filing additional sheets.

(2) Each water utility filing tariffs or schedules changing existing tariffs or schedules shall submit therewith the following information:

(a) A statement plainly indicating the increase, decrease, or other change thereby made in existing rates, charges, or rules and regulations;

(b) A statement setting forth the number of customers affected by the proposed change and the resulting change in annual revenue; and

(c) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed change.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.205  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0635

##### Requirements for Filing Tariffs or Schedules Increasing Rates

This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061:

(1) Each water utility filing tariffs or schedules that increase rates must submit, in addition to requirements of OAR 860-036-0630, the following information:

(a) For each separate schedule, the total number of customers affected, the total annual revenue derived under the existing schedule,

and the amount of estimated annual revenue the water utility expects to derive from the application of the proposed schedule;

(b) For each separate schedule, the average monthly use and resulting average bills under both the existing rates and the proposed rates for characteristic customers, that will fairly represent the application of the proposed tariff or schedules; and

(c) A detailed statement setting forth the reasons relied upon in support of the proposed increase.

(2) Additional information may be required to be filed either prior to acceptance by the Commission of the tendered filing or at any stage in the proceeding.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.205  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0640

##### Tariff Changes Effective with Service Rendered

All tariff changes shall be made applicable with service rendered on and after the effective date of the changes, unless the Commission by order provides otherwise. As used in this rule, "service rendered" means units of water consumed, basic service provided, or likewise as the context requires.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.007 & 757.220  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97

#### 860-036-0645

##### Notice to Interested Persons of Tariffs Filed Under ORS 757.205

(1) This rule applies to rate-regulated water utilities as defined in ORS 757.005 and ORS 757.061.

(2) This rule applies to any tariff filing that is filed under ORS 757.205.

(3) Any person who requests of the Commission, in writing, to be notified of the water utility tariff filings covered under section (2) of this rule must be included on a notice list.

(4) The Commission must notify all persons on the notice list referred to in section (3) of this rule of any applicable tariff filing. The notice will be given within ten days of any tariff filing under section (2) of this rule that complies with OAR 860-036-0605 through 860-036-0635.

(5) The notice must include the following information:

(a) Name of the filing water utility;

(b) Subject;

(c) Filing date;

(d) Effective date;

(e) Date of the Commission's public meeting when the tariff will be considered; and

(f) Customer classes affected.

(6) The Commission may periodically delete names of persons from the notice list who do not demonstrate a continued interest in receiving the notices set forth in section (3) of this rule. No person's name may be deleted from the list without 20 days' notice before deletion.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.230  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2004, f. & cert. ef. 12-30-04

#### Financial Transactions

#### 860-036-0705

##### Form and Filing of Applications

(1) The Commission will furnish to applicant such information from the records on file as will assist in a full presentation of material facts required by OAR 860-036-0710 to 860-036-0735.

(2) When any document required to be filed under these rules has heretofore been filed with the Commission, it shall be sufficient if the application makes reference to such filing and the capacity in which it was filed.

(3) Where the words "none" or "not applicable" truly and completely state the fact, they should be used in answering the requirement of any particular section of this rule.

(4) The Commission may require additional information when it appears to be pertinent in a particular case.

(5) Whenever these rules require the filing of financial statements, they shall be prepared as of the latest date available. The Income Statement shall be for the most recent 12-month period.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 756.105  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98

#### 860-036-0710

##### **Notice and Approval Requirements Relating to the Sale, Transfer, Merger, Termination or Abandonment of a Water Service, or Disposal of a Water Utility**

(1) Any water utility seeking to terminate, abandon service, or otherwise dispose of a water utility, excluding sales, transfers, or mergers, shall apply to and obtain approval from the Commission prior to such termination, abandonment, or disposal. Application requirements are found in OAR 860-036-0715.

(2) Any rate regulated water utility seeking to sell, transfer, or merge, shall apply to and obtain approval from the Commission prior to such transaction. Application requirements are found in OAR 860-036-0715.

(3) Any water utility that is not rate regulated or exempt shall provide its customers with notice of the sale, transfer, or merger 60 days prior to the closing date of the transaction. The notice shall include the following information:

- (a) Name, address, and telephone number of the water utility;
- (b) Purpose of notice;
- (c) Filing date;
- (d) Proposed effective date of sale (minimum of 60 days);
- (e) Name, address, and telephone number of potential buyer;
- (f) Reason(s) for sale;
- (g) Effect of sale upon customers; and

(h) The Commission's toll-free telephone number (1-800-522-2404; TTY 711) and address. The Commission's street address is: Public Utility Commission of Oregon, 550 Capitol St NE Suite 215, Salem, OR 97301-2551. The Commission's mailing address is: PUBLIC UTILITY COMMISSION OF OREGON, CONSUMER SERVICES, PO BOX 2148, SALEM OR 97308-2148.

(4) A water utility otherwise exempt by ORS 757.061 that charges for services in excess of threshold levels established in OAR 860-036-0030, must also provide its customers written notification of the customers' right to petition the Commission for regulatory approval of such transaction at least 60 days prior to the closing date of the transaction. If the Commission receives a petition from at least 20 percent of the customers prior to the closing date of the transaction, the water utility becomes rate regulated and the transaction requires Commission approval.

(5) At least seven business days prior to sending notice to customers, the water utility must provide the Commission with a draft copy of the notice referred to in section (4) of this rule and will include the following information:

- (a) Name, address, and telephone number of the water utility;
- (b) Purpose of notice;
- (c) Proposed filing date;
- (d) Proposed effective date of sale;
- (e) Name, address, and telephone number of potential buyer;
- (f) Reason(s) for sale;
- (g) Effect of sale upon customers;

(h) A statement informing customers of their right to petition the Commission for regulatory approval of the transaction;

(i) A statement informing customers that if 20 percent or more of total customers petition, the water utility will be subject to rate regulation by the Commission;

(j) A statement that customer petitions should state the purpose for the petition and include each customer's name, address, telephone number, and signature;

(k) A statement that customers' petitions may be submitted to the Commission for 45 days from the date of the customer notice;

(l) A statement that the water utility will provide a complete customer list within 10 days of a request from any customer; and

(m) The Commission's toll-free telephone number (1-800-522-2404) and address. The Commission's street address is: Public Utility Commission of Oregon, 550 Capitol St NE Suite 215, Salem, OR 97301-2551. The Commission's mailing address is: PUBLIC UTILITY COMMISSION OF OREGON, CONSUMER SERVICES, PO BOX 2148, SALEM OR 97308-2148.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.480  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03

#### 860-036-0715

##### **Applications for Authority to Sell, Lease, Assign, Mortgage, Merge, Consolidate, or Otherwise Dispose of or Encumber its Property, or to Acquire Stock, Bonds, or Property of Another Public Utility**

(1) Requirements of this rule apply to rate-regulated water utilities seeking authority under ORS 757.480 and 757.485. Every applicant shall, at a minimum, utilize the form prescribed below and provide all required information. At its discretion, the Commission may require further or more detailed information. [Form not included. See ED. NOTE.]

(2) In the case of abandonment or termination of service by the water utility, in addition to the requirements in section (1) of this rule, the water utility must provide a description of all alternative water service options available to the customers and the estimated cost to customers of each alternative water service option.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.105, 757.480 & 757.485  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02

#### 860-036-0716

##### **Acquisition Adjustments**

(1) A rate-regulated water utility may petition the Commission for approval of an acquisition adjustment in rates for acquiring a water system when the benefits of the acquisition outweigh the increase to customers' rates resulting from an acquisition adjustment.

(2) The Commission will consider the merits of the utility's petition based on the benefit to the customers being acquired and the public interest on a case-by-case basis.

(3) The approval and determination of an acquisition adjustment is at the sole discretion of the Commission.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.105, 757.120, 757.125 & 757.135  
Hist.: PUC 9-2003, f. & cert. ef. 5-15-03

#### 860-036-0720

##### **Application by a Water Utility for Authority to Issue Stocks, Bonds, Notes, or Other Securities**

Application by a Water Utility for Authority to Issue Stocks, Bonds, Notes, or Other Securities:

(1) This rule applies to rate-regulated water utilities seeking authority under ORS 757.495, 757.405 to 757.435 inclusive, 757.445, and 757.450. Every applicant shall set forth in this application to the Commission, in the manner and form and in the order indicated, the following information:

(a) The applicant's exact name and the address of its principal business office;

(b) The state in which incorporated, the date of incorporation, and the other states in which authorized to transact water utility business;

(c) The name and address of the person authorized, on behalf of applicant, to receive notices and communications in respect to the application;

(d) The names, titles, and addresses of the principal officers of the applicant;

(e) A description of the general character of the business done and to be done, and a designation of the territories served. A map showing the territories served is desirable;

(f) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of capital stock: brief description; amount authorized (face value and number of shares); amount outstanding (exclusive of any amount held in the treasury); held amount as reacquired securities; amount pledged by applicant; amount owned by affiliated interests, and amount held in any fund;

(g) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of long-term debt or notes: brief description (amount, interest rate and maturity); amount authorized; amount outstanding (exclusive of any amount held in the treasury); amount held as reacquired securities; amount pledged by

applicant; amount held by affiliated interests; and amount in sinking and other funds;

(h) A full description of the securities proposed to be issued, showing: kind and nature of securities or liabilities; amount (face value and number of shares); interest or dividend rate, if any; date of issue and date of maturity; and voting privileges, if any;

(i) A reasonably detailed and precise description of the proposed transaction, including a statement of the reasons why it is desired to consummate the transaction and the anticipated effect thereof. If the transaction is part of a general program, describe the program and its relation to the proposed transaction. Such description shall include, but is not limited to, the following:

(A) A description of the proposed method of issuing and selling the securities;

(B) A statement of whether such securities are to be issued pro rata to existing holders of the applicant's securities or issued pursuant to any preemptive right or in connection with any liquidation or reorganization;

(C) A statement showing why it is in applicant's interest to issue securities in the manner proposed and the reason(s) why it selected the proposed method of sale; and

(D) A statement that exemption from the competitive bidding requirements of any federal or other state regulatory body has or has not been requested or obtained, and a copy of the action taken thereon when available.

(j) The name and address of any person receiving or entitled to a fee for service (other than attorneys, accountants, and similar technical services) in connection with the negotiation or consummation of the issuance or sale of securities, or for services in securing underwriters, sellers, or purchasers of securities, other than fees included in any competitive bid; the amount of each such fee, and facts showing the necessity for the services and that the fee does not exceed the customary fee for such services in arm's-length transactions and is reasonable in the light of the cost of rendering the service and any other relevant factors;

(k) A statement showing both in total amount and per unit the price to the public, underwriting commissions and net proceeds to the applicant. Supply also the information (estimated if necessary) required in section (4) of this rule. If the securities are to be issued directly for property, then a full description of the property to be acquired, its location, its original cost (if known) by accounts, with the identification of the person from whom the property is to be acquired, must be furnished. If original cost is not known, an estimate of original cost based, to the extent possible, upon records or data of the seller and applicant or their predecessors must be furnished, with a full explanation of how such estimate has been made, and a description and statement of the present custody of all existing pertinent data and records. A statement showing the cost of all additions and betterments and retirements, from the date of the original cost, should also be furnished;

(l) The purposes for which the securities are to be issued. Specific information will be submitted with each filing for the issuance of bonds, stocks, or securities:

(A) Construction, completion, extension, or improvement of facilities. A description of such facilities and the cost thereof;

(B) Reimbursement of the applicant's treasury for expenditures against which securities have not been issued. A statement giving a general description of such expenditures, the amounts and accounts to which charged, the associated credits, if any, and the periods during which the expenditures were made;

(C) Refunding or discharging of obligations. A description of the obligations to be refunded or discharged, including the character, principal amounts discount or premium applicable thereto, date of issue and date of maturity, purposes to which the proceeds were applied and all other material facts concerning such obligations; and

(D) Improvement or maintenance of service. A description of the type of expenditure and the estimated cost in reasonable detail;

(m) A statement as to whether or not any application, registration statement, etc., with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body;

(n) The facts relied upon by the applicant to show that the issue:

(A) Is for some lawful object within the corporate purposes of the applicant;

(B) Is compatible with the public interest;

(C) Is necessary or appropriate for or consistent with the proper performance by the applicant of service as a water utility;

(D) Will not impair its ability to perform that service;

(E) Is reasonably necessary or appropriate for such purposes; and

(F) If filed under ORS 757.495, is fair, reasonable, and not contrary to the public interest;

(o) A brief statement of all rights to be a corporation, franchises, permits, and contracts for consolidation, merger, or lease included as assets of the applicant or any predecessor thereof; the amounts actually paid as consideration therefore, respectively; and the facts relied upon to show the issuance of the securities for which approval is requested will not result in the capitalization of the right to be a corporation or of any franchise, permit, or contract for consolidation, merger, or lease in excess of the amount (exclusive of any tax or annual charge) actually paid as the consideration for such right, franchise, permit, or contract; and

(p) If filed under ORS 757.490 or 757.495:

(A) Provide a statement describing the relationship between the water utility and the affiliated interest as defined in ORS 757.015 or 757.490:

(i) Set forth the amount, kind, and ratio to total voting securities held, if applicable;

(ii) List all officers and directors of the affiliated interest who are also officers and/or directors of the applicant; and

(iii) State the pecuniary interest of any officer or director in compliance with ORS 757.490(1).

(B) State the reasons, in detail, relied upon by the water utility for entering into the proposed transaction and the benefits, if any, the customers of the water utility and the general public will derive from the transaction.

(2) Required Exhibits. There shall be filed with the application as part thereof the following exhibits:

(a) **Exhibit A.** A copy of the applicant's charter or articles of incorporation with amendments to date;

(b) **Exhibit B.** A copy of the bylaws with amendments to date;

(c) **Exhibit C.** A copy of each resolution of directors authorizing the issue in respect to which the application is made and, if approval of stockholders has been obtained, copies of the stockholder resolutions should also be furnished;

(d) **Exhibit D.** A copy of the mortgage, indenture, or other agreement under which it is proposed to issue the securities, and a copy of any mortgage, indenture, or other agreement securing other funded obligations of the applicant;

(e) **Exhibit E.** Copies of balance sheets showing booked amounts, adjustments to record the proposed transaction and pro forma, with supporting fixed capital or plant schedules in conformity with the form in the annual report that the applicant is required to file with the Commission;

(f) **Exhibit F.** A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts, as of the date of the application;

(g) **Exhibit G.** Copies of comparative income statements showing recorded results of operations, adjustments to record the proposed transaction and pro forma in conformity with the form in the annual report that the applicant is required to file with the Commission;

(h) **Exhibit H.** A copy of an analysis of surplus for the period covered by the income statements referred to in Exhibit G;

(i) **Exhibit I.** A copy of the registration statement proper, if any, and financial exhibits made a part thereof, filed with the Securities and Exchange Commission;

(j) **Exhibit J.** A copy of the proposed and of the published invitation of proposals for the purchase of underwriting of the securities to be issued; of each proposal received; and of each contract, underwriting, and other arrangement entered into for the sale or marketing of the securities. When a contract or underwriting is not in final form so as to permit filing, a preliminary draft or a summary identifying parties thereto and setting forth the principal terms thereof, may be filed pending filing of the conformed copy in the form executed by final amendment to the application;

(k) **Exhibit K.** Copies of the stock certificates, notes, or other evidences of indebtedness proposed to be issued;

(l) An application for a water utility to loan its funds to an affiliated interest, in addition to Exhibits A through K, shall also include the following:

(A) **Exhibit L.** Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction;

(B) **Exhibit M.** The amount of money the applicant desires to loan to the affiliated interest, terms of said loan, rate of interest, method of repayment, security given, if any, and if said loan is to be an open account or evidenced by a promissory note; and

(C) **Exhibit N.** The use to which funds derived from this loan are to be put by the affiliated interest; and

(m) An application for a water utility to give credit on its books or otherwise by:

(A) Advancing cash through an open or loan account, in addition to **Exhibits A through K**, shall also include the following:

(i) **Exhibit L.** Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction;

(ii) **Exhibit M.** The amount of cash the applicant proposes to receive, the rate of interest it will pay, and the date and method of repayment; and

(iii) **Exhibit N.** A definite statement of purpose for which the advance will be used.

(B) Payments by the affiliated interest of amounts owed, in addition to **Exhibits A through K**, shall include the following:

(i) **Exhibit L.** Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction; and

(ii) **Exhibit M.** The amount that the affiliated interest proposes to pay on the water utility's behalf, with a description of the obligation, how the funds will be used, and how incurred.

(C) Credits or open accounts a water utility proposes to give to an affiliated interest, in addition to **Exhibits A through K**, shall include the following:

(i) **Exhibit L.** Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction; and

(ii) **Exhibit M.** The amount and a description of each item for which the water utility proposes to give credit through its loan or open account.

(3) The following form of application may be filed by all water utilities with annual revenues of less than \$100,000 seeking authority to issue promissory notes maturing more than one year after date of issue or renewal and unsecured notes on motor vehicles in the principal amount of less than \$10,000. In the instances when this provision is proper, the requirements of sections (1) and (2) of this rule do not apply. The Commission may require compliance with sections (1) and (2) of this rule if the Commission deems it necessary in a particular case. [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.405 - 757.450 & 757.495

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 8-2002, f. & cert. ef. 2-26-02

## 860-036-0725

### Applications for Authority to Guarantee Indebtedness

(1) The requirements of this rule apply to rate-regulated water utilities seeking authority under ORS 757.440. Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information that should, to the extent possible, be furnished for each person, firm, or corporation involved:

(a) The information required by OAR 860-036-0720(1)(a) to (g) inclusive;

(b) A full description of the securities for which applicant proposes to assume obligation or liability as guarantor, endorser, surety, or otherwise;

(c) The amount of other securities of said person, firm, or corporation now held, owned, or controlled by the applicant;

(d) A statement as to whether or not any application, with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body;

(e) The reasons, in detail, why it is in applicant's interest to guarantee such securities;

(f) The reasons, in detail, why it is necessary for applicant to guarantee such securities; and

(g) The facts relied upon by the applicant to show the assumption is:

(A) For some lawful object within the applicant's corporate purposes and compatible with the public interest;

(B) Necessary or appropriate for or consistent with the applicant's proper performance of service as a water utility;

(C) Will not impair its ability to perform that service; and

(D) Reasonably necessary or required for such purposes.

(2) Required Exhibits. There shall be filed with the application as part thereof the following exhibits:

(a) **Exhibit A.** A copy of the applicant's charter or articles of incorporation with amendments to date;

(b) **Exhibit B.** A copy of the bylaws with amendments to date;

(c) **Exhibit C.** Copies of all resolutions of directors authorizing the assumption in respect to which the application is made and, if stockholders' approval has been obtained, a copy of the stockholders' resolution should also be furnished;

(d) **Exhibit D.** A copy of any mortgage, indenture, or other agreement securing any security that it proposes to guarantee; also, a copy of any mortgage, indenture, or other agreement securing applicant's funded obligations;

(e) **Exhibit E.** Balance sheets with supporting fixed capital or plant schedules in conformity with the form set forth in the annual report that applicant is required to file with the Commission;

(f) **Exhibit F.** A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts at the date of the application;

(g) **Exhibit G.** Comparative income statements in conformity with the form set forth in the annual report that applicant is required to file with the Commission;

(h) **Exhibit H.** An analysis of surplus for the period covered by the income statements referred to in Exhibit G; and

(i) **Exhibit I.** A statement showing the present market value or other basis of determining the value of the securities to be guaranteed.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.440

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 8-2002, f. & cert. ef. 2-26-02

## 860-036-0730

### Applications for Approval of Transactions Between Affiliated Interests

(1) Except as provided in section (3) of this rule, this rule applies to all rate-regulated water utilities seeking authority under ORS 757.490 and 757.495. An application for financing to an affiliated interest shall be made under OAR 860-036-0720.

(2) Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information:

(a) The applicant's exact name and the address of its principal business office;

(b) The name and address of the person authorized, on the water utility's behalf, to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the water utility and the contracting entity as defined by ORS 757.015 and 757.490;

(d) The amount, kind, and ratio to total voting securities held, if applicable;

(e) A list of all officers and directors of the affiliated interest who are also officers or directors of the applicant;

(f) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(g) A description of the goods or services to be provided, the cost incurred in providing each of the goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(h) An estimate of the amount the water utility will pay annually for the goods or services and the accounts in which it will record the charges;

(i) The reasons, in detail, relied upon by the water utility for procuring the proposed goods or services from the affiliate and benefits, if any, utility customers and the general public will derive from the provision of goods or services;

(j) A description of the procurement process and the reasons, in pertinent detail appropriate to the complexity of the procurement, relied upon by the water utility for procuring the proposed goods or services without a competitive procurement process, if such a process is not used;

(k) Transfer prices in contracts or agreements for the procurement of goods or services under competitive procurement shall be presumed

to be the market value, subject to evaluation of the procurement process;

(l) A copy of the proposed contract or agreement between the water utility and the contracting entity; and

(m) Copies of all resolutions of directors authorizing the proposed transactions and, if stockholders' approval has been obtained, copies of the resolutions approved by the stockholders.

(3) This rule shall not apply to water utilities seeking to purchase or contracting to purchase, directly or indirectly, from any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in ORS 757.490(1):

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210; or

(b) Any service provided under a rate or schedule of rates that:

(A) Has been filed with an agency charged with the regulation of utilities;

(B) Has been approved as just and reasonable or in compliance with another comparable standard; and

(C) Is available to a broad class of customers.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.005 - 757.495

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 8-2002, f. & cert. ef. 2-26-02

### 860-036-0735

#### Information Required for Water Utility Goods or Services Provided to Affiliated Interests

(1) Except as provided in section (4) of this rule, this rule applies to rate-regulated water utilities seeking to provide, or contracting to provide, directly or indirectly, to any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in ORS 757.490(1), service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal, or other services, or entering revenues or credits therefore on its books. This rule does not apply to transactions subject to ORS 757.490 or 757.495 and OAR 860-036-0030.

(2) A water utility's failure to submit this required information shall not limit the Commission's authority to recognize or impute revenues to the water utility pursuant to such contract in any rate valuation or other hearing or proceeding.

(3) For transactions provided in section (1) of this rule, every rate-regulated water utility shall submit to the Commission, in the manner and form indicated, the following information:

(a) Its exact name and the address of its principal business office;

(b) The name of the person authorized on the water utility's behalf to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the water utility and the other contracting entity as defined by ORS 757.015 or 757.490;

(d) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(e) A description of the goods or services to be provided, the costs incurred in providing those goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(f) An estimate of the amount the water utility will receive annually for the goods or services and the accounts in which it will record the payments;

(g) The reasons relied upon by the water utility for providing the proposed goods or services and the benefits, if any, water utility customers and the general public will derive from the provision of goods or services;

(h) A copy of the contract or agreement between the water utility and the contracting entity that is the subject of this filing; and

(i) Copies of all resolutions of directors of the water utility authorizing the proposed transactions and, if approval of the water utility's stockholders was obtained, copies of the resolutions approved by the stockholders.

(4) This rule shall not apply to water utilities seeking to provide or contracting to provide, directly or indirectly, to any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in ORS 757.490(1):

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210; or

(b) Any service provided under a rate or schedule of rates that:

(A) Has been filed with an agency charged with the regulation of water utilities;

(B) Has been approved as just and reasonable or in compliance with another comparable standard; and

(C) Is available to a broad class of customers.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.005 - 757.490

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 8-2002, f. & cert. ef. 2-26-02

### 860-036-0737

#### Timeliness of Applications Made Under OAR 860-036-0730 and Filings Made Under OAR 860-036-0735

An application made under OAR 860-036-0730 and a filing made under OAR 860-036-0735 shall occur no later than 90 days after the execution of the contract giving rise to the application or filing. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99

### 860-036-0738

#### Applications for Waiver of Requirements Under OARs 860-036-0730 and 860-036-0735

This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061: Upon petition by a rate-regulated water utility and approval by the Commission for good cause, the requirements of OARs 860-036-0730 and 860-036-0735 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of circumstances demonstrating in advance that the transaction or transactions will be fair and reasonable and not contrary to the public interest, transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for waiver.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 8-2002, f. & cert. ef. 2-26-02

### 860-036-0739

#### Allocation of Costs by a Water Utility

(1) As used in this rule:

(a) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a water utility;

(b) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a water utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the water utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single water utility;

(c) "Asset" means any tangible or intangible property of a water utility or other right, entitlement, business opportunity, or other thing of value to which a water utility holds claim that is recorded or should be recorded as a capital expenditure in the water utility's financial statements. All water utility tangible or intangible property, rights, entitlements, business opportunities and things of value should be considered assets, services, or supplies;

(d) "Cost" means fully distributed cost, including the water utility's authorized rate of return and all overheads;

(e) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a non-affiliated entity, as determined by commonly accepted valuation principles;

(f) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(g) "Net book value" means original cost less accumulated depreciation;

(h) "Nonregulated activity" means an activity that is not a regulated activity of the water utility as defined in subsection (1)(i) of this rule;

(i) "Regulated activity" means a Commission regulated activity that is provided by a water utility directly or indirectly relating to the

general operations of the water utility such as production, transmission, delivery, or furnishing of water unless the Commission has determined the activity to be exempt from regulation;

(j) “Services” means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All water utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies; and

(k) “Supplies” means any tangible or intangible property of a water utility or other thing of value to which a water utility holds claim that is recorded or should be recorded as an operating expense in the water utility’s financial statements. All water utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies.

(2) For purposes of this rule, regulated and nonregulated activities of a water utility shall be accounted for in accordance with the Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners as modified by the Commission.

(3) When a water utility is conducting an affiliate interest transaction, as defined in this rule, the water utility must use the following cost allocation methods:

(a) When an asset is transferred to a water utility from an affiliate, the transfer shall be recorded in the water utility’s accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from a water utility to an affiliate, the transfer shall be recorded in the water utility’s accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall be recorded in the water utility’s accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from a water utility to an affiliate at a fair market value that is greater than net book value, the difference shall be considered a gain to the water utility. The water utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a water utility to an affiliate, sales shall be recorded in the water utility’s accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in the water utility’s accounts at the water utility’s cost or the market rate, whichever is higher.

(e) When services or supplies are sold to a water utility by an affiliate, sales shall be recorded in the water utility’s accounts at the affiliate’s cost or the market rate, whichever is lower. The affiliate’s cost shall be calculated using the water utility’s most recently authorized rate of return.

(f) Income taxes shall be calculated for the water utility on a standalone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the water utility shall record income tax expense as if it were determined for the water utility separately for all time periods.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.490 & 757.495

Hist.: PUC 7-2004, f. & cert. ef. 4-9-04

### Special Contracts

#### 860-036-0740

##### Special Contracts

This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061:

(1) Rate-regulated water utilities within Oregon entering into special contracts with certain customers prescribing and providing rates, services, and practices not covered by or permitted in the general tariffs, schedules, and rules filed by such water utilities are in legal effect tariffs and are subject to supervision, regulation, and control as such.

(2) All special contracts designating service to be furnished at rates other than those shown in tariffs currently on file with the Commission shall be classified as rate schedules. True and certified copies shall be filed subject to review and approval pursuant to the requirements of OARs 860-036-0605 through 860-036-0645.

(3) Special contracts shall be filed with the Commission not less than 30 days prior to the proposed effective date of the contract and

shall become effective according to its terms the thirty-first day from the date of its filing unless earlier approved, suspended, or rejected by the Commission.

(4) Each special contract filed with the Commission shall be accompanied by documentation necessary to show that the terms are fair, just, and reasonable to the remaining customers, including but not limited to:

(a) A statement summarizing the basis of the terms of the contract and an explanation of the deviation from the tariffs on file;

(b) An explanation of all cost computations involved; and

(c) A statement indicating the basis for use of a contract rather than a filed tariff for the specific service involved.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.007

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02

### Fees, Taxes, and Other Assessments

#### 860-036-0745

##### Relating to City Fees, Taxes, and Other Assessments

(1) The aggregate amount of all business or occupation taxes, licenses, franchise or operating permit fees, or other similar exactions imposed upon water utilities by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, which does not exceed 3.5 percent, applied to gross revenues as defined herein, shall be allowed as operating expenses of such water utilities for rate-making purposes and shall not be itemized or billed separately.

(2) Except as otherwise provided herein, “gross revenues” means revenues received from utility operations within the city less related net uncollectibles. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the water utility purchasing the service is not the ultimate customer.

(3) Permit fees or similar charges for street opening, installations, construction, and the like to the extent such fees or charges are reasonably related to the city’s costs for inspection, supervision, and regulation in exercising its police powers, and the value of any water utility services or use of facilities provided on November 6, 1967, to a city without charge, shall not be considered in computing the percentage levels herein set forth. Any such services may be continued within the same category or type of use. The value of any additional category of water utility service or use of facilities provided after November 6, 1967, to a city without charge shall be considered in computing the percentage levels herein set forth.

(4) This rule shall not affect franchises existing on November 6, 1967, granted by a city. Payments made or value of service rendered by a water utility under such franchises shall not be itemized or billed separately. When compensation different from the percentage levels in section (1) of this rule is specified in a franchise existing on November 6, 1967, such compensation shall continue to be treated by the affected water utility as an operating expense during the balance of the term of such franchise. Any tax, fee, or other exaction set forth in section (1) of this rule, unilaterally imposed or increased by any city during the unexpired term of a franchise existing on November 6, 1967, and containing a provision for compensation for use and occupancy of streets and public ways, shall be charged pro rata to local users as herein provided.

(5) Except as provided in section (4) of this rule, to the extent any city tax, fee, or other exaction referred to in section (1) of this rule exceeds the percentage levels allowable as operating expenses in section (1) of this rule, such excess amount shall be charged pro rata to water utility customers within said city and shall be separately stated on the regular billings to such customers.

(6) The percentage levels in section (1) of this rule may be changed if the Commission determines after such notice and hearing, as required by law, that fair and reasonable compensation to a city or all cities should be fixed at a different level or that by law or the particular circumstances involved a different level should be established.

(7) The amount allowed as an operating expense may be described on customers’ bills in a manner determined by the water utility.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2003, f. & cert. ef. 7-24-03

**860-036-0750**

**Relating to Local Government Fees, Taxes, and Other Assessments**

(1) If any county in Oregon, other than a city-county, imposes upon a water utility any new taxes or license, franchise, or operating permit fees, or increases any such taxes or fees, the water utility required to pay such taxes or fees shall collect from its customers within the county imposing such taxes or fees the amount of the taxes or fees, or the amount of increase in such taxes or fees. However, if the taxes or fees cover the operations of a water utility in only a portion of a county, then the affected water utility shall recover the amount of the taxes or fees or increase in the amount thereof from customers in the portion of the county that is subject to the taxes or fees. "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) The amount collected from each water utility customer pursuant to section (1) of this rule shall be separately stated and identified in all customer billings.

(3) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date.

(4) If any county, water utility, or customer affected by this rule deems the rule's application in any instance to be unjust or unreasonable, it may apply for a waiver of this rule by petition to the Commission, setting forth the reasons why the rule should not apply.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.110

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 8-2002, f. & cert. ef. 2-26-02

**Accounting Records**

**860-036-0755**

**Accounting for Director's Fees**

This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061: Directors' fees paid by a rate-regulated water utility to members of its board of directors, who are also paid as officers of the utility, shall not be recognized as a charge to operating expenses in Oregon.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.110

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 8-2002, f. & cert. ef. 2-26-02

**860-036-0756**

**Accounting for Contributions in Aid of Construction (CIAC)**

(1) Each water utility shall provide an accounting of CIAC upon Commission request in its annual reports and in its rate application. CIAC accounting shall include contributions in any form including, but not limited to, contributed utility plant. CIAC record keeping will identify the contributed plant, original date of installation, and original cost.

(2) Each water utility must keep a record as described in section (1) of this rule and record CIAC on a separate plant and depreciation schedule.

(3) As of November 2002, CIAC and its resulting depreciation will be excluded from water utility ratemaking. CIAC will be separated from utility plant and accounted for and depreciated on a separate schedule outside the ratemaking process.

(4) In cases where previous CIAC depreciation was included in rates and removing it all at once would cause irreparable harm to the water utility, the Commission may systematically remove CIAC from rates over a period of time set forth in a schedule to be approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.105, 757.120, 757.125 & 757.135

Hist.: PUC 9-2003, f. & cert. ef. 5-15-03

**860-036-0757**

**Accounting for Construction Work In Progress (CWIP)**

The Commission may allow into rates the costs of a specific capital improvement project in progress if:

(1) The water utility uses the additional revenues solely for the purpose of completing the capital improvement project;

(2) The water utility demonstrates that its access to capital is limited and it is in the public interest to provide funding for the capital improvement through rates; and

(3) Such costs are approved through tariffs filed with the Commission.

Stat. Auth.: ORS 183, 756, 757 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

**860-036-0760**

**Preservation and Destruction of Records**

(1) The Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities, April 1974, revised May 1985, published by the National Association of Regulatory Utility Commissioners is hereby adopted as modified and prescribed by the Commission for all water utilities with the following exceptions:

(a) Operations and Maintenance, Records of Auxiliary, and other Operations. The Commission prescribes that records of operations other than water utility operations be retained for the same periods as prescribed for similar records pertaining to water utility operations;

(b) Revenue Accounting and Collecting. The Commission prescribes that contracts and card files or other records thereof with customers for water utility service be retained for one year after the expiration or cancellation of the agreement.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.105

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00

**860-036-0765**

**Uniform System of Accounts for Water Utilities — Class A, B, and C**

(1) Class A. **The Uniform System of Accounts for Class A Water Utilities, 1996**, published by the National Association of Regulatory Utility Commissioners, is hereby adopted and prescribed by the Commission for all Class A Water Utilities.

(2) Class B. **The Uniform System of Accounts for Class B Water Utilities, 1996**, published by the National Association of Regulatory Utility Commissioners, is hereby adopted and prescribed by the Commission for all Class B Water Utilities.

(3) Class C. **The Uniform System of Accounts for Class C Water Utilities, 1996**, published by the National Association of Regulatory Utility Commissioners, is hereby adopted and prescribed by the Commission for all Class C Water Utilities.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.105, 757.120, 757.125 & 757.135

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 177, f. 12-2-76, ef. 1-1-77 (Order No. 76-832); PUC 5-1985, f. & ef. 4-24-85 (Order No. 85-355); PUC 3-1992, f. & cert. ef. 2-14-92 (Order No. 92-246); PUC 13-1997, f. & cert. ef. 11-12-97; Renumbered from 860-027-0060

**Annual Reports**

**860-036-0805**

**Budget of Expenditures**

This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061: Each rate-regulated water utility operating within Oregon and having gross operating revenues of \$50,000 or more per annum is required to file with the Commission on or before the first day of November of each year, a copy of its proposed Budget of Expenditures, on forms approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105 & 757.105

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02

**860-036-0810**

**New Construction Budget**

This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061: Each rate-regulated water utility operating within Oregon and having gross operating revenues of \$50,000 or more per annum is required to file annually on or before December 31, on forms approved by the Commission, information on new construction, extensions, and additions to the property of the water utility.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105 & 757.105

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 12-2002, f. & cert. ef. 3-12-02

**860-036-0815**

**Annual Reports**

All water utilities shall submit annual reports to the Commission in the following manner:

(1) Each rate-regulated water utility shall submit a financial Result of Operations annual report using the most current form approved by the Commission and shall submit such report on or before April 1.

(2) Each water utility shall submit a Records and Accounts annual report using the most current form approved by the Commission and shall submit such report on or before April 1.

(3) By June 1, each rate-regulated water utilities shall submit on forms approved and provided by the Commission, a report of all affiliated interest, intercompany, and intracompany transactions that occurred during the period from January 1 through December 31 of the immediately preceding year.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.120, 757.125 & 757.135

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2001, f. & cert. ef. 3-21-01; PUC 8-2002, f. & cert. ef. 2-26-02

**860-036-0820**

**Use of Deferred Accounting as It Applies to Rate-Regulated Water Utilities**

This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061.

(1) As used in this rule:

(a) "Deferred Accounting" means the recording in a balance sheet account, with Commission authorization under ORS 757.259, of a current expense or revenue associated with current service for later reflection in rates;

(b) "Amortization" means the inclusion in rates of an amount that has been deferred under ORS 757.259 and is designed to eliminate, over time, the balance in an authorized deferred account. Amortization does not include the normal positive and negative fluctuations in a balancing account.

(2) Expiration: Any authorization to use a deferred account shall expire 12 months from the date the deferral is authorized to begin. If a deferral under ORS 757.259 is reauthorized, the reauthorization shall expire 12 months from the date the reauthorization becomes effective.

(3) Contents of Application: Application for deferred accounting, by a water utility, a ratepayer, or other applicant shall include:

(a) A description of the water utility expense or revenue for which deferred accounting is requested;

(b) The reason(s) deferred accounting is being requested and a reference to the section(s) of ORS 757.259 under which deferral can be authorized;

(c) The account proposed for recording of the amounts to be deferred and the account that will be used for recording the amounts in the absence of approval of deferred accounting;

(d) An estimate of the amounts to be recorded in the deferred account for the 12-month period subsequent to the application; and

(e) A copy of the notice of application for deferred accounting and list of persons served with the notice.

(4) Reauthorization: Application for reauthorization to use a deferred account shall be made not more than 60 days prior to the expiration of the previous authorization for the deferral. Application for reauthorization shall include the requirements set forth in subsections (4)(a) through (4)(e) of this rule and, in addition, the following information:

(a) A description and explanation of the entries in the deferred account to the date of the application for reauthorization; and

(b) The reason(s) for continuation of deferred accounting.

(5) Exceptions: Authorization under ORS 757.259 to use a deferred account is necessary only to add amounts to an account, not to retain an existing account balance and not to amortize amounts that have been entered in an account under an authorization by the Commission. Interest, once authorized to accrue on unamortized balances in an account, may be added to the account without further authorization by the Commission, even though authorization to add other amounts to an account has expired.

(6) Notice of Application: The applicant shall serve a notice of application upon all persons who were parties in the water utility's last general rate case. If the applicant is other than a rate-regulated water

utility, the applicant shall serve a copy of the application upon the affected water utility. A notice of application shall include:

(a) A statement that the applicant has applied to the Commission for authorization to use deferred accounting; or for an order requiring that deferred accounting be used by a rate-regulated water utility;

(b) A description of the water utility expense or revenue for which deferred accounting is requested;

(c) The manner in which an interested person can obtain a copy of the application;

(d) A statement that any person may submit to the Commission written comment on the application by the date set forth in the notice, which date can be no sooner than 25 days from the date of the application; and

(e) A statement that the granting of the application will not authorize a change in rates, but will permit the Commission to consider allowing such deferred amounts in rates in a subsequent proceeding.

(7) Public Meetings: Unless otherwise ordered by the Commission, applications for use of deferred accounting will be considered at the Commission's public meetings.

(8) Reply comments: Within 10 days of the due date for comments on the application from interested persons, the applicant and the water utility, if the water utility is not the applicant, may file reply comments with the Commission. Those comments shall be served on persons who have filed the initial comments on the application.

(9) Amortization: Amortization in rates of a deferred amount shall only be allowed in a proceeding, whether initiated by the water utility or another party. The Commission may authorize amortization of such amounts only for utility expenses or revenues for which the Commission previously has authorized deferred accounting. Upon request for amortization of a deferred account, the water utility shall provide the Commission with its financial results for a 12-month period or for multiple 12-month periods to allow the Commission to perform an earnings review. The period selected for the earnings review will encompass all or part of the period during which the deferral took place or must be reasonably representative of the period of deferral. Unless authorized by the Commission to do otherwise:

(a) A water utility shall request that amortizations of deferred accounts commence no later than one year from the date that deferrals cease for that particular account; and

(b) In the case of ongoing balancing accounts, the water utility shall request amortization at least annually, unless amortization of the balancing account is then in effect.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105 & 757.259

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02

**Service Territory Allocation**

**860-036-0900**

**Service Territory Allocation**

(1) For purposes of service territory allocation OAR 860-036-0900 through 860-036-0930:

(a) "Allocated territory" means an approved area with boundaries set out in a Commission order granting an application for the allocation of service territory.

(b) "Community water supply system" means a water source and distribution system, whether publicly or privately owned, that serves more than three residences or other users to whom water is provided for public consumption, including but not limited to schools, farm labor camps, industrial establishments, recreational facilities, restaurants, motels, mobile home parks, or group care homes.

(c) "Utility service" means service provided by a water utility as defined in subsection (1)(d) of this rule, any equipment, plant, or facility for the distribution of water to users through a connected and inter-related distribution system. "Utility service" does not include service provided through or by the use of any equipment, plant, or facilities solely for the production and sale of water to other water utilities.

(d) "Water utility" as used in OAR 860-036-0900 through 860-036-0930 means any water system that meets the definition of a water utility in ORS 758.300.

(2) The requirements of this rule apply to all water utilities.

(3) A water utility providing water service may make application to the Commission, on forms provided by the Commission, for an order designating the territory it serves adequately and exclusively as its exclusive service territory.

(4) The Commission shall recognize the exclusive service territory of a water utility that has an existing franchise as of October 23, 1999, with a municipality. A water utility may apply to the Commission to designate exclusive service territory area other than that identified in the franchise agreement, if the water utility is currently providing adequate and exclusive service to areas identified in the franchise agreement.

Stat. Auth.: ORS 183, 756, 757 & 758  
 Stats. Implemented: ORS 758.300 - 758.320 & Ch. 202, OL 2003  
 Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

#### 860-036-0905

##### Original Application Requirements

(1) A completed application requesting an exclusive service territory for area the water utility is currently serving shall include the following:

(a) The water utility's complete name, address, and telephone number;

(b) The nature of the water utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(c) The name(s) and address(es) of all corporate officers, directors, partners, or any other person(s) owning an interest in the water utility;

(d) A statement showing the financial and technical ability of the applicant to provide service to the current territory;

(e) A detailed map or maps of the water system showing the existing lines and facilities;

(f) A detailed map or maps identifying the boundaries of the water utility's current service territory marked with a fine-tipped RED pen. The map must identify the map source and the date of the map in the upper left corner of the map. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the utility's current service territory boundaries and enable correlation with a written description of such territory;

(g) A complete and accurate written description of the water utility's current service territory. The description may be a legal description or may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;

(h) Evidence that the water utility owns the land upon which the water utility facilities are located, or a copy of an agreement that provides for the continued use of the land, such as an easement or 99-year lease;

(i) A schedule showing the number of customers currently served, by class and meter size, as well as the number of customers projected to be served when the current service territory is fully occupied; and

(j) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities having concern with the application, and all known water utilities and community water supply systems in the general area of the current service territory.

(2) The application may also include any adjacent territory that the water utility plans to serve within six months following the date of the application:

(a) If another water utility or community water supply system is not serving such territory; and

(b) If the applicant demonstrates that it is more economical and feasible to serve the area by an extension of the applicant's existing facilities than by an extension of the facilities of another water utility or community water supply system. Application requirements for expanded service territory are contained in OAR 860-036-0915.

(3) Within 15 days of making its proposed service territory filing pursuant to OAR 860-036-0906, a water utility must provide written notice to its customers by mail or hand delivery. The notice shall include the following information:

(a) Name, address, and telephone number of water utility;

(b) The purpose of the notice;

(c) An accurate and detailed written description of the territory applied for;

(d) Filing date;

(e) A statement that customers may file a protest with the Commission's Administrative Hearings Division; and

(f) The Commission's toll-free telephone number, TTY number, and mailing and location addresses.

(4) The water utility's application to the Commission must include a copy of the notice to customers and a customer mailing list.

(5) In reviewing a completed application for current exclusive service territory, the Commission shall consider the applicant's ability to provide adequate and exclusive service to its existing customers which may include but is not limited to, financial resources, technical ability, customer service history, physical facilities, system capacity, revenue and cost studies, and system compliance with the Oregon Health Division's water rules and regulations.

Stat. Auth.: ORS 183, 756, 757 & 758  
 Stats. Implemented: ORS 758.300 - 758.320

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 13-2002, f. & cert. ef. 3-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

#### 860-036-0910

##### Commission Notice and Procedure

(1) Within 30 days of receipt of a completed service territory application, the Commission shall give written notice to any municipality, county, planning council, and governmental authority known to have a concern with the application, and to all known water utilities and community water supply systems in the areas adjacent to the proposed area described in the application.

(2) The Commission shall publish notice of the filing in a newspaper or newspapers of general circulation in the proposed territory at least once weekly for two consecutive weeks.

(3) Any objections to the application must be filed with the Commission no later than 30 days after the last date that the notice was mailed or published, whichever is later.

(4) The Commission may, on its own motion, hold a hearing on the application; however, the Commission must hold a hearing on the application if a customer of the water utility requests a hearing on the application within 30 days after the final publication of notice as required in section (2) of this rule.

(5) If a hearing is scheduled, the Commission shall give notice of the hearing, setting the time, date, and place of hearing. If the hearing is by reason of a customer's request, the Commission shall give notice of the hearing within 30 days after the request is received by the Commission. The hearing shall be held at a place within or conveniently accessible to the area described in the application.

(6) The Commission shall enter an order granting or denying an application for an exclusive service territory under OAR 860-036-0900. The Commission may grant an application subject to such conditions and limitations as the Commission deems appropriate.

(7) The applicable provisions of ORS 756.500 through 756.610 shall govern the conduct of hearings under this section and any appeal of the Commission's order.

Stat. Auth.: ORS 183, 756, 757 & 758  
 Stats. Implemented: ORS 758.300 - 758.320

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

#### 860-036-0915

##### Filing an Application to Expand Exclusive Service Territory

(1) A water utility may apply to expand its service territory to serve an area not currently being provided water service. It shall file an expanded service territory application with the Commission.

(2) Upon application by the water utility or by the Commission's own motion, an approved service territory may be expanded to include unserved areas.

(3) In reviewing a completed application for an expanded exclusive service territory, the Commission shall consider the applicant's ability to adequately and exclusively provide service to the expanded territory, which may include but is not limited to, financial resources, technical ability, physical facilities, customer demand, system capacity, revenue and cost studies, regional planning, environmental impact, customer service history, impact on existing customers, compliance with the Oregon Health Division's water rules and regu-

lations, economic and feasibility studies, and availability of alternate service.

(4) Notice and hearing of the proposed expansion shall be given as provided in OAR 860-036-0910.

(5) The application must include:

(a) The water utility's complete name and address;

(b) The nature of the utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(c) The name and address of any other water utility or community water supply system that could potentially provide water service within the proposed expanded territory;

(d) The name and address of all corporate officers, directors, partners, or any other person owning an interest in the utility;

(e) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities that may have a concern with the application, and all known water utilities and community water supply systems in the general area of the proposed expanded service territory;

(f) A map identifying the boundaries of the proposed expanded service territory (currently unserved) marked with a fine-tipped BLUE pen. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the expanded service territory boundaries and enable correlation with the description of the proposed expanded territory;

(g) A complete and accurate written description of the proposed expanded territory. The description may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;

(h) The total projected number of customers to be served in the proposed expanded territory by meter size and customer class, that is, single family homes, mobile homes, duplexes, golf course clubhouse, commercial, etc.;

(i) The estimated date applicant plans to begin providing service to customers in the proposed expanded territory;

(j) The estimated flat rate or base and usage rate structure to be utilized, unless an alternative rate structure is supported by the applicant and authorized by the Commission;

(k) A cost study including customer growth projections supporting the proposed water service rates and charges;

(l) A schedule showing by account the projected operating expenses of the water system to serve the expanded service territory when 100 percent of the system is being utilized;

(m) A schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 100 percent of the design capacity of the system;

(n) A statement describing the need for water service in the proposed expanded service territory;

(o) Evidence demonstrating adequate existing or proposed capacities of the system and facilities to serve the proposed expanded territory in terms of estimated average daily customer demand, customer peak demand, and daily pumping capacity per water source in gallons or cubic feet. If development will be in phases, separate this information by phases;

(p) A written description of the type of water treatment required, if necessary;

(q) A schedule showing the projected cost of the proposed system(s) by accounts. If the system is to be built in phases, show information for each phase individually;

(r) A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the water utility for capital improvement, and an explanation of the manner and amount of such funding, including their financial statements and a copy of all contracts or agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility;

(s) Financial statements demonstrating applicant's financial capability to provide service;

(t) A statement showing applicant's technical ability or capacity to procure technical skill necessary to provide service;

(u) A statement describing any impact the expansion of service territory may have on existing customers.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 - 758.320

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

#### 860-036-0920

##### Reduction of Approved Service Territory Boundaries Procedure

(1) Upon petition by the water utility or a customer of the utility for an order, or by the Commission on its own motion, an approved service territory may be reduced upon a showing that the water utility is not providing adequate service to its customers or does not have the capacity to serve the designated exclusive service territory.

(2) Notice and procedure of the proposed decrease of an approved service territory shall be given as provided in ORS 860-036-0910.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 - 758.320

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00

#### 860-036-0925

##### Transfer of Approved Service Territory

(1) Except as provided in paragraph (6) of this rule, the rights acquired by an approved service territory may be transferred only with the approval of the Commission after a finding that the assignment or transfer is in the public interest.

(2) Service territory approved by Commission order shall not be altered solely as the result of a change in ownership or form of ownership.

(3) Upon the death of an applicant under an approved service territory, the executor or administrator shall continue operating the water utility for transferring such rights for a period not to exceed two years.

(4) Applicants must submit to the Commission an application to transfer an approved service territory. The application shall include:

(a) The application requirements as provided in OAR 860-036-0915;

(b) Evidence demonstrating that the transfer of the service territory is in the public interest.

(5) Notice and procedure of the proposed transfer shall be given as provided in ORS 860-036-0910.

(6) Commission approval is not required if at least 75 percent of the affected customers agree to the proposed transfer.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 - 758.320

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 13-2002, f. & cert. ef. 3-26-02

#### 860-036-0930

##### Exclusive Obligation

(1) The approved service territory of a water utility shall be exclusive. A water utility or community water supply system shall not provide water utility service within the approved exclusive service territory of another water utility without the express approval of the Commission.

(2) A water utility shall serve only customers within its approved exclusive service territory and shall serve all applicants for service within such territory. The water utility may refuse service only as provided in OAR 860-036-0080.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 758.300 - 758.320

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 13-2002, f. & cert. ef. 3-26-02

### DIVISION 37

## WASTEWATER SERVICE REGULATION FOR JOINT WATER/WASTEWATER UTILITIES

### General

#### 860-037-0001

##### Scope and Applicability of Rules

(1) Adoption of these rules shall in no way preclude the Commission from altering or amending them in whole or in part, or from

requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any wastewater utility subject to these rules. Furthermore, these rules shall not in any way relieve any wastewater utility subject to them from any of its duties under the laws of this State. Upon application by a wastewater utility the Commission may relieve it of any obligations under these rules.

(2) The rules contained in this division are applicable to wastewater service provided by public wastewater utilities, as defined in OAR 860-037-0010(28) and (36), providing service in the State of Oregon.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

## 860-037-0005

### Applicability and Formal Requirements

All applications or petitions filed under the rules contained in this division must also comply with all other applicable Commission rules.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00

## 860-037-0010

### Definitions

As used in this division:

(1) "Actual cost" means the direct cost of parts, materials, and labor of a specific item or project separated from indirect costs.

(2) "Applicant" means a person that:

(a) Applies for service with a wastewater utility; or

(b) Reapplies for service at a new or existing location after service has been discontinued.

(3) "Association" means an incorporated or unincorporated association of individuals or a homeowner association providing wastewater service, as defined in ORS 757.005.

(4) "Co-customer" means a person who meets the definition of "customer" and is jointly responsible with another person for payments for wastewater utility service on an account with the wastewater utility. If only one of the co-customers discontinues service in his/her name, the remaining co-customer shall retain customer status only if he/she reapplies for service in his/her own name within 20 days of such discontinuance, provided the wastewater utility contacts the co-customer or mails a written request for an application to the remaining co-customer within one business day of the discontinuance.

(5) "Commission" means the Public Utility Commission of Oregon.

(6) "Construction" includes installation of a new wastewater system or part thereof, or the alteration, repair, or extension of an existing wastewater system. The grading, excavation, and earth-moving work connected with installation, alteration, or repair of a system, or part thereof, is considered to be a part of the wastewater system construction.

(7) "Contributions in aid of construction" means any money, service, or property received by a wastewater utility for capital expenditures at no cost to the utility and with no obligation to repay the benefactor.

(8) "Cooperative" means a cooperative corporation as defined in ORS Chapter 62.

(9) "Cost-based" means the direct and indirect costs of a specific item or project, including overhead and a reasonable return on investment.

(10) "Customer" means any person, partnership, association, corporation, or governmental agency who has applied for, been accepted, and is currently receiving service unless otherwise noted. Notwithstanding section (2) of this rule, a customer who voluntarily terminates service and subsequently requests service with the same wastewater utility at a new or existing location within 20 days after disconnection retains customer status.

(11) "Customer service line" means that portion of the sewer pipe extending from the end of the utility service connection to the structure or premises to be served. The customer service line is purchased, installed, maintained, repaired, and replaced as necessary by the customer and at the customer's expense.

(12) "DEQ" means the Oregon Department of Environmental Quality.

(13) "Domestic wastewater" means the water-carried human waste, together with such groundwater infiltration and surface water that may be present that flow to wastewater treatment facilities from residences, buildings, industrial establishments, or other places.

(14) "District" means a corporation as defined under ORS Chapter 553.

(15) "Emergency repair" means repair of a failing wastewater system when immediate action is necessary to relieve a situation in which sewage is backing up into a dwelling or building, or repair of a broken sewer pipe. It does not include the construction of new or additional installation, expansion, alteration, or repair of a system, or part thereof that does not constitute a public health hazard.

(16) "Failing system" means a failing wastewater system or any wastewater system that discharges untreated or incompletely treated sewage or septic tank effluent, directly or indirectly, onto the ground surface, public waters, dwellings, or buildings.

(17) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(18) "Industrial/commercial wastewater" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing trade, business, or from the development or recovery of any natural resource.

(19) "Legal availability" means a wastewater system will be legally available for service if the system is not under a DEQ connection permit moratorium.

(20) "Lift or pump station" means any pump, structure, equipment, or device, used to lift sewage or effluent to a higher elevation. Lift stations are considered a part of the wastewater collection system.

(21) "Main line extension" means the extension of a main line to an area not previously served. If the main line extension is required at the request of a potential customer in order to receive service, the cost of such extension will comply with the wastewater utility's main line extension policy.

(22) "Pressure transport piping" means piping that conveys sewage or effluent under pressure into a common sewage system by means of a pump, siphon, or gravity.

(23) "Public health hazard" means a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents, including radiological, relating to sewage that are likely to cause human illness, disorder, or disability, or it is probable that the public is exposed to disease-caused physical suffering or illness due to the presence of inadequately treated sewage. These include, but are not limited to, pathogens, viruses, bacteria, parasites, toxic chemicals, and radioisotopes.

(24) "Public utility" has the meaning given the term in ORS 757.005 and 757.061. The term does not include People's Utility Districts (PUDs), municipalities, or cooperatives.

(25) "Registered dispute" means an unresolved issue between a customer or applicant and a wastewater utility that is under investigation by the Commission's Consumer Services Section or Utility Division staff, but is not the subject of a formal complaint.

(26) "Service connection" means the physical connection of the utility service line and the customer service line and that portion of the sewer pipe extending from the sewer main line to the boundary line of the customer's property, easement, public road, or street under which the sewer main line is located.

(27) "System development charge (SDC) or fee" is the infrastructure charge to all potential customers by a wastewater utility prior to service being initiated. The SDC encompasses the total cost of the wastewater system proportionately allocated to all potential customers.

(28) "Utility" means any wastewater utility, except when a more limited scope is explicitly stated.

(29) "Utility service line" means that portion of the sewer pipe between the sewer main line and the customer's property line. The utility service line is purchased, installed, maintained, repaired, and replaced as necessary by the utility and at the utility's expense.

(30) "Wastewater" means sewage or the water-carried human or animal waste from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration and surface water that may be present. The admixture of domestic and industrial waste or other by-products, such as sludge, is considered sewage.

(31) "Wastewater collection system" means all components including pipes, manholes, pumps, lift or pumping stations, and other components necessary to collect and transport domestic and/or indus-

trial liquid waste from a community, individual, corporation, or entity that produces wastewater, sewage, or other waste treatable in a community or private wastewater treatment facility.

(32) "Wastewater service" means the collection, transportation, treatment, and disposal of wastewater for the public or any other beneficial or necessary purpose. Wastewater service does not include septic pumping.

(33) "Wastewater system" means any structure, equipment, or process required to collect, carry away, and treat sewage, including pipe or conduits, lift or pump stations, main lines, and other structures, devices, appurtenances, and facilities used for collecting, treating, or disposing of wastewater, or for collecting or conveying sewage to an ultimate point for treatment and disposal.

(34) "Wastewater treatment facilities" includes all pipes, pumps, canals, lagoons, plant, structures, and appliances, and other real estate, fixtures, and personal property owned, operated, and controlled or managed in connection with or to facilitate the collection, transport, treatment, and disposal of wastewater for the public, or any other beneficial or necessary purpose.

(35) "Wastewater treatment system" means any sewage treatment system. It includes all structures, facilities, equipment, or processes for treating, neutralizing, stabilizing, and/or disposing of domestic waste and sludge, including industrial waste discharged to sewage treatment works.

(36) "Wastewater utility" means all public water utilities as defined ORS 757.005 and 757.061 that also provide wastewater service inside the boundaries of a city, either directly or through an affiliate, regardless of the number of customers receiving water or wastewater service.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0015

#### Information for Customers and Applicants

(1) Upon request, the wastewater utility shall furnish customers or applicants with such information as is reasonable to permit such customers to secure efficient service.

(2) A wastewater utility shall keep on file and open for public inspection at its offices: complete rate schedules, contract forms, rules and regulations of the utility, and a copy of the Commission's rules and regulations.

(3) Upon request, the wastewater utility shall supply a copy of its approved tariffed rates applicable to the type or types of wastewater service furnished to the customer by the wastewater utility.

(4) When service is initiated and not less than once each year thereafter, a wastewater utility shall give its customers a written summary of the customers' rights and responsibilities, as they relate to the wastewater utility providing service. If service is initiated without a personal contact between the utility and the customer, the wastewater utility shall mail the summary to the customer no later than when the first bill statement is mailed. The summary shall include the text approved by the Commission's Consumer Services Section and describe:

(a) The customer's option to designate a third party to receive bills and notices and the availability of notices in languages other than English;

(b) Special payment options such as equal payment plans. Any late-payment charges shall be explained, along with the availability of any preferred billing date option;

(c) Procedures for conflict resolution, including how to register a dispute with the utility and with the Commission and the toll-free number of the Commission's Consumer Services Section: 1-800-522-2404 or TTY 711.

(5) When service is initiated, the wastewater utility shall inquire if the customer would like to receive notices in a language other than English and will inform the customer of the types of notices and translations currently available. If the language chosen is not available, the utility will inform the customer or applicant that the translated version does not yet exist, but that the customer or applicant's interest will be recorded for the Commission. Each utility shall report to the Commission the number of requests for notices and summaries in non-English languages. The report shall specify the number of requests for each language.

(a) The Commission will translate the Rights and Responsibilities Summary for Oregon Utility Consumers into the designated non-English languages and provide copies to the wastewater utilities. The information published by a wastewater utility pursuant to OAR 860-037-0015 shall prominently display the following statement in the designated non-English languages at the beginning of the summary and be printed in boldface: A version of the Rights and Responsibilities Summary for Oregon Utility Consumers printed in this language is available by calling (name of utility) at (phone number).

(6) Each wastewater utility shall maintain a business location and a regular telephone number at which it may be contacted directly by customers, applicants, or the Commission during its regular business hours. The utility shall respond to nonemergency customer inquiries, complaints, and service problems within a reasonable time period. For purposes of this rule, a reasonable time period is considered to be within 24 hours.

(7) Each wastewater utility must provide a means by which it may be contacted at any hour in the event of a service failure or emergency or at which a customer or applicant may leave a message reporting such failure or emergency.

(8) Notices approved by the Commission shall be posted in a conspicuous place in each wastewater utility office where credit matters are transacted, setting forth the rights and responsibilities of customers under these rules. The notices shall be printed and shall be written in language that is easy to understand.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0020

#### Designation of Third Party to Receive Notices

A wastewater utility shall offer its customer or applicant the option to designate a third party to receive bills and notices set forth in these rules. When a wastewater utility receives such designation, it shall send bills and notices required under these rules to the customer's representative, with duplicate copies of disconnect notices also served on the customer.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0025

#### Dispute Resolution

(1) When a dispute occurs between a customer or applicant and a wastewater utility about any bill, charge, or service, the wastewater utility shall thoroughly investigate the matter and promptly report the results of its investigation to the customer or applicant. The wastewater utility shall prepare a written record showing the name and address of the customer or applicant involved, the date and character of the dispute, and the disposition of the matter. The utility shall retain records of the dispute pursuant to OAR 860-037-0605.

(2) The wastewater utility shall inform the customer or applicant of the right to a wastewater utility supervisory review of any dispute including, but not limited to, establishment of credit and termination of wastewater service through disconnection of water service. If a dispute is not resolved, the wastewater utility shall notify the customer or applicant of the Commission's dispute resolution procedure and its toll-free telephone number.

(3) A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services Section at:

(a) 1-800-522-2404 or TTY 711;

(b) The Commission's mailing address: Public Utility Commission of Oregon, Consumer Services Section, PO Box 2148, Salem OR 97308-2148; or

(c) The Commission's street address: Public Utility Commission of Oregon, 550 Capitol Street NE Suite 215, Salem OR 97301-2551.

(d) The Commission shall notify the wastewater utility upon receipt of such a request.

(4) The Commission's Consumer Services Section shall assist the complainant and the wastewater utility in an effort to reach an informal resolution of the dispute.

(5) If a registered dispute cannot be resolved informally, the Commission's Consumer Services Section shall advise the com-

plainant of the right to file a formal written complaint with the Commission. The complaint shall state the facts of the dispute and the relief requested. The wastewater utility shall answer the complaint within 15 days of service of the complaint. The matter shall then be set for hearing. A hearing may be held on less than 10 days' notice when good cause is shown.

(6) Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.

(7) A customer who has a registered dispute or formal complaint pending with the Commission shall be entitled to continued or restored service provided:

(a) Service was not terminated for theft of service or failure to establish credit;

(b) A bona fide dispute exists in which the facts asserted by the customer entitle the customer to service;

(c) When termination of wastewater service is based on nonpayment, the customer makes adequate arrangement to avoid future loss to the wastewater utility, such as prepaying estimated monthly wastewater utility service charges; and

(d) The customer or applicant diligently pursues conflict resolution under the Commission's rules.

(8) If the conditions in section (7) of this rule are not satisfied, the wastewater utility has no obligation to provide continued service. A wastewater utility discontinuing water service because of a customer's failure to meet the conditions of subsections (7)(c) or (7)(d) of this rule for wastewater utility service shall give the customer a five-business-day disconnect notice. The notice shall be served in the same manner as provided by OAR 860-037-0245, except that it need only describe the defect in performance, the date and time when water service will be disconnected in order to terminate wastewater service and the toll-free number of the Commission's Consumer Services Section. In deciding whether the conditions are met, the wastewater utility shall consult with the Commission's Consumer Services Section. The customer who has filed a formal complaint, the wastewater utility, or the Commission's Consumer Services Section may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the wastewater utility, and the Commission's Consumer Services Section at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.500, 756.512, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0030

#### Applications for Water/Wastewater Utility Service

(1) An application for water/wastewater utility service must be made when:

(a) Service is requested by an applicant who has not previously been served by the water/wastewater utility;

(b) Service has been involuntarily discontinued in accordance with these rules and the customer or applicant later seeks to have service restored; or

(c) Service has been voluntarily discontinued and a request to restore service has not been made within 20 days.

(2) An application is a request for water/wastewater utility service. The water/wastewater utility shall not accept an application for service until the applicant establishes credit as set forth in OAR 860-037-0035. However, the water/wastewater utility may refuse a service application under OAR 860-037-0075.

(3) A water/wastewater utility may require an applicant to provide the following information when applying for service:

(a) The name of person(s) responsible for payment on the account;

(b) The name to be used to identify the account, if different than the actual name;

(c) The birth date of person(s) responsible for payment on the account;

(d) The social security number of person(s) responsible for payment on the account;

(e) A current valid Oregon driver license number of the person(s) responsible for payment on the account;

(f) The service address;

(g) The billing address, if different than service address; and

(h) Any available telephone numbers where the applicant can be reached night and day.

(4) In lieu of providing a valid social security number or current valid Oregon driver license number under section (3) of this rule, an applicant may provide:

(a) A valid state or federal identification containing name and photograph of the person(s) responsible for payment on the account;

(b) A combination of:

(A) An original or certified true copy of his or her birth certificate;

(B) A current identification from school or employer containing a photograph; and

(C) The name, address, and telephone number of a person who can verify the applicant's identity, such as a teacher, employer, or case-worker; or

(c) Other information deemed sufficient by the utility to establish an applicant's identification.

(5) If an applicant is denied service for failure to provide an acceptable form of identification, the applicant may pursue conflict resolution under the Commission's rules.

(6) Upon request, the water/wastewater utility shall protect the account from access by others through the use of a personalized password or other means acceptable to both the water/wastewater utility and the customer.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-037-0035

#### Establishing Credit for Residential Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous water/wastewater utility service type during the preceding 24 months and the new water/wastewater utility can verify, either by contacting the former water/wastewater utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered; or

(b) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the water/wastewater utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the water/wastewater utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) In addition to the methods of demonstrating satisfactory credit set forth in section (1) of this rule, a water/wastewater utility may choose to offer an applicant the option of demonstrating satisfactory credit by meeting minimum credit requirements approved by the Commission.

(3) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of water/wastewater utility service from it or any Oregon water/wastewater utility, as defined in ORS 757.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon water/wastewater utility as defined in ORS 757.005, was found to have tampered with the meter or other

water/wastewater utility facilities, or was otherwise found to have diverted water/wastewater utility service.

(4) In lieu of paying a deposit, an applicant or customer may provide the water/wastewater utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same water/wastewater utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(5) Deposits for water/wastewater utility service shall not exceed one-sixth the amount of reasonable billing for 12 months at the rates then in effect. The estimate shall be based on the use of the service at the premises during the prior 12 months or on the type and size of the customer's equipment that will use the service. Each deposit shall be rounded to the nearest whole dollar.

(6) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The water/wastewater utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The water/wastewater utility discovers that the customer has stolen water/wastewater utility service, has tampered with the meter or other water/wastewater utility facilities, or was otherwise found to have diverted water/wastewater utility service; or

(c) A customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(7) Paying a deposit does not excuse a customer from complying with the water/wastewater utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(8) A water/wastewater utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 11-2004, f. & cert. ef. 6-2-04; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-037-0040

##### Deposit Payment Arrangements for Residential Wastewater Service

(1) When a wastewater utility requires a deposit, the customer or applicant may pay the deposit in full or in three installments. Installments shall be one-third of the deposit. The first installment is due immediately; the remaining installments are due 30 days and 60 days after the first installment payment.

(2) When a deposit installment payment or a deposit is made with a payment for wastewater utility service, the amount paid shall first be applied toward payment of the amount due for deposit.

(3) A customer who is required to pay an additional deposit shall pay one-third of the total deposit within five days. The remainder of the deposit is due under the terms of section (1) of this rule. If the customer has an existing deposit installment agreement, the remaining installment payments will be adjusted to include the additional deposit; however, two installment payments cannot be required within the same 30-day period.

(4) When a customer enters into an installment agreement for payment of a deposit under section (1) of this rule, the wastewater utility shall provide written notice explaining the deposit requirements. The notice shall specify the date each installment payment shall be due and shall include a statement printed in bold-face type informing the person that wastewater service will be terminated through disconnecting water service if payment is not received when due.

(5) If a customer or applicant fails to abide by the terms of a deposit installment agreement, the wastewater utility may disconnect water service after providing a five-business-day written notice. The notice shall comply with the requirements of OAR 860-037-0245.

(6) When good cause exists, the wastewater utility may provide, or the Commission may require, more liberal arrangements for payment of deposits than those set forth in this rule. The wastewater utility shall keep a written record of the reasons for such action.

(7) If termination of wastewater service for nonpayment of a deposit occurs, the customer or applicant disconnected shall pay the full amount of the outstanding deposit, any applicable reconnection fee, late-payment fee, and past due amount before service is restored. A customer may continue with an existing time-payment agreement by paying all past-due installments.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0045

##### Interest on Deposits for Residential and Nonresidential Service

(1) Each year, the Commission shall establish an annual interest rate that must be paid on customer deposits. The Commission will base the rate upon consideration of the effective interest rate for new issues of one-year Treasury Bills issued during the last week of October, the interest rate on the most recent issuance of one-year Treasury Bills, or the effective interest rate for the average yield of Treasury Bills of the closest term issued during the last week of October. This interest rate, rounded to the nearest one-half of one percent, shall apply to deposits held during January 1 through December 31 of the subsequent year. The Commission will advise water/wastewater utilities of the changes in the rate to be paid on customer deposits held as needed.

(2) Upon payment of a deposit, the water/wastewater utility shall provide the customer documentation showing the date, name of the customer or applicant, the service address, the amount of deposit, a statement that the deposit will accrue interest at the rate prescribed by the Commission, and an explanation of the conditions under which the deposit will be refunded.

(3) If the deposit is held beyond one year, accrued interest will be paid by a credit to the customer's account. If held less than one year, interest will be prorated. A water/wastewater utility shall keep a detailed record of each deposit received until the deposit is credited or refunded.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-037-0050

##### Refund of Wastewater Utility Deposits

(1) A wastewater utility shall promptly refund a customer's deposit with accrued interest when service is terminated, provided a refund due shall first be applied to any unpaid balance on the customer's account.

(2) A wastewater utility may continue holding a deposit until credit is satisfactorily established or reestablished. For purposes of this rule, credit is considered established or reestablished one year after a deposit is made if:

(a) The account is current;

(b) Not more than two five-business-day disconnect notices were issued to the customer during the previous 12 months; and

(c) The customer was not disconnected for nonpayment during the previous 12 months.

(3) After satisfactory credit has been established or reestablished, the deposit plus any accrued interest must be promptly refunded or credited to the customer's account.

(4) When the customer moves to a new address within the wastewater utility's service area, the deposit and accrued interest will be transferred to the new account.

(5) Deposits plus accrued interest may be refunded or credited, in whole or in part, to the customer's account at any time earlier than prescribed in this rule, provided the wastewater utility's procedures are nondiscriminatory.

(6) Unless otherwise specified by the customer, a wastewater utility shall mail deposit refunds to the customer's last known address. The wastewater utility will honor valid claims for payment of refunds if received within one year of the date service is terminated. Funds held beyond one year after the date service is terminated will be disposed of in accordance with ORS 98.316.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 98.316, 756.040, 757.005 & 757.061  
 Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0055

##### Installation of Wastewater Service Connection

(1) A wastewater utility shall furnish and install that portion of the sewer pipe from the sewer main to the customer's property boundary line or easement, public road, or street, under which such main is located. Such installation shall be designated as the "wastewater service connection." The wastewater utility shall own, operate, maintain, and repair or replace the wastewater service connection when necessary.

(2) A wastewater utility may require the customer to pay a reasonable wastewater service connection charge to offset its expenses listed in section (1) of this rule.

(3) The customer shall furnish, install, maintain, repair, and replace that portion of the sewer pipe from the end of the wastewater service connection to the premises served. Such installation shall be designated as the "customer service line."

(4) The utility shall not connect the customer service line until it is satisfied that the customer's plumbing is adequate.

(5) All construction and installation of the wastewater service connection and sewer pipes must comply with all applicable statutes, rules, regulations, codes, and industry standards.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040, 757.005 & 757.061  
 Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0060

##### Installation of Main Line Extension

(1) A wastewater utility shall develop a Commission-approved uniform policy governing the amount of main line extension and applicable fee charged to the customer or applicant to receive service. This policy shall be related to the investment that can prudently be made for the probable revenue.

(2) Customers may be required to pay a reasonable, cost-based charge for any necessary main line extension to provide a service connection in accordance with the wastewater utility main line extension policy. Such policy and charges must be filed as tariffs with the Commission.

(3) Each wastewater utility shall establish a main line extension policy that includes the following:

(a) Schedule of cost-based charges;

(b) Advance and refund provisions that equitably collect and rebate main line extension charges to customers who contributed to the payment of the cost of the main line extension; and

(c) The time period when advance and rebate provisions are in effect.

(4) All main line extension policies shall be applied uniformly among the wastewater utility customers and must be on file with the Commission, and made available to the public.

(5) All construction and installation of main lines and extensions shall comply with all applicable rules, regulations, codes, and industry standards.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040, 757.005 & 757.061  
 Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0065

##### Design, Construction, and Operation

(1) The wastewater utility owner is responsible and liable for meeting the requirements for all applicable laws, rules, and codes and for the wastewater (sewage) that passes through the collection, treatment, and disposal plants.

(2) The wastewater utility owner is responsible for obtaining and maintaining all permits, licenses, approvals, design, equipment and materials selection, installation, testing, operation, and maintenance of the complete wastewater system.

(3) Each wastewater utility shall maintain and operate wastewater treatment facilities of adequate size and properly equipped to collect, transport, and treat wastewater, and discharge the effluent at the degree of purity required by the health laws of the DEQ, and all fed-

eral, state, and local regulatory agencies and authorities having jurisdiction over such matters.

(4) All materials used in construction of a wastewater system must be structurally sound, durable, and capable of withstanding normal stresses incidental to installation and operation, and will meet or exceed the industry established standards, codes, and requirements of entities having such authority.

(5) Wastewater treatment facilities shall be constructed, installed, maintained, and operated in accordance with accepted engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

(6) While prudently managing costs, the design and construction of the wastewater utility's collecting main lines, treatment plant and facilities, and all additions thereto and modifications thereof, shall meet or exceed the requirements of all regulatory authorities, construction codes, and industry standards.

(7) The capacity of the treatment facilities for the collection, treatment, and disposal of wastewater and wastewater effluent must be sufficiently sized to meet all normal demands for service and provide reasonable reserve for emergencies.

(8) Each wastewater utility shall adopt procedures for inspection of its plant and facilities to assure safe and adequate operation and shall make inspections of its plant on a regular basis. The procedures shall be filed with the Commission. The wastewater utility shall maintain a record of inspections, findings, and corrective action required and/or taken, by location and date.

(9) All components of the wastewater system must be operated and maintained so as not to create a public health hazard or cause water pollution, and without interruption, sewage spills, sewage backup, or other unhealthful conditions.

(a) The owner must establish operating procedures and maintain appropriate qualified staff and adequate inventory of necessary spare parts such as pumps, piping, electrical controls, and valves.

(b) A failing system must be immediately repaired.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040, 757.005 & 757.061  
 Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0067

##### Wastewater Disposal

(1) The wastewater utility must ensure proper handling and treatment of all wastewater, sewage, effluent, solids, and biosolids (generated or pumped).

(2) The wastewater utility must ensure proper transport of all wastewater, sewage, effluent, solids, and biosolids (generated or pumped). Such transportation must prevent leaking or spilling of sewage onto the highways, streets, roads, waterways, or other land surfaces not approved for application or disposal.

(3) The utility must immediately clean up any ground surface sewage spills and disinfect any and all spill areas, unless exempted by federal or state law or state agency administrative rules.

(4) The wastewater utility owner is responsible for obtaining and maintaining all licenses, permits, wastewater treatment facilities, permitted pits, ponds or lagoons; or solid land application sites.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040, 757.005 & 757.061  
 Hist.: PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0070

##### Interruption of Service

(1) A wastewater utility shall keep a record of any interruption of service affecting its whole system, or a major section thereof, including a statement of the date, time, duration, and cause of interruption, remedy, and steps taken to prevent reoccurrence.

(2) A wastewater utility shall make all reasonable efforts to prevent interruptions of service. When such interruptions occur, the wastewater utility shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(3) Each wastewater utility shall make all reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service, but such notice shall not be required in case of interruption due to emergency repairs or for repairs or maintenance work that results in an interruption of less than five minutes. All sched-

uled interruptions shall be made at a time causing minimum inconvenience to customers. In determining reasonable notice, the wastewater utility shall consider the length of the planned interruption, the type and number of customers affected, the potential impact of the interruption on customers, and other surrounding circumstances. Notice may be given in writing, either via US mail or a door hanger on the affected premises, or by contact with the customer or an adult at the residence by personal visit or by telephone.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005 & 757.061  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 16-2004, f. & cert. ef. 12-1-04

#### 860-037-0075 Refusal of Service

(1) A wastewater utility may refuse to provide wastewater service to an applicant applying for wastewater service until it receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account except as provided below:

(a) When a customer or applicant whose service was terminated applies for service within 20 calendar days of the termination, the wastewater utility shall provide service to an applicant upon receipt of payment equal to at least one-half of any overdue amount. The balance of the amount owed to the utility shall be paid within 30 days of the date service is initiated. Except for the last payment, installments shall be the greater of \$30 or one-half the overdue amount;

(b) Upon failure to pay, the wastewater utility may disconnect water service after providing a written five-business-day notice. The notice shall contain the information and be served in the manner prescribed as provided in OAR 860-036-0245.

(2) If water service is disconnected for failure to comply with the payment terms for wastewater service set forth in section (1)(a) of this rule, the wastewater utility may refuse to restore water service until it receives full payment of any overdue obligation of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, including any reconnection fee, late payment fee, and past due bill.

(3) A wastewater utility may refuse to provide wastewater service until payment is received when the following circumstances exist:

(a) A residential customer has incurred an overdue balance at a service address; and

(b) An applicant for residential service resided at the service address described in subsection (1)(a) of this rule during the time the overdue balance was incurred; and

(c) The residential customer described in subsection (1)(a) of this rule will reside at the location to be served under the new application.

(4) A wastewater utility shall refuse to provide wastewater service if a customer or applicant has not complied with state and municipal codes and regulations governing service and with the rules and regulations of the wastewater utility.

(5) A wastewater utility shall refuse to serve a customer or applicant, if, in the best judgment of the wastewater utility, the facilities of the customer or applicant are of such a character that safe and satisfactory service cannot be given.

(6) If service is refused, the wastewater utility shall provide written notification within 10 business days to the customer or applicant of the reasons for refusal and of the Commission's complaint process. The utility must send contemporaneously a copy of the notice to the Commission's Consumer Services Section unless service was refused for nonpayment.

(7) A wastewater utility shall not accept an application for wastewater service or materially change service to a customer if it does not have adequate facilities or wastewater resources to render the service applied for, or if the desired service is of a character that is likely to unfavorably affect service to other customers.

(a) If a wastewater utility refuses wastewater service on the grounds of inadequate facilities or resources, the wastewater utility shall:

(A) Provide the customer or applicant with a written letter of refusal stating the reason for the refusal. The utility must send contemporaneously a copy of such refusal letter to the Commission's Consumer Services Section.

(B) Inform the customer or applicant that he/she may request the details upon which the wastewater utility's decision was based, including but not limited to current capacity and demand;

(C) When capacity does not exist, provide the estimated costs to provide capacity for the customer or applicant; and

(D) Inform the customer or applicant that he/she may challenge the wastewater utility's refusal of wastewater service through the Commission's dispute resolution process pursuant to OAR 860-037-0025.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.035, 757.061 & 757.225  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 22-2002, f. & cert. ef. 12-9-02; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0080 Restrictions on Entering a Customer Residence

No wastewater utility employee shall enter the residence of a customer without proper authorization except in an emergency endangering life or property.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005 & 757.061  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0095 Annual Fees Payable to the Commission by a Wastewater Utility

(1) On statement forms prescribed by the Commission, each wastewater utility must provide the requested information for the subject year.

(2) Each wastewater utility must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed 25 hundredths of one percent (0.25 percent) of the Oregon revenue during the prior calendar year.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the utility's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the utility.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) For any year in which a wastewater utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual fees subsequently due.

Stat. Auth.: ORS 183 & 756  
Stats. Implemented: ORS 756.310, 756.320 & 756.350  
Hist.: PUC 14-2000, f. & cert. ef. 8-23-00; PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-037-0097 Estimated Annual Fees Payable to the Commission by a Wastewater Utility

(1) For any year in which a wastewater utility fails to file a completed statement form, the Commission may determine a proposed annual fee based upon any information available to the Commission. The proposed annual fee must:

(a) Include a penalty fee for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-011-0080; and

(c) Be made no later than three (3) years after the statement form's due date.

(2) The Commission will provide written notice of the proposed annual fee to the wastewater utility.

(3) Within 30 days after service of the notice of proposed annual fee, the wastewater utility may file a petition with the Commission for a hearing. In its petition, the utility must specify its reasons for disputing the proposed annual fee. The Commission may conduct a hearing on the petition under its rules governing hearings and proceedings.

(4) If the wastewater utility has not filed a petition by the end of the 30-day period, the proposed annual fee is due and payable.

(5) During the 30-day period allowed for filing a petition, the wastewater utility may file its completed statement form and pay the annual fee, penalties, and late statement fee. The Commission will accept the statement form, fees, and penalties in accordance with the original due date for that year's statement form and payment.

Stat. Auth.: ORS 183, 192, 756 & 757

Stats. Implemented: ORS 756.040, 756.310, 756.320 & 756.350

Hist.: PUC 15-2003, f. & cert. ef. 7-24-03; PUC 20-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 18-2004, f. & cert. ef. 12-30-04

### 860-037-0101

#### Wastewater Service Charges

In general, wastewater service charges are based upon the volume of water delivered to the customer's property. The water meter serving the premises measures this volume. In cases where a significant volume of the water delivered to the premises is not returned to, or water or wastewater from another source is discharged to the wastewater system the customer may request, or the utility may require, special flow measuring devices to properly measure the volume of wastewater entering the wastewater system. Such special flow measuring devices must be furnished, installed, and maintained by and at the expense of the customer with the approval of the utility.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 5-2004, f. & cert. ef. 1-29-04

### Billing and Payments

### 860-037-0105

#### Bill Forms

Every wastewater utility providing service shall indicate clearly on the bill the date of the billing period, the schedule number under which the bill was rendered, and any other information needed to compute the bill. Each bill shall bear on its face the delinquent date of the bill and the wastewater utility telephone number where the utility's personnel may be reached during normal business hours.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0110

#### Due and Payable Period; Time-Payment Agreements for Residential Service

(1) Each wastewater utility shall establish procedures to ensure that the period from the billing transmittal for all current charges, including payment of the final bill, to the due date is not less than 15 days. If the bill is delivered by US mail, the due and payable period begins the day after the US Postal Service postmark or the day after the date of postage metering.

(2) A wastewater utility may not disconnect residential water service for nonpayment of wastewater service charges if a customer enters into a written time-payment plan. A wastewater utility will offer customers a choice of payment agreements. At a minimum, the customer may choose between a levelized-payment plan and an equal-pay arrearage plan.

(3) A customer who selects a levelized-payment plan will pay a down payment equal to the average annual bill including the account balance, divided by 12, and a like payment each month for 11 months thereafter:

(a) The monthly installment plan shall be reviewed by the wastewater utility periodically. If necessary, due to changing rates or

variations, the installment amount may be adjusted in order to bring the account into balance within the time period specified in the original agreement;

(b) If a customer changes his/her service address at any time during the period of a time-payment agreement, provided that payments are then current and the customer pays other scheduled or tariffed charges associated with the change in residence, the wastewater utility shall recalculate the customer's deposit or monthly installment. The recalculated amount shall reflect the balance of the account at the previous service address and the average annual bill at the new service address for the months remaining in the original time-payment agreement. When installments on a time-payment agreement have not been kept current, a customer shall be required to pay all past-due installments, together with any other applicable charges before service is provided at the new residence.

(4) A customer who selects an equal-pay arrearage plan will pay a down payment equal to 1/12 the amount owed for past water/wastewater utility service (including the overdue amount and any amounts owed for a current bill or a bill being prepared but not yet delivered to the customer). Each month, for the next 11 months, an amount equal to the down payment will be added to, and payable with, the current charges due for wastewater service. If a customer changes his/her service address at any time during the period of an equal-pay arrearage plan, the plan continues. However, the customer must pay any past-due charges and all other applicable charges before the wastewater utility provides service at the new address.

(5) The wastewater utility and customer may agree in writing to an alternate payment arrangement, provided the wastewater utility first informs the customer of the availability of the payment terms set forth in sections (3) and (4) of this rule.

(6) If a customer fails to abide by the wastewater time-payment agreement, the wastewater utility may disconnect water service after serving a 15-day disconnect notice. The notice shall comply with OAR 860-037-0245, except that subsection (5)(d) shall not be applicable. Such customers shall not be eligible for a renewal or renegotiation of a time-payment plan.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 16-2004, f. & cert. ef. 12-1-04

### 860-037-0115

#### Late-Payment Charge

(1) Except as provided in section (2) of this rule, a wastewater utility may apply a late-payment charge to customer accounts not paid in full each month, provided the wastewater utility has filed the late-payment charge in its tariffs.

(2) The charge will be based on a monthly late-payment rate applied to only overdue account balances at the time of preparing the subsequent month's bill for residential accounts or by the bill due date for all other accounts. The late-payment charge may not be applied to time-payment or equal-payment accounts that are current. The Commission will determine the late-payment rate based on a survey of prevailing market rates for late-payment charges of commercial enterprises and will advise all wastewater utilities of the changes in the rate they may use to determine late-payment charges on overdue customer accounts as needed. The current late-payment rate and the conditions for its application to customer accounts shall be specified on the utility bill.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0120

#### Adjustment of Bills

(1) When an underbilling or overbilling occurs, the wastewater utility shall provide written notice to the customer detailing the circumstances, period of time, and amount of adjustment. If it can be shown that the error was due to an identifiable cause, and the date can be fixed, then the overcharge or undercharge shall be computed back to such date. If no date can be fixed, the wastewater utility shall refund the overcharge or rebill the undercharge for no more than six months'

usage. In no event shall an overbilling or underbilling be for more than three years' usage.

(2) When a customer is required to repay an underbilling, the customer shall be entitled to enter into a time-payment agreement without regard to whether the customer already participates in such an agreement. If the customer and wastewater utility cannot agree upon payment terms, the Commission shall establish terms and conditions to govern the repayment obligation. The wastewater utility shall provide written notice advising the customer of the opportunity to enter into a time-payment agreement and of the Commission's complaint process.

(3) No billing adjustment shall be allowed if a wastewater utility bases its wastewater service charges on the water meter and the water meter registers less than 2 percent error under conditions of normal operation.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.250  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0125

##### Transfer Billings

(1) If a wastewater utility identifies a balance a customer owes the wastewater utility from the customer's prior account for Oregon service, the wastewater utility shall have the option to transfer the amount to the customer's current account. The wastewater utility must give the customer prior notice of the transfer, including the amount due under the prior account, the period when the balance was incurred, and the service address under which the bill was incurred; or the wastewater utility may send a separate notice to the customer giving the same information as included in the transfer, but collecting the amount due separately from the customer's current account. If the bill is identified when a customer changes residences, the provisions of this rule apply.

(2) If the customer has an amount remaining on an existing time-payment agreement, the customer may enter into a new time-payment agreement to include the transfer.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.225  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### Termination of Wastewater Service Through Disconnection of Customer's Water Service

#### 860-037-0205

##### Grounds for Terminating Customer Wastewater Service by Disconnecting Water Service

A wastewater utility may disconnect water service to a wastewater customer for:

(1) Failure to establish credit by:

(a) Failing to pay a deposit or make payments in accordance with the terms of a deposit payment arrangement (OAR 860-037-0040); or  
(b) Providing false identification or verification of identity.

(2) When facilities provided are unsafe or do not comply with federal, state, and municipal codes governing service or the wastewater utility's rules and regulations.

(3) When the customer does not cooperate in providing reasonable access for necessary inspections, operations, or maintenance. Necessary in this context means required by law or to determine if a health or safety hazard exists.

(4) When a customer requests the wastewater utility to disconnect water service or close an account (OAR 860-037-0210) or when a co-customer fails to reapply for service within 20 days after a joint account is closed by the other co-customer, so long as the wastewater utility has provided a notice of pending disconnection.

(5) When dangerous or emergency conditions exist at the service premises (OAR 860-037-0215).

(6) For failure to pay Oregon tariffed wastewater rates due for services rendered.

(7) For diverting service, or other theft of service.

(8) When the Commission approves the disconnection of water service.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.035, 757.061, 757.225 & 757.760  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0210

##### Voluntary Water Disconnection for Wastewater Service

A customer who wishes to have service discontinued, shall provide the wastewater utility with a five-business-day notice in advance of the requested date of discontinuance of service. Until the wastewater utility receives such notice, the customer is responsible for all service rendered.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005 & 757.061  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0215

##### Emergency Water Disconnection for Wastewater Service

A wastewater utility may terminate water service in emergencies endangering life or property without following the procedures set forth in OAR 860-037-0245. However, the wastewater utility shall immediately thereafter notify the customer and the Commission. In such cases, when the necessity for emergency termination was through no fault of the customer, the wastewater utility will not make a charge to restore service.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.035 & 757.061  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0220

##### Disconnection of Water Service on Weekends and Holidays

Water service shall not be disconnected for non-emergencies on a weekend or a state or wastewater utility-recognized holiday. Water service shall not be disconnected for non-emergencies on a Friday or the day before a state or wastewater utility-recognized holiday unless mutually agreed upon by the customer, the wastewater utility, and the Commission's Consumer Services Section.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.760  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0225

##### Accounts Not Related to Residential Service

A wastewater utility may not deny or disconnect residential water service due to the failure to pay for nonresidential wastewater service, or to meet obligations in connection with nonresidential wastewater service.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.760  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0230

##### Disconnection of Wastewater Service to Tenants

(1) If a wastewater utility's records show that a residential billing address is different from the service address, the wastewater utility must provide a duplicate of the five-business-day water disconnect notice required under OAR 860-037-0020 to the occupants of the service address in the manner described in 860-037-0245 unless the wastewater utility has reason to believe that the service address is occupied by the customer. This requirement is satisfied by serving a notice addressed to "Tenants," as required in OAR 860-037-0245 for wastewater service. The notice to occupants need not include the dollar amount owing.

(2) When a wastewater utility's records show that a residence is a master-metered, multi-unit dwelling (including rooming houses), the wastewater utility must notify the Commission's Consumer Services Section at least five business days before disconnecting the water service for wastewater service obligations. The wastewater utility will use reasonable efforts to notify occupants of the impending disconnection and alternatives available to them.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.760  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0235

##### Multilingual Disconnection Notice

(1) Except as provided in section (2) of this rule, all disconnect notices shall contain the following information translated into

Spanish, Vietnamese, Cambodian, Laotian, and Russian (translations are available from the Consumer Services Section):

**IMPORTANT NOTICE:** Your water service will be shut off because of an unpaid balance on your wastewater account. You must act immediately to avoid shut-off. Important information about how you can avoid shut-off is printed in English in the enclosed notice. If you cannot understand English, please find someone to translate the notice. If translation assistance is unavailable, please contact (name) at (phone number) who will try to help you. Information on customer's rights and responsibilities printed in this language is also available by calling that number. **YOU MUST ACT NOW TO AVOID SHUT-OFF.**

(2) Upon petition by a wastewater utility, the Commission shall waive the requirement to provide multilingual notice for two calendar years, which may be renewed upon a showing that the lesser of 5 percent or 500 of the wastewater utility's Oregon customers would benefit from use of multilingual notification or show other reasons why such notices are not necessary.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0240

#### Reconnection Fee

When a wastewater service is disconnected for wastewater service, pursuant to OAR 860-037-0245, the wastewater utility may charge the reconnection fee in its tariff.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.225

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0245

#### Disconnection Procedures for All Customers of Wastewater Utility Services

(1) Involuntary termination of wastewater service for all customers shall be under the provisions of this rule.

(2) Notice Requirements:

(a) At least five business days before a wastewater utility disconnects water service to terminate wastewater service, written notice of disconnection must be provided to the customer;

(b) At least 15 days before a wastewater utility disconnects water service to terminate wastewater service due to customer failure to abide by a time-payment agreement, written notice of disconnect must be provided to the customer; and

(c) The disconnection notice shall inform the person that water service will be disconnected on or after a specific date for violation of a wastewater service rule and shall explain the alternatives, in compliance with OAR 860-037-0220.

(3) The wastewater utility may serve the notice of disconnection in person or send it by first class mail to the last known addresses of the customer and the customer's designated representative. Service is complete on the date of mailing or personal delivery. If notification is made by delivery to the residence, the wastewater utility shall attempt personal contact. If personal contact cannot be made with the customer or an adult resident, the wastewater utility shall leave the notice in a conspicuous place at the residence.

(4) When a written notice is given under these rules:

(a) The notice shall conform to the requirements of OAR 860-037-0235 concerning multilingual requirements and service on any designated representative;

(b) The notice shall conform to the requirements of OAR 860-037-0230 if the wastewater utility's records show that the billing address is different than the service address or that the premise is a multi-unit dwelling. The notice may be addressed to "Tenant." The envelope shall bear a bold notice stating, "Important notice regarding disconnection of water service," or words to that effect.

(5) The notice shall be printed in bold face type and shall state in easy to understand language:

(a) The reason for the proposed termination of wastewater service by disconnection of water service;

(b) The amount to be paid to avoid disconnection;

(c) The earliest date for disconnection;

(d) An explanation of the time-payment agreement provisions of OAR 860-037-0110; and

(e) An explanation of the Commission's dispute resolution process and toll-free number.

(6) A notice of disconnection may not be sent prior to the due date for payment of a bill.

(7) At least five business days before the proposed disconnection date, the wastewater utility must mail or deliver a written disconnection notice to the customer. A fee in an amount approved by the Commission may be charged whenever a wastewater utility is required to visit a residential service address in order to serve a disconnection notice.

(8) On the day that the wastewater utility expects to disconnect water service and prior to disconnection, the wastewater utility make a good faith effort to personally contact the customer or an adult at the residence to be disconnected.

(a) If the contact is made, the wastewater utility shall advise the person of the proposed disconnection; or

(b) If contact is not made, the wastewater utility must leave a notice in a conspicuous place at the residence informing the customer that water service has been, or is about to be, disconnected to terminate wastewater service to the customer.

(9) Where personal contact is made by a wastewater utility under this rule, and the circumstances are such that a reasonable person would conclude that the customer does not understand the consequences of disconnection, the wastewater utility must:

(a) Notify the Department of Human Services and the Commission; and

(b) Delay the proposed disconnection date for five additional business days.

(10) When personal contact is made by the wastewater utility under this rule, the representative of the wastewater utility making contact shall be authorized to accept reasonable partial payment of the overdue balance in accordance with the time-payment provisions.

(11) A wastewater utility must document its efforts to provide notice under this rule and shall make that documentation available to the customer and the Commission upon request.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.750, 757.061 & 757.755

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 5-2004, f. & cert. ef. 1-29-04

### Service Quality

### 860-037-0307

#### Wastewater Utility Compliance Enforcement by Commission Appointment of Regent to Operate and Manage a Wastewater System

(1) In extreme circumstances where a wastewater utility owner, operator, or representative demonstrates to the Commission's satisfaction an unwillingness, incapacity, or refusal to effectively operate and manage the wastewater system to provide safe and adequate service to its customers in compliance with Oregon statutes, rules, and standards, the Commission, after consultation with affected customers, may appoint a regent to operate and manage the wastewater system. The appointment shall be accomplished under an Interim Operating Agreement until a long-term option for the provision of wastewater is available to the customers.

(2) The regent appointed to operate, maintain, and repair the system must be, or employ, a qualified wastewater operator or be a qualified wastewater utility.

(3) The appointment of the regent may also include responsibility for billing and collection, customer service, and administration of the system.

(4) The regent shall record all transactions in a general ledger and supply a copy of the ledger and bank statements to the Commission.

(5) At the end of the Interim Operating Agreement, the Commission shall approve a final accounting of all monies and disbursement of surplus funds.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0308

#### Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs

(1) The Commission may use up to \$5,000 per biennium of the fees collected under ORS 756.310 to make emergency repairs for privately-owned wastewater utilities that provide service within the

boundaries of a city. The Commission may expend monies under the provisions of this rule if the Commission determines that:

- (a) Customers of a wastewater utility are without service and are likely to remain without service for an unreasonable period of time;
- (b) The wastewater utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and
- (c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The Commission shall promptly attempt to recover fees used under this rule from the utility providing water service. No interest shall accrue on the outstanding balance.

(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the fees are expended.

Stat. Auth.: ORS 183, 756, 757 & Ch. 202, OL 2003

Stats. Implemented: ORS 757.061 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

#### 860-037-0309

##### Commission-Assessed Civil Penalties for Noncompliance

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 for each violation of state statutes, Oregon administrative rules, or Commission orders related to wastewater utilities.

(2) Prior to assessing civil penalties, the Commission may send a warning letter to the wastewater utility by registered or certified mail. The warning letter must include, but not be limited to, the following:

- (a) A statement that the wastewater utility is in violation of state statutes, Oregon administrative rules, or Commission orders;
- (b) The time allowed for correcting the violation(s); and
- (c) A statement that, if the violations are not corrected within the time allowed, staff may make a recommendation to the Commission to assess civil penalties.

(3) The Commission must give notice of civil penalties by registered or certified mail to the wastewater utility incurring the penalties. The notice must include, but is not limited to the following:

- (a) The section of the statute, rule, or order violated;
- (b) A concise statement of the violation(s) asserted or charged;
- (c) A statement of the amount of civil penalties that may be assessed;

(d) A statement of the wastewater utility's right to request a hearing within 20 calendar days of the date of service of the notice; and

(e) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) Within 20 calendar days of the date of service of the notice, the wastewater utility incurring the penalties may request a hearing. Such request must be in writing and shall state what actions, if any, have been made to correct the violation(s) stated in the notice. If the wastewater utility does not request a hearing within the time allowed, or if the wastewater utility requesting a hearing fails to appear, the Commission may issue a final order imposing the penalty.

(5) The Commission may require that penalties imposed under this rule be used for the benefit of the customers of wastewater utilities affected by the violation(s).

Auth.: ORS 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 183.090, 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

#### 860-037-0310

##### Maps and Records

(1) A wastewater utility shall keep on file current maps and records of the entire system showing size, location, and date of installation of the collection system and wastewater plant.

(2) Upon request, a wastewater utility shall file with the Commission an adequate description or maps to define the wastewater territory serviced. All maps and records that the Commission may require the wastewater utility to file shall be in a form satisfactory to the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.020 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0320

##### Location of Underground Facilities

A wastewater utility and its customers shall comply with requirements of OAR chapter 952 regarding the prevention of damage to underground facilities.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.542 - 757.562

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-037-0325

##### Construction, Safety, and Reporting Standards for Wastewater Utilities

If a wastewater utility engages in the management, operation, ownership, or control of gas pipelines or communication, signal, or electrical supply lines within Oregon, the wastewater utility shall comply with the construction, safety, and reporting standards set forth in OAR chapter 860, division 024.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.020, 757.035 & 757.039

Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-037-0330

##### Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities

Pole and conduit attachments shall comply with the rules set forth in OAR chapter 860, division 028.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.270 - 757.290 & 759.650 - 757.675

Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

#### Rate Regulation and Tariff Filings

#### 860-037-0405

##### Relating to New Wastewater Utilities

This rule applies to newly constructed investor-owned wastewater utilities that have not previously offered wastewater service to the public during the past 12 months. A new wastewater utility shall initially and immediately file tariffs with the Commission to establish approved rates and charges. All subsequent rate increases will comply with the requirements of OAR 860-037-0410 through 860-037-0445.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061, 757.205 & 758.300 - 758.320

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0407

##### Request for Rate Regulation of an Association within the Boundaries of a City

(1) Association members may submit a petition to the Commission at any time for full rate regulation of a wastewater utility owned or operated by an association located within the boundaries of a city. Petitioners must be current customers of the wastewater utility.

(2) Petitions must be in writing, state the purpose of the petition, and include the customer's name, address, telephone number, and signature.

(3) Individual members may submit letters in lieu of a petition.

(4) If 20 percent of association members petition the Commission, the Commission shall issue an order notifying the association of its change in regulatory status to a rate-regulated utility.

(5) The association must file tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.

(6) If the association fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(7) Petitions filed with the Commission may not be withdrawn or rescinded and are valid for six months.

Stat. Auth.: ORS 183, 756 & Ch. 082, OL 2003

Stat. Implemented: ORS 756.040 & Ch. 082, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

#### 860-037-0410

##### Tariff Specifications

(1) Form and style of tariffs:

(a) All tariffs must be in loose-leaf form so that changes can be made by reprinting and inserting a single leaf;

(b) Each wastewater utility must designate the initial tariff as PUC Oregon No. 1, and designate successive tariffs with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(c) The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used. Blank forms will be furnished by the Commission upon request; and

(d) Separate tariffs must be filed for wastewater service or for any other service entered.

(2) Size of tariffs and required:

(a) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(b) Wastewater utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.205

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-037-0415

##### Tariff Contents

(1) Tariffs must explicitly state the rates and charges for each class of wastewater service rendered, designating the area or district to which they apply.

(2) Rules and regulations of the wastewater utility that in any manner affect the rates charged or to be charged or define the extent or character of the wastewater service to be given shall be included with each tariff.

Stat. Auth.: ORS 183, 330, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.205

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0420

##### Tariff Changes Require 30 Days' Notice to the Commission

Except as hereinafter provided in this division, a wastewater utility must file with the Commission all tariffs, rate schedules, revisions, or supplements thereto containing any change in rates, tolls, charges, or rules and regulations at least 30 days before the effective date of such changes. The Commission will reject tariffs or schedules not conforming with the rules in this division.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.007, 757.061 & 757.220

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-037-0425

##### Announcement of Tariff Changes

(1) Within 15 days of filing with the Commission new or revised wastewater tariff schedules that constitute a general rate revision, a wastewater utility shall inform its customers of the filing. A "general rate revision" is a filing by a wastewater utility that affects all or most of a wastewater utility's wastewater rate schedules. "General rate revision" does not include changes in an automatic adjustment clause under ORS 757.210(1) or similar changes in one rate schedule, such as for an amortization, that affect other rate schedules.

(2) A wastewater utility shall inform its customers by:

(a) Insertion of a display announcement, not less than a three column standard advertising unit (SAU) by 10 inch advertisement, at least once in a newspaper of general circulation in the communities served by the wastewater utility;

(b) An announcement inserted in the wastewater utility's regular billing to its wastewater customers; or

(c) An announcement mailed to each wastewater customer.

(3) At a minimum, the announcement shall include the following information:

(a) The approximate current and proposed average monthly wastewater service rate for each customer class, expressed in dollar terms;

(b) A brief statement of the reasons why the change is sought;

(c) Notification that copies of the wastewater utility's application, testimony, and exhibits are available for inspection at its main and district offices;

(d) The mailing address and telephone number of the wastewater utility's office that customers may contact for additional information about the filing;

(e) The Commission's Consumer Services Section toll-free telephone number: 1-800-522-2404 or TTY 711; and mailing address: Public Utility Commission of Oregon, Administrative Hearings Division, PO Box 2148, Salem OR, that interested persons may contact to receive notice of the time and place of any hearing on the matter; and

(f) A statement that the purpose of the announcement is to provide customers of the wastewater utility with general information as to the proposed tariffs and their effect on customers, and that the calculations and statements contained in the announcement are not binding on the Commission.

(4) With no less notice than seven business days prior to sending the written announcement to its customers, the wastewater utility must provide the Commission with a draft copy of the written announcement for staff review.

(5) Within 20 days of issuance of the announcement, the wastewater utility shall file an affidavit with the Commission that notice has been given and include a copy of the announcement.

(6) The Commission may waive the requirements of this rule upon a showing by the wastewater utility that the notice required by this rule has been given with respect to a particular general rate revision, and upon a further showing that additional notice with respect to that rate revision would be duplicative, confusing to customers, and burdensome to the wastewater utility.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0430

##### Applications to Make Tariffs or Rate Schedules Effective on Less Than Statutory Notice

A wastewater utility seeking authority to make tariffs or rate schedules effective on less than statutory notice must use application forms approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.220

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 18-2004, f. & cert. ef. 12-30-04

#### 860-037-0435

##### Requirements for Filing Tariffs or Schedules Changing Rates

(1) A wastewater utility may make wastewater tariff changes by filing an entirely new tariff or by filing revised sheets that shall refer to the sheets of the tariffs on file. Additions to the tariff on file may be made by filing additional sheets.

(2) Each wastewater utility filing wastewater tariffs or schedules changing existing tariffs or schedules shall submit therewith the following information:

(a) A statement plainly indicating the increase, decrease, or other change thereby made in existing rates, charges, tolls, or rules and regulations;

(b) A statement setting forth the number of customers affected by the proposed change and the resulting change in annual revenue; and

(c) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed change.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.205

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0440

##### Requirements for Filing Tariffs or Schedules Naming Increased Rates

(1) A wastewater utility filing tariffs or schedules that increase rates shall submit, in addition to the requirements of OAR 860-037-0435, the following information:

(a) A statement setting forth for each separate schedule the total number of customers affected, the total annual revenue derived under the existing schedule, and the amount of estimated annual revenue derived under the proposed schedule in the application;

(b) A statement setting forth for each separate schedule the monthly bills under both the existing rates and the proposed rates for characteristic customers that fairly represents the application of the proposed tariff or schedules; and

(c) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed increase.

(2) Additional information may be required to be filed either prior to acceptance by the Commission of the tendered filing or at any stage in the proceeding.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.205

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0445

##### Tariff Changes Effective with Service Rendered

All tariff changes apply to service rendered on and after the effective date of the changes, unless the Commission by order provides otherwise. As used in this rule, “service rendered” means basic service provided, or likewise as the context requires.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.007, 757.061 & 757.220

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0450

##### Notice to Interested Persons

(1) This rule applies to any tariff filing that is filed under ORS 757.205.

(2) Any person who requests of the Commission, in writing, to be notified of wastewater utility tariff filings covered under section (1) of this rule must be included on a notice list.

(3) The Commission must notify all persons on the notice list referred to in section (2) of this rule of any applicable tariff filing. The notice will be given within ten days of any tariff filing under section (1) of this rule that complies with OAR 860-037-0410 through 860-037-0440.

(4) The notice must include the following information:

(a) Name of the wastewater utility submitting the filing;

(b) Subject;

(c) Filing date;

(d) Effective date;

(e) Date of the public meeting the tariff will be considered (when the information is available); and

(f) Customer classes affected.

(5) The Commission may periodically delete from the notice list names of persons who do not demonstrate a continued interest in receiving the notices set forth in section (2) of this rule. No person’s name may be deleted from the list without 20 days’ notice before deletion.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.230

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 18-2004, f. & cert. ef. 12-30-04

#### Financial Transactions

#### 860-037-0505

##### Form and Filing of Applications

(1) The Commission will furnish to applicant such information from the records on file as will assist in a full presentation of material facts required by OAR 860-037-0510 to 860-037-0535.

(2) When any document required to be filed under these rules has previously been filed with the Commission, it shall be sufficient if the application makes reference to such filing and the capacity in which it was filed.

(3) Where the words “none” or “not applicable” truly and completely state the fact, they should be used in answering the requirement of any particular section of this rule.

(4) The Commission may require additional information when it appears to be pertinent in a particular case.

(5) Whenever these rules require the filing of financial statements, they shall be prepared as of the latest date available. The Income Statement shall be for the most recent 12-month period.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0510

##### Notice and Approval Requirements Relating to the Sale, Transfer, Merger, Termination, Abandonment, or Disposal of a Wastewater Utility

(1) Approval Requirements:

(a) Each wastewater utility must file an application to obtain Commission approval prior to the sale, transfer, or merger of the utility. Application requirements are found in OAR 860-037-0515;

(b) Each wastewater utility must file an application to obtain Commission approval prior to terminating, abandoning, or otherwise disposing of the wastewater utility, excluding sales, transfers, or mergers.

(2) Notice Requirements:

(a) Each wastewater utility shall provide written notification to customers and the Commission of any sale, transfer, merger, termination, abandonment, or disposal of the utility 60 days prior to the closing date of the transaction. The notice shall include the following information:

(A) Name, address, and telephone number of the wastewater utility;

(B) Purpose of notice;

(C) Filing date;

(D) Proposed effective date of the transaction.

(E) Name, address, and telephone number of potential buyer;

(F) Reason(s) for sale, transfer, or merger, termination, abandonment or disposal of the wastewater system;

(G) Effect of the transaction upon customers; and

(H) The Commission’s Consumer Services Section toll free number: 1-800-522-2404 or TTY 711; mailing address: Public Utility Commission of Oregon, Consumer Services Section, PO Box 2148, Salem OR 97308-2148; and street address: Public Utility Commission of Oregon, 550 Capitol Street NE Suite 215, Salem, OR 97301-2551.

(I) In case of termination, abandonment, or disposal of utility, the utility shall also provide an explanation of any alternative water service option(s) to customers.

(3) A draft copy of the customer notice must be mailed to the Commission for Utility Division staff review seven business days prior to a customer mailing.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.480

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0515

##### Applications for Authority to Sell, Lease, Assign, Mortgage, Merge, Consolidate, or Otherwise Dispose of or Encumber its Property, or to Acquire Stock, Bonds, or Property of Another Public Utility

Requirements of this rule apply to wastewater utilities seeking authority under ORS 757.480 and 757.485. Every applicant shall at a minimum, utilize the form prescribed below and provide all required information. At its discretion, the Commission may require further or more detailed information. [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061, 757.105, 757.480 & 757.485

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0517

##### Acquisition Adjustment

(1) A wastewater utility may file a petition with the Commission for approval of an acquisition adjustment for acquiring a wastewater utility. The approval and determination of an acquisition adjustment is at the sole discretion of the Commission.

(2) The Commission shall consider the merits of the utility’s petition based on the benefit to the customers being acquired and the public interest on a case-by-case basis.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061  
Hist.: PUC 5-2004, f. & cert. ef. 1-29-04

**860-037-0520**

**Application by a Wastewater Utility for Authority to Issue Wastewater Stocks, Bonds, Notes, or Other Securities**

(1) This rule applies to wastewater utilities seeking authority under ORS 757.495, 757.405 to 757.435 inclusive, 757.445, and 757.450. Every applicant shall set forth in this application to the Commission, in the manner and form and in the order indicated, the following information:

(a) The applicant's exact name and the address of its principal business office;

(b) The state in which incorporated, the date of incorporation, and the other states in which authorized to transact wastewater utility business;

(c) The name and address of the person authorized, on behalf of applicant, to receive notices and communications in respect to the application;

(d) The names, titles, and addresses of the principal officers of the applicant;

(e) A description of the general character of the business done and to be done, and a designation of the territories served. A map showing the territories served is desirable;

(f) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of capital stock: brief description; amount authorized (face value and number of shares); amount outstanding (exclusive of any amount held in the treasury); held amount as reacquired securities; amount pledged by applicant; amount owned by affiliated interests; and amount held in any fund;

(g) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of long-term debt or notes: brief description (amount, interest rate, and maturity); amount authorized; amount outstanding (exclusive of any amount held in the treasury); amount held as reacquired securities; amount pledged by applicant; amount held by affiliated interests; and amount in sinking and other funds;

(h) A full description of the securities proposed to be issued, showing: kind and nature of securities or liabilities; amount (face value and number of shares); interest or dividend rate, if any; date of issue and date of maturity; and voting privileges, if any;

(i) A reasonably detailed and precise description of the proposed transaction, including a statement of the reasons why it is desired to consummate the transaction and the anticipated effect thereof. If the transaction is part of a general program, describe the program and its relation to the proposed transaction. Such description shall include, but is not limited to, the following:

(A) A description of the proposed method of issuing and selling the securities;

(B) A statement of whether such securities are to be issued pro rata to existing holders of the applicant's securities or issued pursuant to any preemptive right or in connection with any liquidation or reorganization;

(C) A statement showing why it is in applicant's interest to issue securities in the manner proposed and the reason(s) why it selected the proposed method of sale; and

(D) A statement that exemption from the competitive bidding requirements of any federal or other state regulatory body has or has not been requested or obtained, and a copy of the action taken thereon when available.

(j) The name and address of any person receiving or entitled to a fee for service (other than attorneys, accountants, and similar technical services) in connection with the negotiation or consummation of the issuance or sale of securities, or for services in securing underwriters, sellers, or purchasers of securities, other than fees included in any competitive bid; the amount of each such fee, and facts showing the necessity for the services and that the fee does not exceed the customary fee for such services in arm's-length transactions and is reasonable in the light of the cost of rendering the service and any other relevant factors;

(k) A statement showing both in total amount and per unit the price to the public, underwriting commissions, and net proceeds to the applicant. Supply also the information (estimated if necessary) required in section (4) of this rule. If the securities are to be issued

directly for property, then a full description of the property to be acquired, its location, its original cost (if known) by accounts, with the identification of the person from whom the property is to be acquired, must be furnished. If original cost is not known, an estimate of original cost based, to the extent possible, upon records or data of the seller and applicant or their predecessors must be furnished, with a full explanation of how such estimate has been made, and a description and statement of the present custody of all existing pertinent data and records. A statement showing the cost of all additions and betterments and retirements, from the date of the original cost, should also be furnished;

(l) The purposes for which the securities are to be issued. Specific information will be submitted with each filing for the issuance of bonds, stocks, or securities:

(A) For construction, completion, extension, or improvement of wastewater facilities, include a description of such facilities and the cost thereof;

(B) For reimbursement of the applicant's treasury for expenditures against securities that have not been issued, include a statement giving a general description of such expenditures, the amounts and accounts charged, the associated credits, if any, and the periods during which the expenditures were made;

(C) For refunding or discharging of wastewater obligations, include a description of the obligations to be refunded or discharged. The description shall provide the character, principal amounts discount or premium applicable thereto, date of issue and date of maturity, purposes to which the proceeds were applied and all other material facts concerning such obligations; and

(D) For improvement or maintenance of wastewater service include a description of the type of expenditure and the estimated cost in reasonable detail.

(m) A statement as to whether or not any application, registration statement, etc., with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body;

(n) The facts relied upon by the applicant to show that the issue:

(A) Is for some lawful object within the corporate purposes of the applicant;

(B) Is compatible with the public interest;

(C) Is necessary or appropriate for or consistent with the proper performance by the applicant of service as a wastewater utility;

(D) Does not impair its ability to perform that service;

(E) Is reasonably necessary or appropriate for such purposes; and

(F) If filed under ORS 757.495, is fair and reasonable and not contrary to the public interest.

(o) A brief statement of all rights to be a corporation, franchises, permits, and contracts for consolidation, merger, or lease included as assets of the applicant or any predecessor thereof; the amounts actually paid as consideration therefore, respectively; and the facts relied upon to show the issuance of the securities for which approval is requested will not result in the capitalization of the right to be a corporation or of any franchise, permit, or contract for consolidation, merger, or lease in excess of the amount (exclusive of any tax or annual charge) actually paid as the consideration for such right, franchise, permit, or contract; and

(p) If filed under ORS 757.490 or 757.495:

(A) Provide a statement describing the relationship between the wastewater utility and the affiliated interest as defined in ORS 757.015 or 757.490:

(i) Set forth the amount, kind, and ratio to total voting securities held, if applicable;

(ii) List all officers and directors of the affiliated interest who are also officers and/or directors of the applicant; and

(iii) State the pecuniary interest of any officer or director in compliance with ORS 757.490(1).

(B) State the reasons, in detail, relied upon by the wastewater utility for entering into the proposed transaction and the benefits, if any, the customers receiving wastewater service and the general public will derive from the transaction.

(2) Required Exhibits. The following exhibits shall be filed as part of the application:

(a) EXHIBIT A. A copy of the applicant's charter or articles of incorporation with amendments to date;

(b) EXHIBIT B. A copy of the bylaws with amendments to date;

(c) EXHIBIT C. A copy of each resolution of directors authorizing the issue in respect to which the application is made and, if approval of stockholders has been obtained, copies of the stockholder resolutions should also be furnished;

(d) EXHIBIT D. A copy of the mortgage, indenture, or other agreement under which it is proposed to issue the securities, and a copy of any mortgage, indenture, or other agreement securing other funded obligations of the applicant;

(e) EXHIBIT E. Copies of balance sheets showing booked amounts, adjustments to record the proposed transaction and pro forma, with supporting fixed capital or plant schedules in conformity with the form in the annual report which applicant is required to file with the Commission;

(f) EXHIBIT F. A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts, as of the date of the application;

(g) EXHIBIT G. Copies of comparative income statements showing recorded results of operations, adjustments to record the proposed transaction and pro forma in conformity with the form in the annual report which applicant is required to file with the Commission;

(h) EXHIBIT H. A copy of an analysis of surplus for the period covered by the income statements referred to in Exhibit G;

(i) EXHIBIT I. A copy of the registration statement proper, if any, and financial exhibits made a part thereof, filed with the Securities and Exchange Commission;

(j) EXHIBIT J. A copy of the proposed and of the published invitation of proposals for the purchase of underwriting of the securities to be issued; of each proposal received; and of each contract, underwriting, and other arrangement entered into for the sale or marketing of the securities. When a contract or underwriting is not in final form so as to permit filing, a preliminary draft or a summary identifying parties thereto and setting forth the principal terms thereof, may be filed pending filing of the conformed copy in the form executed by final amendment to the application;

(k) EXHIBIT K. Copies of the stock certificates, notes, or other evidences of indebtedness proposed to be issued;

(l) An application for a wastewater utility to loan its funds to an affiliated interest, shall also include the following:

(A) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction;

(B) EXHIBIT M. The amount of money the applicant desires to loan to the affiliated interest, terms of said loan, rate of interest, method of repayment, security given, if any, and if said loan is to be an open account or evidenced by a promissory note; and

(C) EXHIBIT N. The use to which funds derived from this loan are to be put by the affiliated interest.

(m) An application for a wastewater utility to give credit on its books or otherwise by:

(A) Advancing cash through an open or loan account, shall also include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction;

(ii) EXHIBIT M. The amount of money the applicant proposes to receive, the rate of interest it will pay, and the date and method of repayment; and

(iii) EXHIBIT N. A definite statement of purpose for which the advance will be used.

(B) Payments by the affiliated interest of amounts owed, shall also include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction; and

(ii) EXHIBIT M. The amount of money the affiliated interest proposes to pay on the wastewater utility's behalf, with a description of the obligation, how the funds will be used, and how incurred.

(C) Credits or open accounts a wastewater utility proposes to give to an affiliated interest, shall also include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction; and

(ii) EXHIBIT M. The amount and a description of each item for which the wastewater utility proposes to give credit through its loan or open account.

(3) The following form of application may be filed by all wastewater utilities with annual revenues of less than \$100,000 seeking authority to issue promissory notes maturing more than one year after

date of issue or renewal and unsecured notes on motor vehicles in the principal amount of less than \$10,000. In the instances when this provision is proper, the requirements of sections (1) and (2) of this rule do not apply. The Commission may require compliance with sections (1) and (2) of this rule if the Commission deems it necessary in a particular case. [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005, 757.061, 757.405 - 757.450 & 757.495

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

## 860-037-0525

### Applications for Authority to Guarantee Indebtedness

(1) The requirements of this rule apply to wastewater utilities seeking authority under ORS 757.440. Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information that should, to the extent possible, be furnished for each person, firm, or corporation involved:

(a) The information required by OAR 860-037-0520(1)(a) to (g) inclusive;

(b) A full description of the securities the applicant proposes to assume obligation or liability as guarantor, endorser, surety, or otherwise;

(c) The amount of other securities of said person, firm, or corporation now held, owned, or controlled by the applicant;

(d) A statement as to whether or not any application, with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body;

(e) The reasons, in detail, why it is in applicant's interest to guarantee such securities;

(f) The reasons, in detail, why it is necessary for applicant to guarantee such securities; and

(g) The facts relied upon by the applicant to show the assumption is:

(A) For some lawful object within the applicant's corporate purposes and compatible with the public interest;

(B) Necessary or appropriate for or consistent with the applicant's proper performance of service as a wastewater utility;

(C) Does not impair its ability to perform that service; and

(D) Reasonably necessary or required for such purposes.

(2) Required Exhibits. The following exhibits shall be filed as part of the application:

(a) EXHIBIT A. A copy of the applicant's charter or articles of incorporation with amendments to date;

(b) EXHIBIT B. A copy of the bylaws with amendments to date;

(c) EXHIBIT C. Copies of all resolutions of directors authorizing the assumption in respect to which the application is made and, if stockholders' approval has been obtained, a copy of the stockholders' resolution should also be furnished;

(d) EXHIBIT D. A copy of any mortgage, indenture, or other agreement securing any security which it proposes to guarantee; also, a copy of any mortgage, indenture, or other agreement securing applicant's funded obligations;

(e) EXHIBIT E. Balance sheets with supporting fixed capital or plant schedules in conformity with the form set forth in the annual report the applicant is required to file with the Commission;

(f) EXHIBIT F. A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts at the date of the application;

(g) EXHIBIT G. Comparative income statements in conformity with the form set forth in the annual report the applicant is required to file with the Commission;

(h) EXHIBIT H. An analysis of surplus for the period covered by the income statements referred to in Exhibit G; and

(i) EXHIBIT I. A statement showing the present market value or other basis of determining the value of the securities to be guaranteed.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.440

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

**860-037-0530****Applications for Approval of Transactions Between Affiliated Interests**

(1) Except as provided in section (3) of this rule, the requirements of this rule apply to all wastewater utilities seeking authority under ORS 757.490 and 757.495. An application for financing to an affiliated interest shall be made under OAR 860-037-0520.

(2) Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information:

(a) The applicant's exact name and the address of its principal business office;

(b) The name and address of the person authorized, on the wastewater utility's behalf, to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the wastewater utility and the contracting entity as defined by ORS 757.015 and 757.490;

(d) The amount, kind, and ratio to total voting securities held, if applicable;

(e) A list of all officers and directors of the affiliated interest who are also officers or directors of the applicant;

(f) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(g) A description of the goods or services to be provided, the cost incurred in providing each of the goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(h) An estimate of the amount of money the wastewater utility expects to pay annually for the goods or services and the accounts in which the charges are recorded;

(i) The reasons, in detail, relied upon by the wastewater utility for procuring the proposed goods or services from the affiliate and benefits, if any, utility wastewater service customers and the general public will derive from the provision of goods or services;

(j) A description of the procurement process and the reasons, in pertinent detail appropriate to the complexity of the procurement, relied upon by the wastewater utility for procuring the proposed goods or services without a competitive procurement process, if such a process is not used;

(k) Transfer prices in contracts or agreements for the procurement of goods or services under competitive procurement is presumed to be the market value, subject to evaluation of the procurement process;

(l) A copy of the proposed contract or agreement between the wastewater utility and the contracting entity; and

(m) Copies of all resolutions of directors authorizing the proposed transactions and, if stockholders' approval has been obtained, copies of the resolutions approved by the stockholders.

(3) This rule shall not apply to wastewater utilities seeking to purchase or contracting to purchase, directly or indirectly, from any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in 757.490(1):

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210; or

(b) Any service provided under a rate or schedule of rates that:

(A) Has been filed with an agency charged with the regulation of utilities;

(B) Has been approved as just and reasonable or in compliance with another comparable standard; and

(C) Is available to a broad class of customers.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.005 - 757.495

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

**860-037-0535****Information Required Regarding Wastewater Utility Goods or Services Provided to Affiliated Interests**

(1) Except as provided in section (4) of this rule, this rule applies to wastewater utilities seeking to provide, or contracting to provide, directly or indirectly, to any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in 757.490(1), service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal, or other services, or entering revenues or credits therefore on its books. This rule does not

apply to transactions subject to ORS 757.490 or 757.495 and OAR 860-037-0030.

(2) A wastewater utility's failure to submit this required information shall not limit the Commission's authority to recognize or impute revenues to the wastewater utility pursuant to such contract in any rate valuation or other hearing or proceeding.

(3) For transactions provided in section (1) of this rule, every wastewater utility shall submit to the Commission, in the manner and form indicated, the following information:

(a) Its exact name and the address of its principal business office;

(b) The name of the person authorized on the wastewater utility's behalf to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the wastewater utility and the other contracting entity as defined by ORS 757.015 or 757.490;

(d) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(e) A description of the goods or services to be provided, the costs incurred in providing those goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(f) An estimate of the amount the wastewater utility expects to receive annually for the goods or services and the accounts in which the payments are recorded;

(g) The reasons relied upon by the wastewater utility for providing the proposed goods or services and the benefits, if any, wastewater utility customers and the general public will derive from the provision of goods or services;

(h) A copy of the contract or agreement between the wastewater utility and the contracting entity that is the subject of this filing; and

(i) Copies of all resolutions of directors of the wastewater utility authorizing the proposed transactions and, if approval of the wastewater utility's stockholders was obtained, copies of the resolutions approved by the stockholders.

(4) This rule shall not apply to wastewater utilities seeking to provide or contracting to provide, directly or indirectly, to any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in ORS 757.490(1):

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210; or

(b) Any service provided under a rate or schedule of rates that:

(A) Has been filed with an agency charged with the regulation of wastewater utilities;

(B) Has been approved as just and reasonable or in compliance with another comparable standard; and

(C) Is available to a broad class of customers.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.005 - 757.490

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 5-2004, f. & cert. ef. 1-29-04

**860-037-0540****Timeliness of Applications Made Under OAR 860-037-0530 and Filings Made Under OAR 860-037-0535**

An application made under OAR 860-037-0530 and a filing made under 860-037-0535 shall occur no later than 90 days after the execution of the contract giving rise to the application or filing. The contract is deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

**860-037-0545****Applications for Waiver of Requirements Under OARs 860-037-0530 and 860-037-0535**

Upon petition by a wastewater utility and approval by the Commission for good cause, the requirements of OARs 860-037-0530 and 860-037-0535 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of circumstances demonstrating in advance that the transaction or transactions are fair and reasonable and not contrary to the public interest, transactions

exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for waiver.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0547

##### Allocation of Costs by a Wastewater Utility

(1) As used in this rule:

(a) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a wastewater utility;

(b) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a wastewater utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the wastewater utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single wastewater utility;

(c) "Asset" means any tangible or intangible property of a wastewater utility or other right, entitlement, business opportunity, or other thing of value to which a wastewater utility holds claim that is recorded or should be recorded as a capital expenditure in the wastewater utility's financial statements. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services or supplies;

(d) "Cost" means fully distributed cost, including the wastewater utility's authorized rate of return and all overheads;

(e) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a non-affiliated entity, as determined by commonly accepted valuation principles;

(f) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(g) "Net book value" means original cost less accumulated depreciation;

(h) "Nonregulated activity" means an activity that is not a regulated activity of the wastewater utility as defined in subsection (1)(i) of this rule;

(i) "Regulated activity" means a Commission regulated activity that is provided by a wastewater utility directly or indirectly relating to the general operations of the wastewater utility such as production, transmission, delivery, or furnishing of water, and the provision of wastewater services to the public inside the boundaries of a city unless the Commission has determined the activity to be exempt from regulation;

(j) "Services" means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies; and

(k) "Supplies" means any tangible or intangible property of a wastewater utility or other thing of value to which a wastewater utility holds claim that is recorded or should be recorded as an operating expense in the wastewater utility's financial statements. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities and things of value should be considered assets, services, or supplies.

(2) For purposes of this rule, regulated and nonregulated activities of a wastewater utility shall be accounted for in accordance with the Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners as modified by the Commission.

(3) When a wastewater utility is conducting an affiliate interest transaction, as defined in this rule, the wastewater utility must use the following cost allocation methods:

(a) When an asset is transferred to a wastewater utility from an affiliate, the transfer shall be recorded in the wastewater utility's accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from a wastewater utility to an affiliate, the transfer shall be recorded in the wastewater utility's accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall

be recorded in the wastewater utility's accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from a wastewater utility to an affiliate at a fair market value that is greater than net book value, the difference shall be considered a gain to the wastewater utility. The wastewater utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a wastewater utility to an affiliate, sales shall be recorded in the wastewater utility's accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in the wastewater utility's accounts at the wastewater utility's cost or the market rate, whichever is higher.

(e) When services or supplies are sold to a wastewater utility by an affiliate, sales shall be recorded in the wastewater utility's accounts at the wastewater utility's cost or the market rate, whichever is lower. The affiliate's cost shall be calculated using the wastewater utility's most recently authorized rate of return.

(f) Income taxes shall be calculated for the wastewater utility on a standalone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the wastewater utility shall record income tax expense as if it were determined for the wastewater utility separately for all time periods.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.490 & 757.495

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

#### Special Contracts

#### 860-037-0550

##### Special Contracts

(1) Wastewater utilities within Oregon entering into special contracts with certain customers prescribing and providing wastewater rates, services, and practices not covered by or permitted in the general tariffs, schedules, and rules filed by such wastewater utilities are in legal effect tariffs and are subject to supervision, regulation, and control as such.

(2) All special contracts designating wastewater service to be furnished at rates other than those shown in tariffs currently on file with the Commission are classified as rate schedules. True and certified copies shall be filed subject to review and approval pursuant to the requirements of OARs 860-037-0405 through 860-037-0445.

(3) Special contracts shall be filed with the Commission at least 30 days prior to the proposed effective date of the contract and are effective according to its terms the 31st day from the date of its filing unless earlier approved, suspended, or rejected by the Commission.

(4) Each special contract filed with the Commission shall be accompanied by documentation necessary to show that the terms are fair, just, and reasonable to the remaining customers, including but not limited to:

(a) A statement summarizing the basis of the terms of the contract and an explanation of the deviation from the tariffs on file;

(b) An explanation of all cost computations involved; and

(c) A statement indicating the basis for use of a contract rather than a filed tariff for the specific service involved.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.007 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### Fees, Taxes, and Other Assessments

#### 860-037-0555

##### Relating to City Fees, Taxes, and Other Assessments

(1) The aggregate amount of all business or occupation taxes, licenses, franchise or operating permit fees, or other similar exactions imposed upon wastewater utilities by any city in Oregon for engaging in wastewater business within such city or for use and occupancy of city streets and public ways, which does not exceed 3.5 percent, applied to gross revenues as defined herein, shall be allowed as operating expenses of such wastewater utilities for rate-making purposes and shall not be itemized or billed separately.

(2) Except as otherwise provided herein, "gross revenues" means revenues received from utility wastewater service operations less related net uncollectibles. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the wastewater utility purchasing the service is not the ultimate customer.

(3) Permit fees or similar charges for street opening, installations, construction, and the like to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in exercising its police powers, and the value of any wastewater utility service or use of facilities provided on November 6, 1967, to a city without charge, shall not be considered in computing the percentage levels herein set forth. Any such service may be continued within the same category or type of use. The value of any additional category of wastewater utility service or use of facilities provided after November 6, 1967, to a city without charge shall be considered in computing the percentage levels herein set forth.

(4) This rule shall not affect franchises existing on November 6, 1967, granted by a city. Payments made or value of wastewater service rendered by a wastewater utility under such franchises shall not be itemized or billed separately. When compensation different from the percentage levels in section (1) of this rule is specified in a franchise existing on November 6, 1967, such compensation shall continue to be treated by the affected wastewater utility as an operating expense during the balance of the term of such franchise. Any tax, fee, or other exaction set forth in section (1) of this rule, unilaterally imposed or increased by any city during the unexpired term of a franchise existing on November 6, 1967, and containing a provision for compensation for use and occupancy of streets and public ways, shall be charged pro rata to local users as herein provided.

(5) Except as provided in section (4) of this rule, to the extent any city tax, fee, or other exaction referred to in section (1) of this rule exceeds the percentage levels allowable as operating expenses in section (1) of this rule, such excess amount shall be charged pro rata to wastewater utility service customers within said city and shall be separately stated on the regular billings to such customers.

(6) The percentage levels in section (1) of this rule may be changed if the Commission determines after such notice and hearing, as required by law, that fair and reasonable compensation to a city or all cities should be fixed at a different level or that by law or the particular circumstances involved a different level should be established.

(7) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the wastewater utility.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0560

##### Relating to Local Government Fees, Taxes, and Other Assessments

(1) If any county in Oregon, other than a city-county, imposes upon a wastewater utility any new taxes or license, franchise, or operating permit fees, or increases any such taxes or fees, the wastewater utility required to pay such taxes or fees shall collect from its wastewater customers within the county imposing such taxes or fees the amount of the taxes or fees, or the proportional share of increase in such taxes or fees. However, if the taxes or fees cover the operations of a wastewater utility in only a portion of a county, then the affected wastewater utility shall recover the amount of the taxes or fees or increase in the amount thereof from wastewater customers in the portion of the county that is subject to the taxes or fees. "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) The amount collected from each wastewater service customer pursuant to section (1) of this rule shall be separately stated and identified in all wastewater customer billings.

(3) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date.

(4) If any county, wastewater utility, or customer affected by this rule deems the rule's application in any instance to be unjust or unreasonable, it may apply for a waiver of this rule by petition to the Commission, setting forth the reasons why the rule should not apply.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.110

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### Accounting Records

#### 860-037-0565

##### Accounting for Director's Fees

Director's fees paid by a wastewater utility to members of its board of directors, who are also paid as officers of the utility, shall not be recognized as a charge to operating expenses in Oregon.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.110

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0567

##### Accounting for Contributions in Aid of Construction (CIAC)

(1) CIAC are contributions in any form including, but not limited to, cash, services, or utility plant on a separate schedule. The utility must identify the type of contribution, original cost, and utility plant installation date.

(2) Each wastewater utility must provide an accounting of CIAC upon Commission request, and in its annual reports and rate applications. Each utility shall account for and record CIAC on a separate schedule.

(3) Each wastewater utility must keep a record as described in section (2) of this rule and record CIAC on a separate plant and depreciation schedule.

(4) As of November 1, 2002, CIAC and its resulting depreciation are excluded from wastewater utility ratemaking. CIAC must be separated from utility plant and accounted for and depreciated on a separate schedule outside the ratemaking process.

(5) In cases where previous CIAC depreciation was included in rates and removing it all at once would cause irreparable harm to the wastewater utility, the Commission may systematically remove CIAC from rates over a period of time set forth in a schedule to be approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 5-2004, f. & cert. ef. 1-29-04

#### 860-037-0570

##### Accounting for Construction Work In Progress (CWIP)

This rule applies to wastewater utilities that provide service inside the boundaries of a city. The Commission may allow into rates the costs of a specific capital improvement project in progress if:

(1) The wastewater utility uses the additional revenues solely for the purpose of completing the capital improvement project;

(2) The wastewater utility demonstrates that its access to capital is limited and it is in the public interest to provide funding for the capital improvement through rates; and

(3) Such costs are approved through tariffs filed with the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stat. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

### Record and Reporting Requirements

#### 860-037-0605

##### Preservation and Destruction of Records

The Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities, April 1974, revised May 1985, published by the National Association of Regulatory Utility Commissioners as applicable for wastewater utility service and operation is hereby adopted as modified and prescribed by the Commission for all wastewater service documents and records, with the following exceptions:

(1) Operations and Maintenance, Records of Auxiliary, and other Operations. Records of operations shall be retained for the same periods as prescribed for similar records pertaining to wastewater utility operations;

(2) Revenue Accounting and Collecting. Contracts and card files or other customer records for wastewater utility service shall be retained for at least one year after the expiration or cancellation of the agreement.

(3) Record Media. Each wastewater utility that provides service in Oregon shall allow the federally required “e-sign” as a form of accepted media.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.105

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0610

#### Uniform System of Accounts for Wastewater Utilities

The Uniform System of Accounts for Class A Water Utilities, 1996, published by the National Association of Regulatory Utility Commissioners, is hereby adopted as modified and prescribed by the Commission for all wastewater service and operations.

[Publications: Publications referenced are available from the Agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061, 757.105, 757.120, 757.125 & 757.135

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### Annual Reports

### 860-037-0615

#### Budget of Expenditures

Each wastewater utility operating wastewater service within Oregon and having gross operating revenues of \$50,000 or more per annum is required to file with the Commission on or before the 1st day of November of each year, a copy of its proposed Budget of Expenditures, on forms approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005, 757.061 & 757.105

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0620

#### New Construction Budget

Each wastewater utility operating wastewater service within Oregon and having gross operating revenues of \$50,000 or more per annum is required to file annually on or before December 31, on forms approved by the Commission, information on new construction, extensions, and additions to the property of the wastewater utility.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005, 757.061 & 757.105

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 12-2002, f. & cert. ef. 3-12-02; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0625

#### Annual Reports

On forms approved and provided by the Commission, all wastewater utilities shall submit:

(1) A financial Result of Operations annual report for the immediately preceding year, by April 1.

(2) A report of all affiliated interest, intercompany, and intracompany transactions which occurred during the period from January 1 through December 31 of the immediately preceding year, by June 1.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005, 757.061, 757.120, 757.125 & 757.135

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 8-2001, f. & cert. ef. 3-21-01; PUC 5-2004, f. & cert. ef. 1-29-04

### 860-037-0630

#### Use of Deferred Accounting as it Applies to Wastewater Operations by Wastewater Utilities

(1) Definitions: The following definitions shall be used in this rule:

(a) “Amortization” means the inclusion in rates of an amount that has been deferred under ORS 757.259 and which is designed to eliminate, over time, the balance in an authorized deferred account. Amortization does not include the normal positive and negative fluctuations in a balancing account;

(b) “Deferred Accounting” means the recording in a balance sheet account, with Commission authorization under ORS 757.259, of a current expense or revenue associated with current service for later reflection in rates.

(2) Expiration: Any authorization to use a deferred account expires 12 months from the date the deferral is authorized to begin. If a deferral under ORS 757.259 is reauthorized, the reauthorization expires 12 months from the date the reauthorization becomes effective.

(3) Contents of Application: Application for deferred accounting by a wastewater utility, a ratepayer, or other applicant shall include:

(a) A description of the wastewater utility expense or revenue for which deferred accounting is requested;

(b) The reason(s) deferred accounting is being requested and a reference to the section(s) of ORS 757.259 under which deferral can be authorized;

(c) The account proposed for recording of the amounts to be deferred and the account which would be used for recording the amounts in the absence of approval of deferred accounting;

(d) An estimate of the amounts to be recorded in the deferred account for the 12-month period subsequent to the application; and

(e) A copy of the notice of application for deferred accounting and list of persons served with the notice.

(4) Reauthorization: Application for reauthorization to use a deferred account shall be made not more than 60 days prior to the expiration of the previous authorization for the deferral. Application for reauthorization shall include the requirements set forth in subsections (3)(a) through (3)(e) of this rule and, in addition, the following information:

(a) A description and explanation of the entries in the deferred account to the date of the application for reauthorization; and

(b) The reason(s) for continuation of deferred accounting.

(5) Exceptions: Authorization under ORS 757.259 to use a deferred account is necessary only to add amounts to an account, not to retain an existing account balance and not to amortize amounts which have been entered in an account under an authorization by the Commission. Interest, once authorized to accrue on unamortized balances in an account, may be added to the account without further authorization by the Commission, even though authorization to add other amounts to an account has expired.

(6) Notice of Application: The applicant shall serve a notice of application upon all persons who were parties in the wastewater utility’s last general rate case. If the applicant is other than a wastewater utility, the applicant shall serve a copy of the application upon the affected wastewater utility. A notice of application shall include:

(a) A statement that the applicant has applied to the Commission for authorization to use deferred accounting; or for an order requiring that deferred accounting be used by a wastewater utility;

(b) A description of the wastewater utility expense or revenue for which deferred accounting is requested;

(c) The manner in which an interested person can obtain a copy of the application;

(d) A statement that any person may submit to the Commission written comment on the application by the date set forth in the notice, which date can be no sooner than 25 days from the date of the application; and

(e) A statement that the granting of the application does not authorize a change in rates, but permits the Commission to consider allowing such deferred amounts in rates in a subsequent proceeding.

(7) Public Meetings: Unless otherwise ordered by the Commission, applications for use of deferred accounting will be considered at the Commission’s public meetings.

(8) Reply comments: Within 10 days of the due date for comments on the application from interested persons, the applicant and the wastewater utility, if the wastewater utility is not the applicant, may file reply comments with the Commission. Those comments shall be served on persons who have filed the initial comments on the application.

(9) Amortization: Amortization in rates of a deferred amount shall only be allowed in a proceeding, whether initiated by the wastewater utility or another party. The Commission may authorize amortization of such amounts only for wastewater utility expenses or revenues for which the Commission previously has authorized deferred accounting. Upon request for amortization of a deferred account, the wastewater utility shall provide the Commission with its financial results for a 12-month period or for multiple 12-month periods to allow the Commission to perform an earnings review. The period selected for the earnings review encompasses all or part of the period during which the

deferral took place or must be reasonably representative of the period of deferral. Unless authorized by the Commission to do otherwise:

(a) A wastewater utility shall request that amortizations of wastewater deferred accounts commence no later than one year from the date that deferrals cease for that particular account; and

(b) In the case of ongoing balancing accounts, the wastewater utility shall request amortization at least annually, unless amortization of the balancing account is then in effect.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005, 757.061 & 757.259

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

## DIVISION 38

### DIRECT ACCESS REGULATION

#### 860-038-0001

##### Scope and Applicability of Rules

(1) The rules contained in this division apply to electric companies and electricity service suppliers, except that these rules do not apply to an electric company serving fewer than 25,000 consumers in this state unless the electric company:

(a) Offers direct access to any of its retail electricity consumers in this state; or

(b) Offers to sell electricity services available under direct access to more than one retail electricity consumer of another electric company in this state.

(2) Except as otherwise provided in these rules, an electric company must comply with all other divisions of OAR chapter 860.

(3) OAR 860-038-0380, sections (1) through (9), apply to aggregators; section (10) applies to electric companies.

(4) These rules shall not in any way relieve any entity from its duties under Oregon law. Upon application by an entity subject to these rules and for good cause shown, the Commission may relieve it of any obligations under these rules.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 11-2002, f. & cert. ef. 3-8-02

#### 860-038-0005

##### Definitions for Direct Access Regulation

As used in this Division:

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.

(2) "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:

- (a) Local governments;
- (b) Electric companies;
- (c) Residential consumers;
- (d) Public or regional interest groups; and
- (e) Small nonresidential consumers.

(3) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.

(4) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services. "Aggregator" means an entity that aggregates.

(5) "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.

(6) "Commission" means the Public Utility Commission of Oregon.

(7) "Common costs" means costs that cannot be directly assigned to a particular function.

(8) "Competitive operations" means any electric company's activities involving the sale or marketing of electricity services or directly related products in an Oregon retail market. Competitive operations include, but are not limited to, the following:

(a) Energy efficiency audits and programs;

(b) Sales, installation, management, and maintenance of electrical equipment that is used to provide generation, transmission, and distribution related services or enhances the reliability of such services; and

(c) Energy management services, including those services related to electricity metering and billing. Services or products provided by the electric company as part of its electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to its direct access customers are not competitive operations.

(9) "Consumer-owned utility" means a municipal electric utility, a people's utility district, or an electric cooperative.

(10) "Cost-of-service consumer" means a retail electricity consumer who is eligible for a cost-of-service rate under ORS 757.603.

(11) "Default supplier" means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.

(12) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.

(13) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(14) "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(15) "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(16) "Divestiture" means the sale of all or a portion of an electric company's ownership share of a generation asset to a third party.

(17) "Economic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. "Economic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(18) "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(19) "Electric company operational information" means information obtained by an electric company as part of its provision of services or products, as long as such products or services are not defined as "competitive operations." Such information includes, but is not limited to, data relating to the interconnection of customers to an electric company's transmission or distribution systems; trade secrets; competitive information relating to internal processes; market analysis reports; market forecasts; and information about an electric company's transmission or distribution system, processes, operations, or plans or strategies for expansion.

(20) "Electric cooperative" means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(21) "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(22) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(23) "Electricity services" means electricity distribution, transmission, generation, or generation-related services.

(24) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct

access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(25) "Emergency default service" means a service option provided by an electric company to a nonresidential consumer that requires less than five business days' notice by the consumer or its electricity service supplier.

(26) "Fully distributed cost" means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.

(27) "Functional separation" means separating the costs of the electric company's business functions and recording the results within its accounting records, including allocation of common costs.

(28) "Joint marketing" means the offering (including marketing, promotion, or advertising) of retail electric services by an electric company in conjunction with its competitive operation to consumers either through contact initiated by the electric company, its Oregon affiliate, or through contact initiated by the consumer.

(29) "Large nonresidential consumer" means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.

(30) "Load" means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(31) "Local energy conservation" means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.

(32) "Low-income weatherization" means repairs, weatherization, and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(33) "Market transformation" means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(34) "Multi-state electric company" means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.

(35) "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.

(36) "Net system power mix" means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Oregon Department of Energy.

(37) "New" as it refers to energy conservation, market transformation, and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company.

(38) "New renewable energy resource" means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation on or before July 23, 1999. "New renewable energy resource" does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

(39) "Non-energy attributes" means the environmental, economic, and social benefits of generation from renewable energy facilities. These attributes are normally transacted in the form of Tradable Renewable Certificates.

(40) "Nonresidential consumer" means a retail electricity consumer who is not a residential consumer.

(41) "Ongoing valuation" means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.

(42) "One-time administrative valuation" means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

(43) "One average megawatt" means 8,760,000 kilowatt-hours (8,784,000 in a leap year) of electricity per twelve consecutive month period.

(44) "Oregon affiliate" means an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market.

(45) "Oregon share" means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.

(46) "People's utility district" has the meaning given that term in ORS 261.010.

(47) "Portfolio" means a set of product and pricing options for electricity.

(48) "Proprietary consumer information" means any information compiled by an electric company on a consumer in the normal course of providing electric service that makes possible the identification of any individual consumer by matching such information with the consumer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the consumer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the consumer to whom the information relates does not constitute proprietary consumer information.

(49) "Qualifying expenditures" means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Oregon Department of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(50) "Registered dispute" means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission's Consumer Services Section but is not the subject of a formal complaint.

(51) "Regulated charges" means charges for services subject to the jurisdiction of the Commission.

(52) "Regulatory assets" means assets that result from rate actions of regulatory agencies.

(53) "Renewable energy resources" means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power, or by low-emission nontoxic biomass based on solid organic fuels from wood, forest, and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; and

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(54) "Residential consumer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential consumer" does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, "dwelling" includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.

(55) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after March 1, 2002, at the site.

(56) "Self-directing consumer" means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Oregon Department of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.

(57) "Serious injury to person" has the meaning given in OAR 860-024-0050.

(58) "Serious injury to property" has the meaning given in OAR 860-024-0050.

(59) "Site" means:

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;

(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings and structures; and

(C) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.

(60) "Small nonresidential consumer" means a nonresidential consumer that is not a large nonresidential consumer.

(61) "Special contract" means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.

(62) "Structural separation" means separating the electric company's assets by transferring assets to an affiliated interest of the electric company.

(63) "Total transition amount" means the sum of an electric company's transition costs and transition benefits.

(64) "Traditional allocation methods" means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company's last Oregon rate proceeding completed prior to December 31, 2000.

(65) "Transition benefits" means the value of the below-market costs of an economic utility investment.

(66) "Transition charge" means a charge or fee that recovers all or a portion of an uneconomic utility investment.

(67) "Transition costs" means the value of the above-market costs of an uneconomic utility investment.

(68) "Transition credit" means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

(69) "Transmission grid" means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries.

(70) "Unbundling" means the process of assigning and allocating a utility's costs into functional categories.

(71) "Uneconomic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. "Uneconomic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 23-2001, f. & cert. ef. 10-1-01; PUC 5-2002, f. & cert. ef. 2-8-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 18-2002, f. & cert. ef. 10-17-02; PUC 13-2004, f. & cert. ef. 8-31-04; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 6-2006, f. & cert. ef. 5-11-06

## 860-038-0080

### Resource Policies and Plans

(1) The Commission adopts the following policies with respect to the Oregon share of generating resources (generating assets and power purchase contracts with a duration of at least one year) of each electric company:

(a) At such time as the Resource Plan is implemented and fully executed, each electric company will retain in its Oregon revenue requirement costs associated with a level of generating resources that

is not greater than that necessary to meet the current and reasonably expected future loads of its Oregon cost-of-service consumers. In determining whether an electric company has excess generating resources, the Commission will consider the projected useful lives and mix of fuels of the electric company's generating resources. To encourage the development of a competitive retail energy market, it is the policy of the Commission to release to the competitive market generating resources in excess of such reasonably expected future loads. It is also the policy of the Commission to determine a one-time valuation for the share of an electric company's generating resources attributable to Oregon consumers who are not cost-of-service consumers;

(b) The Commission will not require an electric company to acquire new generating resources except as provided in ORS 757.663. Major capital improvements to existing generating resources will continue to be subject to least cost planning processes and analyses and the Oregon share of their prudently-incurred costs will be included in an electric company's Oregon revenue requirement, which for a multi-state electric company shall be consistent with Commission decisions pursuant to subsection (3)(a)(G) of this rule. Electric companies must include new generating resources in revenue requirement at market prices, and not at cost, and such new generating resources will not be added to an electric company's rate base even if owned by the electric company;

(c) The Oregon share of the costs of each generating resource may be either completely in, completely out, or "mixed" with respect to inclusion in an electric company's Oregon revenue requirement. The Commission will permit mixed status unless it finds that mixed status will:

(A) Reduce the generating resource's operating efficiency;

(B) Harm the development of a competitive market; and

(C) Prevent the owners from making economic decisions about the operation of the generating resource.

(d) For a multi-state electric company for which the Commission adopts a fixed-allocated Oregon share amount, and a Resource Plan is implemented, such generating allocation amount will be used for developing cost-of-service rates, transition charges and credits, and Operations and Maintenance allocations as well as other allocations that use generation-based factors.

(2) For purposes of this rule and OARs 860-038-0100 and 860-038-0140, a class's share of the total Oregon share of a generating resource will equal the ratio of the class's total Oregon retail load measured in weather-normalized kilowatt-hour sales to total Oregon retail load measured in weather-normalized kilowatt-hour sales for a 12 month period as determined by the Commission. Loads will be adjusted to remove the effects of demand exchange programs that were in effect during the 12 month period. To the extent such shares are not known as of the time period established by the Commission, the electric company will use estimates until relevant data are available.

(3) By a date to be determined by the Commission, each electric company must file with the Commission a resource plan that meets the following requirements:

(a) Information. The resource plan must include the following information:

(A) Consistent with paragraph subsection (3)(a)(G) of this rule, the amount of capacity and energy and the availability of each generating resource that is attributable to the share of the electric company's load from cost-of-service consumers, and the amount that is attributable to the share of the electric company's load from consumers not eligible for a cost-of-service rate;

(B) A forecast of the revenue requirements associated with each generating resource over both its projected remaining useful life and economic life, with sensitivities for major assumptions, and identification of deferred taxes, excess deferred taxes, FASB 109 assets, and any investment tax credits associated with each generating resource;

(C) The other characteristics of the generating resource that could affect its value including but not limited to its capability to provide or support ancillary services, the value of its site and environmental or operating permits, and any environmental issues associated with it;

(D) A forecast of future market prices for electricity, including forecasts of major fuel inputs and sensitivity analyses;

(E) A forecast of loads of the electric company's Oregon cost-of-service consumers covering at least the period of the longest-lived generating resource;

(F) The estimated fair market value of the Oregon share of each generating resource; and

(G) For a multi-state electric company, how the electric company proposes to allocate a share of its generating resources to Oregon. The multi-state electric company must also propose a fixed Oregon-allocated generating resource share based on the following factors:

(i) A forecasted allocation of each generating resource for a 12 month period as determined by the Commission, using traditional allocation methods recognized by the Commission;

(ii) The projected potential changes in Oregon share, due to alternative inter-jurisdictional allocation methods, over the life of each resource absent implementation of these rules; and

(iii) The change in risk borne by parties by fixing the Oregon share of generating resource.

(b) Recommended Valuation Methodology. The resource plan must identify, for each generating resource, or portion thereof if the resource meets the criteria for mixed status, whether the Oregon share of each generating resource should be:

(A) Retained in the electric company's Oregon revenue requirement for the purpose of serving Oregon cost-of-service consumers and administratively valued through a process to be specified by rule;

(B) Sold through the auction process specified in OAR 860-038-0100, and if so:

(i) The general terms and conditions that should apply to the sale, including but not limited to, a prototype purchase and sale agreement; and

(ii) Any sales incentives that the electric company proposes to apply to Oregon nonresidential consumers for the Oregon nonresidential consumers' share of the generating resource. Such incentives may be structured to encourage the electric company to follow the recommended timeline provided under subsection (3)(d) of this rule; or

(C) Removed from the electric company's Oregon revenue requirement and administratively valued through a process to be specified by rule, and if so, any incentive to apply to Oregon nonresidential consumers for removing the nonresidential consumers' share of the generating resource from revenue requirement. Such incentives may be structured to encourage the electric company to follow the recommended timeline provided under subsection (3)(d) of this rule.

(c) Results of the Resource Plan. The resource plan must identify the impacts of implementing it, including the following:

(A) The approximate load/resource balance, and the availability of each generating resource based on the electric company's current and forecasted load for Oregon cost-of-service consumers;

(B) The estimated rates to each Oregon customer class that will result from implementation of the resource plan, including:

(i) The amount of estimated transition charges and credits;

(ii) A comparison to the current effective rates of the electric company as of the date of filing; and

(iii) An estimate of the cost-of-service rates for cost-of-service consumers 10 years after implementation of the resource plan.

(C) How the resource plan is consistent with the purposes of SB 1149 in that the plan:

(i) Facilitates a fully competitive market;

(ii) Provides consumers fair, non-discriminatory access to competitive markets; and

(iii) Retains the benefits of low-cost resources for consumers.

(D) Any other implications of the resource plan that could help inform the Commissioners in their decision.

(d) Process. The electric company must develop the resource plan in a public process designed to inform and solicit input from Commission staff, representatives of Oregon residential, small nonresidential and large nonresidential consumers, and other interested parties.

(4) The Commission must consider the electric company's recommended resource plan in a contested case proceeding. The Commission's order must identify those resources that, at the option of the electric company, may be auctioned immediately, before any Commission decision to waive the requirements for a cost-of-service rate for any consumers under ORS 757.603(1)(b) and before final administrative valuation of other resources and potential modification of the electric company's Resource Plan. The Commission's order must also approve, modify, or reject the resource plan.

(a) If the Commission modifies the resource plan, the electric company will have 30 days from the date of the Commission's order to accept or reject the modifications. If the electric company rejects

the Commission's modifications, the electric company must file a second recommended resource plan within 60 days of the date of rejection;

(b) If the Commission rejects the resource plan, the order rejecting the plan must specifically describe the deficiencies in the resource plan. In that event, the electric company must file a second recommended resource plan within 60 days of the order rejecting the original plan;

(c) If the Commission modifies the second recommended resource plan, the electric company will have 30 days from the date of the order to accept or reject the modifications. If the electric company rejects the Commission's modifications, future attempts at reaching a resource plan may be initiated by either the electric company or the Commission. The timelines outlined in subsection (4)(a) of this rule shall apply once a new resource plan is submitted or modifications to a former plan are suggested.

(5) A resource plan that has been recommended by the electric company and approved by the Commission, or modified by the Commission and accepted by the electric company, is referred to in these rules as a "Resource Plan." The Resource Plan may encompass one plan or a set of plan options corresponding to different assumptions about consumer eligibility for cost-of-service rates. The electric company must implement the Resource Plan consistent with OAR 860-038-0100 and a process for administrative valuation to be specified by rule. The ongoing valuation method, as described in OAR 860-038-0140, will be used to establish transition charges and credits for resources that have not been sold or administratively valued.

(6) For a multi-state electric company, pending the implementation of a Resource Plan and establishing final values for generating resources in accordance with these rules, the following will guide developing rates for Oregon consumers of the electric company for the period March 1, 2002, through December 31, 2003:

(a) Cost-of-service rates will be based upon traditional allocation methods;

(b) Transition charges or credits shall not include assumed costs and revenues of the portion of generating resources not needed to serve Oregon loads associated with residential and small nonresidential consumers choosing portfolio access, small nonresidential consumers choosing direct access or standard offer rate options, and large nonresidential consumers when, and to the extent, the costs and revenues of the generating resources that are not needed are recognized and included in the electric company's revenue requirement in another state, less the costs and revenues of such generating resources which have been included in the electric company's revenue requirement by another state prior to October 1, 2001; and

(c) Beginning January 1, 2004, transition charges and transition credits will be calculated without regard to subsection (7)(b) of this rule.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 5-2001(Temp), f. & cert. ef. 2-6-01 thru 8-4-01; PUC 6-2001(Temp), f. & cert. ef. 3-1-01 thru 8-27-01; PUC 12-2001(Temp), f. & cert. ef. 5-4-01 thru 10-30-01; PUC 14-2001, f. & cert. ef. 5-25-01; PUC 20-2001, f. 8-1-01, cert. ef. 8-4-01; PUC 24-2001, f. 10-25-01, cert. ef. 10-31-01; PUC 18-2002, f. & cert. ef. 10-17-02

## 860-038-0100

### Auction Process

(1) Each electric company must follow the process provided in sections (2) and (3) of this rule for all generating resources, or portions thereof, that it intends to sell pursuant to the Resource Plan, unless it presents to the Commission, and the Commission approves, an alternative process.

(2) The auction process will be the process adopted by the Commission in Order No. 99-765, except that affiliates of the electric company may participate in the auction as eligible buyers, in which case the auction will be subject to such requirements to assure independent decision making as the Commission may determine.

(3) Unless otherwise provided in the Resource Plan, the electric company shall not begin its auction process until the Commission issues a final order valuing all of the electric company's Oregon share of generating resources pursuant to a process to be established by rule.

(4) Notwithstanding section (3) of this rule, the electric company may, at its option, immediately auction all or a portion of generating resources identified by the Commission as exempt from section

(3) of this rule. Any such auction will be subject to ORS 757.480 and OAR 860-027-0025.

(5) The electric company shall recover through the transition balancing account the costs of an auction process, including but not limited to the reasonable costs of investment bankers and other advisors.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.600 - 757.667  
Hist.: PUC 17-2000, f. & cert. ef. 9-29-00

#### 860-038-0140

##### Ongoing Valuation

(1) An electric company may use an ongoing valuation method to determine the transition costs or transition credits applicable to Oregon cost-of-service consumers until otherwise directed by the Commission. Except in the circumstances set forth in OAR 860-038-0080(5) and (6), an electric company will use an ongoing valuation method to determine the transition charges or transition credits applicable to Oregon cost-of-service consumers.

(2) Each electric company will propose one or more ongoing valuation methods in the rate filings. Each method must, at a minimum, address:

- (a) How and over what period the electric company proposes to establish the fixed costs of included generating resources;
- (b) How and over what period the electric company proposes to establish the variable costs of included generating resources;
- (c) How and over what period the electric company proposes to establish the availability and output of included generating resources;
- (d) How and over what period the electric company proposes to establish the market value of the output of included generating resources; and

(e) How and when revisions should be made in the method.

(3) An electric company may propose to include in its tariffs expedited procedures, which shall include an opportunity for public comment, for determining the costs and value of an electric company's generating resources for purposes of determining transition charges and credits applicable under this rule.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.600 - 757.667  
Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 18-2002, f. & cert. ef. 10-17-02

#### 860-038-0160

##### Transition Costs and Credits

(1) Except as provided for in OAR 860-038-0080(6), each Oregon retail electricity consumer of an electric company will receive a transition credit or pay a transition charge equal to 100 percent of the net value of the Oregon share of all economic utility investments and all uneconomic utility investments of the electric company as determined pursuant to an auction, an administrative valuation, or an ongoing valuation. The transition charge or credit applicable to a retail electricity consumer may change to reflect the duration of the service option chosen by the consumer but will not change based on the supplier of the electricity services chosen by the consumer.

(2) Once a Resource Plan is implemented, the Oregon cost-of-service consumers of an electric company will bear the entire revenue requirement of generating resources, or portions thereof, retained in that electric company's Oregon revenue requirement for the purpose of serving those Oregon consumers. In addition, the electric company will:

- (a) Collect from its Oregon cost-of-service consumers the funds necessary to provide any transition credits related to such resources to its other Oregon consumers exclusive of incentive payments; or
- (b) Credit to its Oregon cost-of-service consumers the funds received from any transition charges related to such resources from its other Oregon consumers exclusive of incentive payments.

(3) For purposes of determining transition costs and transition credits:

(a) The value of generating resources determined through an auction conducted pursuant to OAR 860-038-0100 will equal the proceeds of such auction, less any reasonable costs of sale and any tax effects of the sale;

(b) The value applicable to Oregon nonresidential consumers will be reduced for any incentives provided under the Resource Plan;

(c) The net value of generating resources determined through an auction conducted pursuant to OAR 860-038-0100 will equal the Ore-

gon residential and nonresidential respective values of generating resources minus the book value as recorded for regulatory purposes;

(d) The value of generating resources determined through an administrative valuation conducted pursuant to a process to be specified by rule will equal the final valuation inclusive of any tax effects less allowed appraisal costs. The treatment of the tax effects of a potential future sale of an administratively valued asset will be addressed in a future rulemaking;

(e) The value applicable to Oregon nonresidential consumers will be reduced for any incentives provided under the Resource Plan; and

(f) The net value of generating resources determined through an administrative valuation conducted pursuant to a process to be specified by rule will equal the Oregon residential and nonresidential respective values of generating resources minus the book value as recorded for regulatory purposes.

(4) For the Oregon share of: (a) economic and uneconomic investments that are not resources, (b) other regulatory assets, (c) demand side management assets existing as of March 1, 2002, and (d) retired or abandoned plant for which the Commission established cost recovery before July 23, 1999, transition costs or benefits will be allocated 100 percent to Oregon retail electricity consumers.

(5) Each electric company must maintain records to properly record and amortize transition costs and transition credits using a transition balancing account. Any unamortized balance in the transition balancing account will accrue interest at the electric company's Oregon authorized cost of capital.

(6) The transition costs or transition benefits allocated to a customer class for a specific time period will be charged or credited to Oregon retail electricity consumers on a weather normalized equal cents per kilowatt-hour basis adjusted for losses. To the extent weather-normalized kilowatt-hour sales are not known, as of March 1, 2002, estimates will be used until relevant data are available.

(7) The Commission will determine the period of payment or recovery of transition costs or transition credits, provided such period will not exceed 10 years.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040 & 757.600 - 757.667  
Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 18-2002, f. & cert. ef. 10-17-02

#### 860-038-0200

##### Unbundling

(1) This rule is designed to ensure compliance with ORS 757.642 by directing electric companies to separately identify their embedded costs on a function-by-function basis. The electric company must unbundle its costs in a manner that facilitates the development of rates described in OARs 860-038-0220 to 860-038-0280. The electric company must unbundle costs associated with functions that a retail electricity consumer may self-supply or purchase from an entity other than the electric company. The calculation of unbundled rates is beyond the scope of this rule.

(2) Each electric company must separately identify its costs of each of the following functions:

- (a) Generation;
- (b) Transmission services;
- (c) Distribution services;
- (d) Ancillary services;
- (e) Consumer services;
- (A) Billing services;
- (B) Metering services; and
- (C) Other consumer services;

(f) Retail services, examples of which are listed in section (3) of this rule;

(g) Investment in public purposes; and

(h) Any other function the Commission deems appropriate.

(3) Examples of Retail Services include but are not limited to the marketing, sale, design, construction, installation or retrofitting, financing, operation and maintenance, warranty and repair of or consulting with respect to:

(a) Energy consuming equipment located on the consumer's premises;

(b) Provision of technical assistance relating to any customer-premises process or device that consumes electricity, including energy audits;

(c) Transformation equipment, power-generation equipment, and related services located on the consumer's premises that are not owned by the electric company;

(d) Building or facility design and related engineering services, including building shell construction, renovation or improvement, or analysis and design of energy-related industrial processes;

(e) Facilities operations and management; and

(f) Other activities identified by the Commission.

(4) Each electric company must separately identify costs as direct or indirect for each function. Costs must be directly assigned where information is available. To the extent possible, all costs must be assigned to the functions based on cost causation. Common costs and taxes allocated to each of these functions must be separately identified. A return on investment must be calculated and stated separately for each function.

(5) Each electric company must file its functionally unbundled costs with its general rate filings and results of operations reports filed with the Commission. The electric company filing must clearly identify the allocation factor(s) used to functionalize each rate base, expense, and revenue item. All allocation and functionalization procedures adopted by the Commission for an electric company must be used in subsequent filings until expressly modified by the Commission.

(6) Each electric company must make an initial filing complying with the rules in this Division by October 1, 2000. This filing shall use the financial results for a test year that encompasses all or part of the 12-month period beginning October 1, 2001.

(7) Each electric company must use the allocators and cost functionalization procedures set forth in section (9) of this rule to functionally unbundle its respective costs. If an electric company proposes to assign, allocate, or reclassify costs using cost functionalization procedures that differ from those contained herein, the electric company must include in its filing, testimony that:

(a) Supports the allocation factors and procedures the electric company proposes to use to unbundle its costs;

(b) Justifies the deviation from the cost functionalization procedures; and

(c) Presents the results of the allocation factors and procedures set forth in this rule and the results of the alternative factors and procedures that are proposed.

(8) The cost allocation factors in section (7) of this rule are subject to Commission review and approval.

(9) Costs must be directly assigned to the functions identified in section (2) of this rule where information is available. The allocation procedures presented below are to be used to functionalize those costs that cannot otherwise be charged directly to the appropriate function.

(a) Rate Base:

(A) Intangible Plant (FERC Accounts 301-303) must be directly assigned where possible. The remainder of the costs must be allocated to the appropriate functions using the O&M Labor allocator;

(B) Generation Plant (FERC Accounts 310-346) must be directly assigned to the Generation function, except that some costs may need to be reclassified;

(C) Transmission Plant (FERC Accounts 350-359) must be directly assigned to the Transmission function, except that some costs may need to be reclassified. Transmission Plant is defined as both transmission lines and transmission substation equipment operating at voltages of at least 46 kilovolts, as well as transmission facilities and transmission substation equipment operating at voltages of at least 34.5 kilovolts if such facilities terminate within enclosed substations;

(D) Distribution Plant (FERC Accounts 360-373) must be directly assigned to the Distribution function, except that some costs may need to be reclassified;

(E) General Plant (FERC Accounts 389-399) must be directly assigned where possible. The remainder of the costs must be allocated to the appropriate functions using the O&M Labor allocator;

(F) Accumulated Depreciation must be functionalized in the same manner as the respective Plant accounts; and

(G) Each electric company must review its other rate base items and where possible directly assign the costs to the appropriate function. The remaining costs must be allocated to the appropriate functions using general allocators to be determined in each company's filing;

(b) Operation and Maintenance (O&M) Expense:

(A) Production O&M Expense (FERC Accounts 500-557) must be directly assigned to the Generation function, except that some costs may need to be reclassified;

(B) Transmission O&M Expense (FERC Accounts 560-574) must be directly assigned to the Transmission function, except that some costs may need to be reclassified;

(C) Distribution O&M Expense (FERC Accounts 580-598) must be directly assigned to the Distribution function, except that some costs may need to be reclassified;

(D) Customer Accounts O&M Expense (FERC Accounts 901-905) must be directly assigned where possible. The remainder of the costs must be allocated to the appropriate functions using general allocators to be determined in each company's filing, except for FERC Account 904, Uncollectible Accounts, which must be allocated using a Total Revenue Requirement allocator;

(E) Customer Service and Information O&M Expense (FERC Accounts 906-910) must be directly assigned where possible. The remainder of the costs must be allocated to the appropriate functions using general allocators to be determined in each company's filing;

(F) Sales O&M Expense (FERC Accounts 911-917) must be allocated exclusively to functions determined to be competitive by the Commission; and

(G) Administrative and General O&M Expense (FERC Accounts 920-935) must be allocated to the appropriate functions using the O&M Labor allocator; and

(c) Other Expenses:

(A) Amortization and Depreciation Expenses must be functionalized in the same manner as the respective Plant accounts; and

(B) All taxes must be identified as Federal, State, or Local Taxes;

(i) Taxes other than income taxes must be allocated in the following manner:

(I) Ad Valorem Taxes: Net Plant in Service;

(II) Payroll Taxes: Labor;

(III) Revenue Related Taxes: Total Revenue Requirement; and

(IV) Franchise Fees & Privilege Taxes: Distribution function; and  
(ii) Income Tax Expenses must be calculated for each of the functions identified in section (2) of this rule; and

(d) Revenues: In a rate filing, required revenues must be calculated for each unbundling category using the traditional revenue requirement calculation methodology (recovery of costs plus a return on investment). For reporting purposes, revenues must be assigned to the appropriate category per the underlying tariff for which they were collected. Common revenues that cannot be directly assigned must be functionalized using the Net Plant allocation factor.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00

## 860-038-0220

### Portfolio Options

(1) An electric company must provide each residential consumer who is connected to its distribution system with a portfolio of product and pricing options. An eligible customer may enroll in or exit renewable resource options at any time, subject to any switching fees approved by the Commission under subsection (8)(e) of this rule. The minimum term for customers enrolling in a market-based option is 12 months. Portfolio options will not be offered to large nonresidential consumers.

(2) Sections (3) through (8) of this rule apply to residential portfolio product and pricing options.

(3) By July 1 of each year, the Portfolio Options Committee will recommend portfolio options to the Commission that will be effective January 1 of the following year. Each recommended portfolio option shall specify a service period from 12 months to 36 months. The Commission is not bound by the recommendations of the Portfolio Options Committee.

(4) The portfolio must include at least one product and rate that reflects renewable energy resources and one market-based rate. The Portfolio Options Committee will recommend the resource content of each renewable energy resource product. At least one renewable energy resource product will contain "significant new" resources. The Portfolio Options Committee will recommend a definition of "significant" based on an evaluation of resource availability, resource cost, and other factors. The portfolio options may include options for the collection of funds for future renewable resource purchases or collection of funds

for energy related environmental mitigation measures such as salmon recovery.

(5) Each electric company is responsible for administering the options, including but not limited to marketing and billing.

(6) Each electric company must acquire the renewable supply resources necessary to provide the renewable energy resources product through a Commission-approved bidding process or other Commission-approved means. Each electric company may acquire the resources necessary to provide the other product and pricing options at its discretion.

(7) Four months prior to the implementation of the portfolio product and pricing options an electric company must file tariffs for its portfolio options.

(8) This section applies to residential and small nonresidential product and pricing options. An electric company must develop portfolio rates as follows:

(a) The portfolio rates must be based on the unbundled costs identified through the application of OAR 860-038-0200;

(b) The portfolio rates for any class of customer must be based on the unbundled costs to serve that class;

(c) The portfolio rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the portfolio rate option;

(d) The portfolio rates must exclude electric company costs that are avoided when a consumer chooses to be served under the portfolio rate option;

(e) An electric company may impose nonrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

(9) This section applies to small nonresidential portfolio product and pricing options. The Portfolio Options Committee will recommend portfolio product and pricing options, if any, to the Commission for approval. The electric company must implement small nonresidential portfolio product and pricing options adopted by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 13-2004, f. & cert. ef. 8-31-04

## 860-038-0240

### Cost-of-Service Rate

(1) After March 1, 2002, an electric company must provide a cost-of-service rate option to cost-of-service consumers. Only one cost-of-service rate option may be offered by schedule to each class of consumers.

(2) Unless a new residential or small nonresidential consumer elects otherwise, the electric company will serve the consumer under the cost-of-service option.

(3) An electric company must develop cost-of-service rates as follows:

(a) The cost-of service rates must be based on the unbundled costs identified through the application of OAR 860-038-0200;

(b) The cost-of-service rates for any class of consumer must be based on the unbundled costs to serve that class;

(c) The cost-of-service rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the cost-of-service rate option;

(d) The cost-of-service rates must exclude electric company costs that are avoided when a consumer chooses to be served under the cost-of-service rate option;

(e) An electric company may impose nonrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

(4) An electric company must separately state in its tariffs transition charges or credits and the rates associated with the revenue requirement of retained resources and purchases assigned to residential and small nonresidential consumers.

(5) An electric company must separately identify in its tariffs other credits or charges such as the credit associated with power supply contracts with the Bonneville Power Administration.

(6) The electric company must design its cost-of-service rate for nonresidential consumers and one-time charges associated with returning to a cost-of-service rate so that residential consumers served under a cost-of-service rate are not assigned costs associated with other classes of consumers switching between direct access or standard offer and the cost-of-service rate. The electric company may limit switching through enrollment periods or by requiring minimum terms of service.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 18-2002, f. & cert. ef. 10-17-02

## 860-038-0250

### Nonresidential Standard Offer

(1) By March 1, 2002, each electric company shall provide one or more standard offer rate options to large nonresidential retail electricity consumers and one or more standard offer rate options to small nonresidential consumers. Each electric company must designate one of the standard offers available to each customer class as the non-emergency default supply option.

(2) An electric company must develop the standard offer rate as follows:

(a) A standard offer rate option shall be a tariff approved by the Commission, which is priced based on supply purchases made on a competitive basis from the wholesale market plus the transition credit or transition charge, if any, and all other unbundled costs of providing standard offer service. A standard offer rate must reflect the full costs of providing standard offer service;

(b) The standard offer rates for any class of customer must be based on the unbundled costs to serve that class;

(c) The standard offer rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the standard offer rate option;

(d) The standard offer rates must exclude electric company costs that are avoided when a consumer chooses to be served under the standard offer rate option;

(e) An electric company may impose nonrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

(g) An electric company may offer a cost-of-service rate to large nonresidential consumers in lieu of a one-year standard offer rate option.

(3) Nonresidential cost-of-service consumers who do not choose direct access or a specific standard offer service will be served under the cost-of-service rate until they choose another service option. Large nonresidential consumers who are not cost-of-service consumers will be served under the non-emergency default supply option unless they elect direct access or a different standard offer service.

(4) An electric company must, for nonresidential consumers, identify any applicable transition charges or credits.

(5) An electric company must separately identify other credits or charges such as the credit associated with power supply contracts with the Bonneville Power Administration.

(6) The notice and deposit requirements listed in OAR 860-038-0280(4) and (5) apply to standard offer service.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 18-2002, f. & cert. ef. 10-17-02

## 860-038-0260

### Direct Access

(1) By March 1, 2002, an electric company must allow nonresidential consumers to choose direct access.

(2) An electric company must develop direct access rates as follows:

(a) The direct access rates must be based on the unbundled costs identified through the application of OAR 860-038-0200;

(b) The direct access rates for any class of customer must be based on the unbundled costs to serve that class;

(c) The direct access rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the direct access rate option;

(d) The direct access rates must exclude electric company costs that are avoided when a consumer chooses to be served under the direct access rate option;

(e) An electric company may impose nonrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

(3) After March 1, 2002, subject to Commission approval, an electric company may enter into special contracts for distribution service but may not enter into special contracts for power supply.

(4) Operation of a special contract approved by the Commission prior to March 1, 2002, between an electric company and a retail electricity consumer that extends beyond March 1, 2002, will be governed by the terms of the contract.

(5) Line extension charges must be independent of the power supply option elected by a retail electricity consumer.

(6) Unless directed otherwise by the Commission, the electric company must standardize its direct access tariffs and contracts to the extent possible to conform to industry and national standards, and should include at least the following:

(a) Definitions of services;

(b) Rules for application for direct access service, including notice periods;

(c) Rules for switching among forms of service, including notice periods;

(d) Termination rights;

(e) Dispute resolution;

(f) Descriptions of required ancillary services, including statements of the conditions on self-supply, if any;

(g) Billing and payment;

(h) Liability and indemnification;

(i) All necessary service schedules and technical requirements; and

(j) Other provisions that the Commission determines are reasonable and necessary for direct access.

(7) An electric company must file direct access tariffs that are practical and workable in combination with tariffs required by the Federal Energy Regulatory Commission (FERC). The electric company must:

(a) Ensure the minimization of differences in service definitions between retail direct-access and wholesale open-access;

(b) Ensure that services that are permitted to be self-supplied by the FERC are permitted to be self-supplied by the electric company, unless the company obtains an exception from the Commission; and

(c) State rates, terms, and conditions in its Oregon tariffs that properly work in conjunction with the electric company's FERC tariffs and, if not identical to, can at least be easily compared with those required by the FERC.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-01; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 18-2002, f. & cert. ef. 10-17-02

#### 860-038-0275

##### Direct Access Annual Announcement and Election Period

(1) On November 15 of each year (or the next business day if November 15 falls on a Saturday, Sunday, or legal holiday as defined by ORS 187.010), each electric company must announce the prices to be charged for electricity services in the next calendar year. The date on which the electric companies are required to announce such prices is "the Announcement Date."

(2) Electric companies must allow retail electricity customers that are eligible for direct access at least five business days after the Announcement Date to choose service under a cost-of-service rate option or to purchase electricity from either an electricity service supplier through direct access or an electric company through a standard rate offer.

(3) At least five business days before the Announcement Date, electric companies and electricity service suppliers must announce, and post on their websites, estimates of prices for electricity services in the subsequent calendar year or subsequent contract period if different than a calendar year:

(a) All electric companies and electricity service suppliers must continuously post the estimated prices announced under this rule on their websites until the Announcement Date.

(b) Electric companies' estimated prices will be the companies' estimates of the electricity service prices that will be in effect for the calendar year subsequent to the Announcement Date.

(c) Electricity service suppliers will determine estimated prices that will allow electricity consumers to compare the estimated prices of the electric company and electricity service supplier for the subsequent calendar year, or contract period if different than a calendar year.

(d) Announcing estimated prices as required by this rule creates no obligation on the part of the electric companies and/or electricity service suppliers to provide electricity service to any consumer at the estimated prices.

(e) If an electricity service supplier does not intend to sell electricity services in the subsequent calendar year or contract period, the electricity service supplier must announce, and post on a web site, that it does not intend to sell electricity services in the subsequent calendar year or contract period.

(4) Thirty days prior to the Announcement Date, electric companies and electricity service suppliers shall provide to the Commission a URL address for a website where the individual electric company or electricity service supplier will post prices and announcements as prescribed by this rule. The Commission will post the URL addresses on its website.

(5) At least once each year, electric companies must offer customers a multi-year direct access program with an associated fixed transition adjustment.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 13-2004, f. & cert. ef. 8-31-04

#### 860-038-0280

##### Default Supply

(1) Default supply is an alternative available to nonresidential consumers served by direct access.

(2) The two types of default supply are emergency as defined in OAR 860-038-0005 and standard offer as defined in OAR 860-038-0250.

(3) Each electric company must provide the emergency option as follows:

(a) Emergency default service commences when an electric company is informed by the ESS or nonresidential consumer, or becomes aware, that an ESS is no longer providing service; and

(b) Each electric company must file tariffs with the Commission that include the emergency service option. An electric company must design emergency service rates to recover its costs of providing such service.

(4) A nonresidential consumer must give the electric company notice of intent to purchase or terminate purchase of standard offer service consistent with the applicable tariff provision.

(5) An electric company may require a deposit from a consumer applying to receive emergency default service or standard offer service. The electric company may disconnect a consumer receiving default service or standard offer service subject to OAR 860-021-0305 and 860-021-0505.

(6) Unless otherwise directed by a nonresidential consumer, an electric company must move an emergency service consumer from emergency default service to standard offer service within five business days of the nonresidential consumer's initial purchase of emergency default service. This provision does not limit a consumer's right to return from emergency default service or standard offer service to direct access.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 18-2002, f. & cert. ef. 10-17-02

**860-038-0300**

**Electric Company and Electricity Service Suppliers Labeling Requirements**

(1) The purpose of this rule is to establish requirements for electric companies and electricity service suppliers to provide price, power source, and environmental impact information necessary for consumers to exercise informed choice.

(2) For each service or product it offers, an electric company must provide price, power source, and environmental impact information to all residential consumers at least quarterly. The information must be based on the available service options. The information must be supplied using a format prescribed by the Commission. An electric company must also include on every bill a URL address, if available, for a world-wide web site where this information is displayed. The electric company must report price information for each service or product for residential consumers as the average monthly bill and price per kilowatt-hour for monthly usage levels of 250, 500, 1,000 and 2,000 kilowatt-hours, for the available service options.

(3) An electric company and an electricity service supplier must provide price, power source and environmental impact information on or with bills to nonresidential consumers using a format prescribed by the Commission. The electric company or electricity service supplier must provide a URL address, if available, for a world-wide web site that displays the power source and environmental impact information for the products sold to consumers. An electric company and an electricity service supplier must report price information for nonresidential consumers on each bill as follows:

(a) The price and amount due for each service or product that a nonresidential consumer is purchasing;

(b) The rates and amount of state and local taxes or fees, if any, imposed on the nonresidential consumer;

(c) The amount of any public purpose charge; and

(d) The amount of any transition charge or credit.

(4) For power supplied through its own generating resources, the electric company must report power source and environmental impact information based on the company's own generating resources, not the net system power mix. An electric company's own resources include company-owned resources and wholesale purchases from specific generating units, less wholesale sales from specific generating units. An electric company's own resources do not include the non-energy attributes associated with purchases under the provisions of a net metering tariff or other power production tariff unless the electric company has separately contracted for the purchase of the Tradable Renewable Certificates. For net market purchases, the electric company must report power source and environmental impact information based on the net system power mix. The electric company must report power source and environmental impact information for standard offer sales based on the net system power mix.

(5) For purposes of power source and environmental impact reporting, an ESS should use the net system power mix for the current calendar year unless the ESS is able to demonstrate a different power source and environmental impact. An ESS demonstration of a different mix must be based on projections of the mix to be supplied during the current calendar year. Power source must be reported as the percentages of the total product supply including the following:

(a) Coal;

(b) Hydroelectricity;

(c) Natural gas;

(d) Nuclear; and

(e) Other fuels including but not limited to new renewable resources, if over 1.5 percent of the total fuel mix.

(6) Environmental impact must be reported for all retail electric consumers using the annual emission factors for the most recent available calendar year applied to the expected production level for each source of supply included in the electricity product. Environment impacts reported must include at least:

(a) Carbon dioxide, measured in lbs./kWh of CO<sub>2</sub> emissions;

(b) Sulfur dioxide, measured in lbs./kWh of SO<sub>2</sub> emissions;

(c) Nitrogen oxides, measured in lbs./kWh of NO<sub>x</sub> emissions; and

(d) Spent nuclear fuel measured in mg/kWh of spent fuel.

(7) Every bill to a direct access consumer must contain the ESS's and the electric company's toll-free number for inquiries and instruc-

tions as to those services and safety issues for which the consumer should directly contact the electric company.

(8) The ESS must provide price, power source, and environmental impact in all contracts and marketing information.

(9) The electric company must provide price, power source, and environmental impact in all standard offer marketing information.

(10) Beginning April 1, 2003, and on April 1st thereafter for the prior calendar year, each electric company, and each ESS making any claim other than net system power mix, must file a reconciliation report on forms prescribed by the Commission. The report must provide a comparison of the fuel mix and emissions of all of the seller's certificates, purchase or generation with the claimed fuel mix and emissions of all of the seller's products and sales.

(11) Each ESS and electric company owning or operating generation facilities shall keep and report such operating data about its generation of electricity as may be specified by order of the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 7-2005, f. & cert. ef. 11-30-05

**860-038-0340**

**Electric Company Ancillary Services**

(1) This rule applies to those ancillary services that are not within the exclusive jurisdiction of the Federal Energy Regulatory Commission.

(2) The Commission may require an electric company to provide ancillary services to facilitate direct access to consumers.

(3) The Commission may decide which ancillary services a direct access consumer may purchase directly from electricity service suppliers.

(4) An electric company must provide ancillary services to facilitate direct access that are comparable to the services it provides for its own retail electricity consumers.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00

**860-038-0360**

**Electric Company Customer Metering Requirements**

(1) The electric company must own/lease, install, test, read, remove, and maintain a customer meter for each retail electricity consumer receiving metered distribution services.

(2) The electric company's meter reading must be the basis for the electric company charges billed to the retail electricity consumer. The electric company must provide the results of the meter reading to the consumer's ESS in a timely manner, comparable to the provision of such information to its own non-distribution divisions, affiliates, and related parties for direct access customers served by those divisions, affiliates, and related parties. The electric company must not disclose meter data to any entity or person other than the retail electricity consumer, the consumer's ESS, or the Commission unless written authorization is obtained from the retail electricity consumer.

(3) The electric company must make available a standard meter and metering services to each retail electricity consumer that are adequate for the billing and other requirements of the electric company.

(4) The electric company must offer meters and metering services, other than the standard meters and metering services, that are necessary for an ESS to provide service to a retail electricity consumer. If an ESS requests that the electric company offer a specific meter capability or function or metering service, the electric company must consider and approve or deny the request within 10 business days. If the request is approved, the electric company must file rates with the Commission for such meter or metering service within 30 days. If the request is denied, the ESS may appeal the decision to the Commission. The electric company must establish charges for different meter capabilities or functions and metering services subject to approval by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00

**860-038-0380**

**Aggregation**

(1) For purposes of ensuring compliance with Commission standards for consumer protection, an aggregator must be registered by the

Commission to combine retail electricity consumers in the service territory of an electric company into a buying group for the purchase of electricity and related services.

(2) The initial registration fee is \$50.

(3) The annual renewal fee is \$25.

(4) At a minimum, the aggregator must supply the following information:

(a) Name of aggregator;

(b) Name, address, and phone number of the aggregator's regulatory contact; and

(c) A signed statement from an authorized representative of the aggregator declaring that all information provided is true and correct.

(5) At a minimum, the aggregator must attest that it will:

(a) Furnish to consumers a toll-free number or local number that is staffed during normal business hours to enable a consumer to resolve complaints or billing disputes and a statement of the aggregator's terms and conditions that detail the consumer's rights and responsibilities;

(b) Comply with all applicable state and federal laws, rules, and Commission orders applicable to aggregators; and

(c) Adequately respond to Commission information requests applicable to aggregators and related to the provisions of this rule within 10 business days.

(6) An aggregator must take all reasonable steps, including corrective actions, to ensure that persons or agents hired by the aggregator, including but not limited to officers, directors, agents, employees, representatives, successors, and assigns adhere at all times to the terms of all state and federal laws, rules, and Commission orders applicable to aggregators.

(7) Annually, 30 days prior to expiration, a registered aggregator must notify the Commission that it will not be renewing its registration or it must renew its registration by submitting an application for renewal that includes an update of information specified in section (4) of this rule. The aggregator must state that it continues to attest that it will meet the requirements of section (5) of this rule. The authorized representative of the aggregator must state that all information provided is true and correct and sign the renewal application. The renewal is granted for a period of one year from the expiration date of the prior registration.

(8) No aggregator may make material misrepresentations in consumer solicitations, agreements, or in the administration of consumer contracts. Aggregators may not engage in dishonesty, fraud, or deceit that benefits the aggregator or disadvantages consumers.

(9) An aggregator must promptly report to the Commission any circumstances or events that materially alter information provided to the Commission in the registration process.

(10) The electric company must allow aggregation of electricity loads, pursuant to ORS 757, which may include aggregation of demand for other services available under direct access.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 2-2001, f. & cert. ef. 1-5-01

## 860-038-0400

### Electricity Service Supplier Certification Requirements

(1) An electricity service supplier (ESS) must be certified by the Commission to sell electricity services to consumers.

(2) An ESS must be certified as either scheduling or nonscheduling as prescribed in OAR 860-038-0410.

(3) The initial certification fee is \$400.

(4) The annual renewal fee is \$200.

(5) An ESS applicant must file an application that contains the following information:

(a) Name of applicant, including owners, directors, partners, and officers, with a description of the work experience of key personnel in the sale, procurement, and billing of energy services or similar products;

(b) Name, address, and phone number of the ESS applicant's regulatory contact;

(c) Proof of authorization to do business in the state of Oregon;

(d) Dun and Bradstreet number, if available;

(e) Confirmation that the applicant (including owners, directors, partners, and officers) has not violated consumer protection laws or rules in the past three years;

(f) Audited financial statements of the ESS applicant (and its guarantor, if applicable) and credit reports consisting of:

(A) A balance sheet, income statement, and statement of cash flow for each of the three years preceding the filing and for the interim quarters between the end of the last audited year and the filing date; or

(B) For an applicant that has been in operation for less than three years, the audited balance sheets, income statements, and statements of cash flow for each of the years the company was in operation and for the interim quarters between the end of the last audited year and the filing date; or

(C) For an applicant that has been in operation for less than 12 months on the date the application is filed, such financial statements as are kept in the regular course of the applicant's business operations and pro-forma financial statements for a period of not less than 36 months.

(D) If audited financial statements are unavailable, the applicant may submit unaudited financial statements for each of the three years preceding the filing and for the interim quarters between the end of the last unaudited year and the filing date. The applicant must also submit a statement explaining why audited statements are not available.

(g) A showing of creditworthiness through documentation of tangible assets in excess of liabilities (i.e., tangible net worth) of at least \$1,000,000 on its most recent balance sheet and demonstration of either its own investment grade credit rating pursuant to (A) or fulfillment of bond/guaranty requirements pursuant to (B):

(A) Investment grade rating means a suitable rating on the long term, senior unsecured debt, or if this rating is unavailable, the corporate rating, of a major credit rating agency.

(B) An applicant may use any of the financial instruments listed below, in an amount commensurate with the services and products it intends to offer, to satisfy the credit requirements established by this rule.

(i) Cash or cash equivalent (i.e., cashier's check);

(ii) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 18 months;

(iii) A bond in a form acceptable to the Commission, irrevocable for a period of at least 18 months; or

(iv) A guaranty in a form acceptable to the Commission issued by a principal of the applicant or a corporation holding controlling interest in the applicant, which is irrevocable for at least 18 months. To the extent the applicant relies on a guaranty, the applicant must provide financial evidence sufficient to demonstrate that the lender or guarantor possesses the cash or cash equivalent needed to fund the guaranty.

(h) A showing of technical competence in energy procurement and delivery, information systems, billing & collection, and if subject to the requirements of section 16 of this rule, safety & engineering;

(i) A showing that its financial and technical competence is consistent with the services and products it intends to offer, and the targeted customer class(es) and geographical areas; and

(j) A statement as to whether the ESS is applying for certification as a scheduling or nonscheduling ESS and information documenting an ability to comply to the requirements of OAR 860-038-0410; and

(k) The authorized representative of the applicant must state that all information provided is true and correct and sign the application.

(6) At a minimum, an applicant must attest that it will:

(a) Furnish to consumers a toll-free number or local number that is staffed during normal business hours to enable a consumer to resolve complaints or billing disputes and a statement of the ESS's terms and conditions that detail the customer's rights and responsibilities;

(b) Comply with all applicable laws, rules, Commission orders, and electric company tariffs;

(c) Maintain insurance coverage, security bond, or other financial assurance commensurate with the types and numbers of consumers and loads being served, meet any other credit requirements contained in the electric company's tariffs, and cover creditors for a minimum of 90 days from the date of cancellation; and

(d) Adequately respond to Commission information requests within 10 business days.

(7) As conditions for certification, an ESS must agree to:

(a) Enter into an agreement or agreements with each respective electric company to assign to the electric companies any federal system benefits available from the Bonneville Power Administration to

the residential and small-farm customers who receive distribution from an electric company and are served by the ESS; and

(b) Not enter into a Residential Sale and Purchase Agreement with the Bonneville Power Administration pursuant to Section 5(c) of the Pacific Northwest Power Act concerning federal system benefits available to residential and small farm customers receiving distribution from an electric company.

(8) Staff will notify interested persons of the application, allow 14 days from the date of notification for the filing of protests to the application (through submission of an email or letter to the staff), review the application, and make a recommendation to the Commission whether the application should be approved or denied.

(9) An applicant or a protesting party may request a hearing within seven calendar days of the date of the staff recommendation. Upon determining the appropriateness of the request, the Commission will conduct a hearing as provided for in division 014 of the Commission's rules.

(10) The Commission may issue an Order granting the applicant's request for certification upon a finding that:

(a) The applicant paid the initial certification PUC fee, as required by OAR 860-038-0400(3);

(b) The applicant filed an application containing accurate, complete and satisfactory information that demonstrates it meets the requirements to be certified as an ESS.

(11) If the Commission grants the application, the Commission may include any conditions it deems reasonable and necessary. Further, upon granting the application, the Commission will certify the ESS for a period of one year from the date of the order.

(12) An ESS must take all reasonable steps, including corrective actions, to ensure that persons or agents hired by the ESS adhere at all times to the terms of all laws, rules, Commission orders, and electric company tariffs applicable to the ESS.

(13) An ESS must notify the Commission that it will not be renewing its certification or it must renew its certification each year as follows:

(a) An ESS must submit its application for renewal 30 days prior to the expiration date of its current certificate;

(b) In its application for renewal the ESS must include the renewal fee, update the information specified in subsections (5)(a), (b), (i), and (j) of this rule, and state whether it violated or is currently being investigated for violation of any attestation made under the current certificate. The ESS must state that it continues to attest that it will meet the requirements of sections (6) and (7) of this rule. The authorized representative of the ESS must state that all information provided is true and correct and sign the renewal application;

(c) If the Commission takes no action on the renewal application, the renewal is granted for a period of one year from the expiration date of the prior certificate;

(d) If a written complaint is filed, or if on the Commission's own motion, the Commission has reason to believe the renewal should not be granted, the Commission will conduct a revocation proceeding per section (14) of this rule. The renewal applicant will be considered temporarily certified during the pending revocation proceeding.

(14) Upon review of a written complaint or on its own motion the Commission may, after reasonable notice and opportunity for hearing, revoke the certification of an ESS for reasons including, but not limited to, the following:

(a) Material misrepresentations in its application for certification or in any report of material changes in the facts upon which the certification was based;

(b) Material misrepresentations in customer solicitations, agreements, or in the administration of customer contracts;

(c) Dishonesty, fraud, or deceit that benefits the ESS or disadvantages customers;

(d) Demonstrated lack of financial, or operational capability; or

(e) Violation of agreements stated in sections (6) and (7) of this rule.

(15) An ESS must promptly report to the Commission any circumstances or events that materially alter information provided to the Commission in the certification or renewal process or otherwise materially impacts their ability to reasonably serve electricity consumers in Oregon.

(16) Each ESS that owns, operates, or controls electrical supply lines and facilities subject to ORS 757.035 must have and maintain its

entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service. Each such ESS must inspect its lines and facilities in such a manner and with such frequency as may be needed to ensure a reasonably complete knowledge about their condition and adequacy at all times. Such record must be kept of the conditions found as the ESS considers necessary to properly maintain its system, unless in special cases the Commission specifies a more complete record. The ESS must have written plans describing its inspection, operation, and maintenance programs necessary to ensure the safety and reliability of the facilities. The written plans and records required herein must be made available to the Commission upon request. The ESS must report serious injuries to persons or property in accordance with ORS 860-024-0050.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 23-2001, f. & cert. ef. 10-11-01; PUC 7-2005, f. & cert. ef. 11-30-05

## 860-038-0410

### Scheduling

(1) Each ESS shall be certified as either scheduling or non-scheduling.

(2) Each scheduling ESS shall schedule the resources to serve the direct access loads for which it has scheduling responsibility with the appropriate control area operators. Scheduling shall be in accordance with all generally accepted regional and Western Electricity Coordinating Council rules and guidelines.

(a) Only a single scheduling ESS may schedule all the resources and other services for any single direct access consumer. Multiple ESSs may provide services to any individual direct access consumer, but only through a single scheduling ESS;

(b) Each scheduling ESS shall be responsible for ensuring that all necessary point-to-point transmission services have been acquired across the facilities of third parties, above and beyond the network integration transmission service provided on the facilities of the electric company to serve the direct access loads for which it has scheduling responsibility;

(c) Each scheduling ESS shall be responsible for forecasting the requirements for serving the direct access loads for which it has scheduling responsibility and arranging for resources;

(d) Each scheduling ESS shall be responsible for settling imbalances with electric companies for the total resources and direct access loads for which it has scheduling responsibility.

(3) A nonscheduling ESS must contract with a scheduling ESS or control area operator for all scheduling services.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 7-2005, f. & cert. ef. 11-30-05

## 860-038-0420

### Electricity Service Supplier Consumer Protection

(1) All advertising and marketing activities by electricity service suppliers must be truthful, not misleading, and in compliance with Oregon's Unfair Trade Practices Act (ORS 646.605 through 646.656).

(2) No person or entity may offer to sell electricity services available pursuant to direct access unless it has been certified by the Commission as an ESS.

(3) Sections (3) through (6) of this rule do not apply when a consumer is changing suppliers. Sections (3) through (6) apply when an ESS is discontinuing service to a consumer. An ESS must give its customers at least 10 business days written notice, as prescribed in section (5) of this rule, before the ESS may discontinue service.

(4) The written notice of intent to discontinue service to the ESS customer must be printed in boldface type and must state in easy to understand language:

(a) The name and contact information of the ESS and the service location intended to be discontinued;

(b) The reasons for the proposed discontinuance;

(c) The earliest date for discontinuance; and

(d) The amount necessary to be paid to avoid discontinuance of services, if applicable.

(5) The ESS must serve the notice of discontinuance in person or send it by first class mail to the last known address of the ESS customer. Service is complete on the date of personal delivery or, if service is by U. S. mail, on the day after the U. S. Postal Service postmark or the day after the date of postage metering.

(6) Not less than 10 business days prior to discontinuance of service to an ESS customer, the ESS must notify the serving electric company, by mutually acceptable means, that the ESS will no longer be supplying energy to that ESS customer. If an ESS and a consumer waive the 10-day notice, pursuant to section (8) of this rule, the ESS must still notify the electric company of its intent to discontinue a consumer's service as soon as it notifies the consumer that service is to be discontinued. The written notice must contain the following:

- (a) Name and contact information of the ESS that is discontinuing service, the consumer's name, account number, service location and, if applicable, the electric company's unique location identifier;
- (b) Earliest date for discontinuance; and
- (c) Necessary information applicable to the transfer of the consumer's service.

(7) This section of this rule applies to any alleged violation of the rules in Division 038 applicable to electricity service suppliers.

(a) When a dispute occurs between an ESS and its consumer about any bill, charge, or service, the electricity service supplier must acknowledge the dispute with a response to the consumer within five calendar days. The ESS must thoroughly investigate the matter and report the results of its investigation to the ESS consumer within 15 calendar days. If the ESS is unable to resolve the matter with its consumer within 15 calendar days, the ESS must advise the consumer of the option to request internal supervisory review of unregulated disputes and to request the Commission's assistance in resolving a dispute within the Commission's jurisdiction;

(b) An ESS customer may request the Commission's assistance in resolving a dispute within the Commission's jurisdiction by contacting the Commission's Consumer Services Division. The Commission must notify the electricity service supplier upon receipt of such a request;

(c) The Commission's Consumer Services Division will assist the complainant and the electricity service supplier in an effort to reach an informal resolution of the dispute. The ESS must provide the Commission with the necessary information to assist in resolving the dispute. The electricity service supplier must answer the registered ESS dispute within 15 calendar days of service of the complaint;

(d) If a registered ESS dispute cannot be resolved informally, the Commission's Consumer Services Division will advise the complainant of the right to file a formal written complaint with the Commission. The complaint must state the facts of the dispute and the relief requested. The electricity service supplier must answer the complaint within 15 calendar days of service of the complaint. The matter will then be set for expedited hearing. A hearing may be held on less than 10 calendar days' notice when good cause is shown.

(8) Within the terms of a written contract, a consumer and an ESS may agree to arrangements other than those specified in sections (3), (4), (5), and (6) of this rule, if the following requirements are met:

(a) The contract must include an exact copy of the paragraphs in subsection (8)(b) of this rule. The paragraphs must be in bold type of at least 12-font size. Immediately following the paragraphs, there must be a line for the consumer's signature and the date.

(b) The agreement must contain the following notice:  
IF YOU SIGN THIS AGREEMENT, YOU MAY GIVE UP CERTAIN RIGHTS YOU HAVE UNDER OAR 860-038-0420(3) through (6). These rules state: The ESS must insert the complete text of OAR 860-038-0420(3) through (6). THIS MAY AFFECT YOUR ABILITY TO ARRANGE FOR OTHER ENERGY SERVICE.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 11-2003, f. & cert. ef. 7-3-03

## 860-038-0445

### Coordination of Supplier Changes and Billing

(1) This rule applies to electricity service suppliers and to electric companies providing service options to nonresidential consumers. For purposes of this rule, "supplier" means an electricity service supplier or electric company.

(2) An ESS may not provide service to a consumer without a written contract or electronic authorization between the customer and the ESS and the submission by the ESS of a Direct Access Service Request (DASR) to the electric company to switch such customer from its then-current supplier to the ESS. The DASR must contain all information required by the electric company's direct access tariff to effect the switching of such customer's supplier.

(3) An ESS or electric company shall not submit a DASR unless it possesses written or electronic authorization from the consumer.

(4) The ESS must maintain records sufficient to demonstrate compliance with this rule including a copy of the contract authorizing the change in supplier for a period of one year from the date the customer authorized a change in electric service to such supplier. Upon request, the supplier must make such records available to the electric company or the Commission.

(5) An acceptable DASR must conform to industry electronic data interchange protocols.

(6) The written contract or electronic authorization must contain, at a minimum, the following information:

- (a) The consumer's name, current account number, and an electric company's unique location identifier, if available;
- (b) The service address and the consumer's mailing address;
- (c) The type of service being purchased;
- (d) The name of the new supplier that will be supplying the service;

(e) The effective date and time of change of supplier;

(f) The consumer's billing preference (electric company only, electricity service supplier only, or both);

(g) Identification and explanation of any nonrecurring charges associated with the change of supplier;

(h) A statement to the effect that the consumer is authorized to make the change and authorizes the change to the new supplier; and

(i) The consumer's signature or electronic authorization and title.

(7) Any change of supplier without an acceptable DASR conforming to the requirements of section (5) of this rule and a written contract or electronic authorization conforming to the requirements of section (6) of this rule shall constitute a violation of this rule.

(8) An ESS must obtain acceptance of its DASR at least 10 business days prior to the effective date of the change.

(9) An electric company must accept or reject a DASR and provide notification to the ESS, within three business days of submission. Upon acceptance of a DASR, the electric company must notify the current supplier of the change within three business days.

(10) If the change date of suppliers does not coincide with the serving electric company's established meter reading schedule, the new supplier will pay the applicable tariffed charges to the electric company necessary to accommodate an off-cycle meter reading.

(11) Each supplier must supply, upon request from a consumer, a copy of the service description and rates applicable to the type or types of service furnished to the consumer.

(12) A consumer will receive a consolidated bill from the electric company unless the consumer chooses one of the following:

- (a) A separate bill from every individual supplier that provides products or services to the consumer; or
- (b) A consolidated bill from an ESS.

(13) An electric company and the ESS must cooperate to ensure the exchange of information in a timely manner necessary for billing purposes. The electric company or the ESS may request the Commission's assistance in resolving a dispute within the Commission's jurisdiction by contacting the Commission's Consumer Services Division. The Commission will notify the appropriate company upon receipt of such a request. The appropriate company must answer the registered dispute within 15 calendar days of service of the complaint.

(14) If the consumer receives a consolidated billing from an electric company, the ESS must provide the information to the electric company required in OAR 860-038-0300, and the electric company must provide that information on the bill.

(15) If the consumer chooses a consolidated billing by the ESS, the electric company must provide the information to the ESS required in OAR 860-038-0300 and the ESS must provide that information on the bill.

(16) An electric company and ESS must cooperate to resolve any consumer complaint.

(17) An electric company and the ESS must exchange all necessary information to facilitate the billing of consumers and the exchange of funds using industry electronic data interchange protocols. If there is a dispute regarding the information exchange, the ESS or the electric company may appeal to the Commission for assistance in resolving the dispute.

(18) The party contracting with the electric company for the delivery of services shall be obligated to pay the electric company's

transmission and distribution charges in accordance with the electric company's applicable tariffs. When the ESS is the contracting party, the direct access customer's failure to pay the ESS the full amount of ESS charges shall not relieve the ESS of its obligation to the electric company for delivery services in accordance with the electric company's direct access tariff. The electric company shall have access to the security posted by the ESS in accordance with the terms of the electric company's direct access tariff in the event the ESS defaults in the payment of electric company charges to the ESS.

(19) Absent a contract with the electric company described in section (18) of this rule, when payment, including amounts for regulated charges, is made directly to an electricity service supplier or electric company, the payment must be allocated as follows:

- (a) As directed by the nonresidential consumer; or
- (b) Absent specific direction from the nonresidential consumer, in the following sequence:
  - (A) Past due regulated;
  - (B) Current regulated;
  - (C) Past due unregulated charges in proportion to the outstanding balance; and
  - (D) Current unregulated charges in proportion to the outstanding balance; and

(c) If a contractual agreement between an ESS customer and an electricity service supplier dictates payment allocations other than those identified in section (b) of this rule, the electricity service supplier will provide notification with the bill that failure to pay the regulated charges can result in disconnection of service.

(20) Services subject to the jurisdiction of the Commission may not be discontinued, disconnected, or placed in jeopardy because of nonpayment of unregulated charges.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 11-2003, f. & cert. ef. 7-3-03

#### 860-038-0450

##### Location of Underground Facilities

An ESS and its customers shall comply with requirements of chapter 952 regarding the prevention of damage to underground facilities.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.542 - 757.562 & 757.649

Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-038-0460

##### Construction, Safety, and Reporting Standards for Electricity Service Suppliers

An ESS shall comply with the construction, safety, and reporting standards set forth in OAR chapter 860, division 024.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.035, 757.039 & 757.649

Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-038-0470

##### Attachments to Poles and Conduits Owned by Public, Telecommunications, and Consumer-Owned Utilities

Pole and conduit attachments shall comply with the rules set forth in OAR chapter 860, division 028.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.270 - 290, 757.600 - 667 & 759.650 - 675

Hist.: PUC 23-2001, f. & cert. ef. 10-11-01

#### 860-038-0480

##### Public Purposes

(1) Each electric company that offers direct access to its retail electricity consumers and each electricity service supplier that provides electricity services to direct access consumers in the electric company's service territory will collect a public purpose charge from its retail electricity consumers for 10 years beginning on the date direct access is first offered.

(2) Except as provided in section (6) of this rule, electric companies and electricity service suppliers will bill and collect from each of their retail electricity consumers a public purpose charge equal to 3 percent of the total revenues billed to those consumers for electricity services, distribution, ancillary services, metering and billing, transition charges, and other types of costs that were included in electric rates on July 23, 1999.

(3) The electricity service suppliers will remit monthly to each electric company the public purpose charges they collect from the customers of each electric company.

(4) The electricity service suppliers will remit monthly the public purpose charges collected from direct service industrial consumers they serve to the electric company in whose service territory the direct service industrial site is located.

(5) The electric company whose territory abuts the greatest percentage of the site of an aluminum plant that averages more than 100 average megawatts of electricity use per year will collect monthly from the aluminum company a public purpose charge. The aluminum company will remit to the appropriate electric company a public purpose charge equal to 1 percent of the total revenue from the sale of electricity services to the aluminum plant from any source. Annually, the aluminum company will submit to the electric company an affidavit from a certified public accountant verifying that the costs for electricity services at the site of the aluminum plant and the remittance of the public purpose charges are accurate for the previous calendar year.

(6) A retail electricity consumer, including an aluminum plant as described in section (5) of this rule, may receive credits against its public purpose charges for qualifying expenditures incurred for new energy conservation and the above-market costs of new renewable energy resources at any site if the following qualifications for becoming a self-directing consumer are met:

(a) The consumer has used more than one average megawatt of electricity at any such site in the prior calendar year; and

(b) The consumer has received final certification from the Oregon Department of Energy for expenditures for new energy conservation and/or new renewable energy resources.

(7) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to July 23, 1999. For energy conservation measures that were started on or after July 23, 1999, but prior to the implementation of direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions is met:

(a) The energy conservation measure did not receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999; or

(b) The energy conservation measure did receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999, but the self-directing consumer repaid the amount of such funding (cost of audit and incentives plus interest) no later than 90 days following the implementation of direct access; provided that, a self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures.

(c) For purposes of this subsection, "started" means that a contract has been executed to install or implement an energy conservation measure.

(8) The Oregon Department of Energy will establish specific rules and procedures that are consistent with these rules for qualifying a self-directing consumer's expenditures.

(9) The electric company will apply the self-direction credit, determined by the Oregon Department of Energy, toward the consumer's public purpose obligation.

(10) Each electric company will establish five separate accounts for the public purpose charges to be funded from its collections of public purpose charges as follows:

- (a) Energy conservation in schools;
- (b) New cost-effective local energy conservation and new market transformation;
- (c) Above-market costs of new renewable energy resources;
- (d) New low-income weatherization; and
- (e) Construction and rehabilitation of low-income housing.

(11) Each electric company will allocate the public purpose funds it collects (billed less uncollectible amounts) from electricity service suppliers and consumers to the five public purpose accounts as follows:

- (a) Energy conservation in schools — 10.0 percent;
- (b) Local and market transformation conservation — 56.7 percent;
- (c) Renewable energy resources — 17.1 percent;

- (d) Low-income weatherization — 11.7 percent; and
- (e) Low-income housing — 4.5 percent.

(12) Each electric company will adjust the accounts for the credits returned to self-directing customers for conservation or renewable resource expenditures certified by the Oregon Department of Energy.

(13) Each electric company will distribute funds from the public purpose accounts at least monthly as follows:

(a) The funds for conservation in schools to the education service districts located in its service territory;

(b) The funds for local and market transformation conservation as directed by the Commission;

(c) The funds for renewable energy resources as directed by the Commission;

(d) The funds for low-income weatherization to the Housing and Community Services Department; and

(e) The funds for low-income housing to the Housing and Community Services Department Revolving Account.

(14) Each electric company will determine by January 1 of each year the allocation of public purpose funds for schools to the Education Service Districts according to the following methodology:

(a) From the Department of Education, collect current total weighted average daily membership (ADMw) as defined in ORS 327.013 and average daily membership (ADM) for each Education Service District that contains schools served by the electric company;

(b) For each of the Education Service Districts, compute the ratio of ADM in schools served by the electric company to total ADM;

(c) For each Education Service District, multiply its total ADMw by the ratio of ADM in schools served by the electric company to total ADM. The result is an estimate of ADMw in schools served by the electric company;

(d) Add the estimates of ADMw for each Education Service District; and

(e) Compute the percentage of the total ADMw represented by each Education Service District. These are the percentages that will be used to allocate the public purpose funds for schools to Education Service Districts for the 12-month period with the exception of 2002 where the funds will be allocated for a 10-month period beginning March 1, 2002. After 2002, the 12-month period will begin on January 1 of each year.

(15) The electric company may be reimbursed for the reasonable administrative costs it incurs to collect and distribute the public purpose funds. Those administrative costs will be deducted from the total amount of public purpose funds collected by the electric company before the funds are allocated to the five public purpose accounts. The electric company will also pay from the total public purpose funds collected or from a specific fund any other administrative costs the Commission directs to be paid for implementation of the public purpose requirements. The entities responsible for administering the public purpose funds will pay for their costs of implementing the public purpose requirements from the public purpose funds they receive from the electric company.

(16) The electric companies and the administrators of the public purpose funds will collect sufficient information so that biennial reports can be made to the Legislature on what has been accomplished with the public purpose funds and how those funds have benefited the consumers of each electric company. Specifically, information must be collected so that the reporting requirements of ORS 757.617 can be fulfilled.

(a) Each electric company must report the total funds collected by source (that is, electric company customers, electricity service suppliers and self-directing consumers) for public purposes, the amounts distributed to the administrators of each public purpose fund, and its administrative costs;

(b) Each administrator of public purpose funds must report, at a minimum:

- (A) The amount of funds received;
- (B) The amount of funds spent;
- (C) Its administrative costs; and

(D) Its results, for example, measures installed, projects funded, energy saved, homes weatherized, and low-income homes built/rehabilitated.

Stat. Authority: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 1-2001, f. & cert. ef. 1-5-01; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 13-2004, f. & cert. ef. 8-31-04; PUC 7-2007, f. & cert. ef. 5-15-07

## 860-038-0500

### Code of Conduct Purpose

The Code of Conduct rules (OAR 860-038-0500 through 860-038-0640) govern the interactions and transactions among the electric company, its Oregon affiliates, and its competitive operations. The Code of Conduct is designed to protect against market abuses and anti-competitive practices by electric companies in the Oregon retail electricity markets.

Stat. Auth.: ORS 183, 756 & 757

Stat. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

## 860-038-0520

### Electric Company Name and Logo

An electric company may allow its Oregon affiliates and its competitive operations the use of its corporate name, trademark, brand, or logo in advertisements of specific electricity services to existing or potential consumers located within the electric company's service area, as long as the Oregon affiliate or its competitive provider includes a disclaimer in its communications. The disclaimer must be written in a bold and conspicuous manner or be clearly audible, as appropriate for the communication medium. The disclaimer must be included in all print, auditory and electronic advertisements.

(1) The disclaimer for an Oregon affiliate must state the following: [Name of Oregon affiliate] is not the same company as {name of electric company} and is not regulated by the Public Utility Commission of Oregon. You do not have to buy {name of Oregon affiliate}'s products or services to continue to receive your current electricity service from {name of electric company}.

(2) The disclaimer for a competitive operation must state the following: 'You do not have to buy {product/service name} to continue to receive your current electricity service from {name of electric company}.'

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

## 860-038-0540

### Consumer Information

(1) Subject to Commission approval, an electric company shall determine the proprietary consumer information that will be made available to its competitive operations, ESSs, affiliates and aggregators. An electric company shall file and maintain a tariff with the Commission that specifies the types of information, along with the prices, terms, conditions, and consent procedures associated with the transfer of such information to the entities described in this section. The provisions of section (1) do not apply to information transferred pursuant to section (2) of this rule.

(2) An electric company shall transfer to the entity that administers the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B), hereinafter known as the Administrator, proprietary consumer information for a consumer whose demand is less than one megawatt (1MW) unless the consumer has opted-out of the information transfer pursuant to section (4) of this rule. A consumer shall be considered a less than 1MW consumer pursuant to criteria established by an electric company through its billing process. The transfer of such information shall be made pursuant to an Information Transfer Agreement, which is executed and maintained by an electric company and the Administrator. An Information Transfer Agreement shall specify:

(a) The necessary database format and information that will be transferred;

(b) The billing period, payment arrangements, and estimations of incremental costs incurred by an electric company for the transfer of the information;

(c) Timelines for an electric company to notify consumers and transfer information to the Administrator;

(d) Timelines for an electric company to provide updates to the Administrator for all of the usage data and revisions to the underlying database information;

(e) A general non-disclosure statement as well as a specific non-disclosure agreement that each Administrator employee and con-

tractor employee shall sign prior to having access to consumer information, including proprietary consumer information;

(f) That the proprietary consumer information will be used by the Administrator to implement, administer, and evaluate energy efficiency and renewable energy programs and will not be used for telemarketing or direct mailings to consumers;

(g) That the release of proprietary consumer information by the Administrator for any other purpose or to any other party shall not be made without consent of the consumer; and

(h) Provisions for modification of the Information Transfer Agreement. If the Administrator and an electric company cannot agree on the terms and conditions of an Information Transfer Agreement, the Commission shall set the terms and conditions based upon input from the Administrator and electric company.

(3) If the Administrator notifies an electric company that the proprietary information supplied by an electric company is insufficient, incomplete, or not usable, the Administrator and electric company will attempt to resolve the issue and if necessary, modify the Information Transfer Agreement. If the Administrator and electric company cannot resolve the issue, the electric company and the Administrator shall promptly seek Commission resolution of the dispute. An electric company shall, at a minimum, transfer the following proprietary consumer information to the Administrator: consumer name, service address, 18 months of the most recent historical usage data provided on a per month basis, point of delivery identification number, and rate schedule for each consumer. An electric company shall also provide information about any energy efficiency program participation and type of space heat used by consumer to the extent that such information is available in the electric company's records. An electric company shall not provide social security numbers, billing and payment history, credit information, tax identification numbers, driver license numbers, life support information, or any medical information. An electric company shall also provide the Administrator with updates for all of the usage data and revisions to the underlying database information on a periodic basis subject to subsection (2)(d) of this rule.

(4) An electric company shall provide consumers whose demand is less than 1MW an opportunity to opt-out of the information transfer. An electric company shall notify the consumers of the opt-out option by direct mail, company newsletter, or other acceptable communication as set forth in the Information Transfer Agreement. The notification shall at a minimum:

- (a) Identify and explain the role of the Administrator;
- (b) Identify the type of proprietary consumer information to be transferred by an electric company; and
- (c) Describe the nature and use of the proprietary consumer information by the Administrator.

(5) An electric company shall notify in writing consumers whose demand is 1MW or greater (over 1MW consumer) to provide an opportunity to opt-in to the information transfer. Consumers shall be considered an over 1 MW consumer pursuant to criteria established by an electric company through its billing process. The notice provided by an electric shall comply with the requirement of section (4) of this rule. For consumers without a usage history, demand may be estimated by an electric company for the purpose of this provision and those consumers projected to meet the 1MW or greater demand shall be included. Consumers having multiple accounts may have their accounts treated as a group for the purpose of this rule and may include or exclude all accounts through one notification process. If the over 1MW consumer does not opt-in to the information transfer, all accounts shall be excluded from the information sharing process. The transfer of proprietary consumer information shall be in accordance with section (2) of this rule and the Information Transfer Agreement. An electric company shall also provide periodic opt-in notification for the over 1MW consumers either as a part of a standard consumer contact discussion or in writing pursuant to the timelines agreed upon in the Information Transfer Agreement and set forth in subsection (2)(c) of this rule.

(6) When an electric company has provided proprietary consumer information to the Administrator in accordance with this rule, an electric company shall not be charged with at-fault complaints filed with Commission's Consumer Services Division with respect to the provision of proprietary consumer information if the Commission finds that the electric company did not violate its tariff, Oregon Administrative Rules, Oregon Revised Statutes, or a Commission Order.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040 & 757.600 - 757.667  
 Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 13-2003(Temp), f. & cert. ef. 7-24-03 thru 1-20-04; PUC 4-2004, f. & cert. ef. 1-15-04

## 860-038-0560

### Treatment of Competitors

(1) An electric company shall treat the competitors of its Oregon affiliates and its competitive operations fairly in all respects and in a manner consistent with the treatment it affords any of its Oregon affiliates or competitive operations in the electric company's:

- (a) Provision of supply;
- (b) Provision of capacity;
- (c) Provision of electricity services;
- (d) Provision of information obtained as a result of providing either electric service to its non-direct access customers within its allocated service territory, or transmission and distribution services to direct access customers;
- (e) Offering of discounts;
- (f) Tariff discretion; and
- (g) Processing requests for electricity related services. This section shall not apply to the provision or joint purchasing of corporate services such as accounting, auditing, financial, legal, or information technology services.

(2) An electric company shall not condition or otherwise tie the provision of any regulated services provided by the electric company, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any regulated services provided by the electric company, to the taking of any electricity services or directly related products from its Oregon affiliates or competitive operations.

(3) An electric company shall not assign a consumer to whom it currently provides electricity services to any of its Oregon affiliates or competitive operations, whether by default, direct assignment, option, or by any other means, unless that means is equally available to all competitors.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040 & 757.600 - 757.667  
 Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

## 860-038-0580

### Prevention of Cross-subsidization Between Competitive Operations and Regulated Operations

(1) Other than information that is routinely made public by an electric company, or for which a tariff has been approved subject to OAR 860-038-0540(1), an electric company must not provide electric company operational or marketing information to its competitive operations unless it makes such information available to ESSs and other entities that provide electricity services or directly related products on identical terms and conditions.

(2) The electric company must identify and separately account for revenues and costs of its competitive operations.

Stat. Auth.: ORS 183, 756 & 757  
 Stats. Implemented: ORS 756.040 & 757.600 - 757.667  
 Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 25-2003, f. & cert. ef. 12-11-03; PUC 6-2006, f. & cert. ef. 5-11-06

## 860-038-0590

### Transmission and Distribution Access

(1) An electric company may be relieved of some or all of the requirements of this rule by placing its transmission facilities under the control of a regional transmission organization consistent with FERC Order No. 2000 and obtaining Commission approval of an exemption.

(2) An ESS may request transmission service, distribution service or ancillary services under standard Commission tariffs and FERC-approved tariffs. The electric company shall coordinate the filings of these tariffs to ensure that all retail and direct access consumers are offered comparable services at comparable prices.

(3) Each electric company shall provide nondiscriminatory access to transmission, distribution and ancillary services, including transmission into import-limited areas and local generation resources within import-limited areas, to serve all retail consumers. An electric company shall not give preference or priority in transmission and distribution pricing, transmission and distribution access, or access to, pricing of, or provision of ancillary services and local generation

resources, to itself or its affiliate relative to persons or entities requesting transmission or distribution access to serve direct access consumers. No preference or priority may be given to, nor any different obligation assigned to, any consumer based solely on whether the consumer is purchasing service from an electric company or an ESS.

(a) Any transmission or distribution capacity to which an electric company has entitlements, by ownership or by contract, for the purpose of serving its Oregon load shall be made available to an electric company and ESSs that are serving such load on at least a pro rata basis. An electric company shall describe in its tariff filings how it proposes to provide substantively comparable transmission and distribution service to all retail consumers at the same or similar rates if:

(A) Access to the electric company's transmission or distribution facilities or entitlements is restricted by contract or by regulatory obligations in other jurisdictions; or

(B) If providing transmission or distribution service on a pro rata basis would result in stranding generating capacity owned or provided through contract by the electric company;

(b) Except for those ancillary services required by FERC to be purchased from an electric company, an ESS may acquire, on behalf of the retail loads for which it is responsible, all ancillary services required relative to the transmission of electricity by any combination of:

(A) Purchases under the electric company's Open Access Transmission Tariff;

(B) Self-provision; or

(C) Purchases from a third party;

(c) Energy imbalance obligations, including the pricing of imbalances and penalties for imbalances, shall be developed to reasonably minimize imbalances and to meet the needs of the direct access market environment. The electric company shall address such energy imbalance obligations in its proposed FERC tariffs. Energy imbalance obligations imposed upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, shall comply with the following:

(A) The obligations shall impose substantively comparable burdens upon ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company, and shall not unreasonably differentiate between consumers that are entitled to direct access on the basis of customer class, provider of the service, or type of access;

(B) The obligations shall recognize the practical scheduling and operational limitations associated with serving retail consumer loads in the direct access environment, but shall require ESSs, including the entity serving the standard offer load, to make reasonable efforts to minimize their energy imbalances on an hourly basis;

(C) The obligations shall be designed with the objective of deterring ESSs, including the entity serving the standard offer load, and consumers purchasing service from the electric company from burdening electric system operation or gaining economic advantage by underscheduling, over-scheduling, under-generating or over-generating. The obligations shall not be punitive in nature; and

(D) The obligations shall enable an electric company and ESSs, including the entity serving the standard offer load, to settle for energy imbalance obligations on a financial basis, unless otherwise mutually agreed to by the parties.

(d) Where local generation is required to operate for electric system security or where there is insufficient transmission import capability to serve retail loads without the use of local generation, the electric company shall make services available from such local generation under its ownership or control to ESSs consistent with the electric company's provision of services to standard offer consumers, residential consumers, and other retail consumers. The electric company shall also specify such obligations in appropriate sales contracts prior to any divestiture of such resources;

(e) The electric company's tariffs shall specify prices, terms, and conditions for scheduling, billing, and settlement. Other functions may be specified as needed;

(f) An electric company's tariffs shall include a dispute resolution process to resolve issues between the electric company and the ESSs that serve the retail load of an electric company in a timely manner. Such processes shall provide that unresolved disputes related to such retail access matters may be appealed to the Commission.

(4) If adherence to OAR 860-038-0590 requires FERC approval of tariff or contract provisions, the electric company must petition FERC for the approval of the tariff or contract provisions within 90 days of the effective date of this rule. Subsequent tariffs or contracts requiring FERC approval will be made in a timely manner.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 7-2001, f. & cert. ef. 3-15-01

## 860-038-0600

### Joint Marketing and Referral Arrangements

(1) For joint marketing, advertising, and promotional activities an electric company shall not:

(a) Provide or acquire leads on behalf of its Oregon affiliates;

(b) Solicit business or acquire information on behalf of its Oregon affiliates;

(c) Give the appearance of speaking or acting on behalf of its Oregon affiliates except that an electric company, pursuant to a customer request, may provide information about electricity services or directly related products offered by the electric company's Oregon affiliates. Prior to providing the information, the electric company must inform the customer that:

(A) Other providers may exist; and

(B) The customer does not have to purchase these electricity services or directly related products from the electric company's Oregon affiliate in order for the customer to continue to receive the customer's current electricity service from the electric company;

(d) Represent to consumers or potential consumers that it can offer electricity services or directly related products from the electric company's Oregon affiliates bundled or packaged with its tariffed services; or

(e) Request authorization from its consumers to pass on proprietary consumer information exclusively to its Oregon affiliates.

(2) An electric company shall not engage in joint marketing, advertising, or promotion of its electricity services or directly related products with those of its Oregon affiliates in a manner that favors the electricity services or directly related products of the Oregon affiliate. Such joint marketing, advertising, or promotion includes, but is not limited to, the following:

(a) Acting or appearing to act on behalf of its Oregon affiliates in any communications and contacts with any existing or potential consumers, subject to the exception in (1)(c) above;

(b) Joint sales calls;

(c) Joint proposals, either as requests for proposals or responses to requests for proposals;

(d) Joint promotional communications or correspondence, except that an electric company may allow its Oregon affiliates access to consumer bill advertising inserts according to the terms of a Commission approved tariff, so long as access to such inserts is made available on the same terms and conditions to unaffiliated entities offering similar services as the Oregon affiliates that use bill inserts; or

(e) Joint presentations at trade shows, conferences, or other marketing events within the state of Oregon.

(3) An electric company may participate in meetings with its Oregon affiliates to discuss technical or operational subjects regarding the electric company's provision of transmission or distribution services to the consumer; but only in the same manner and to the same extent the electric company participates in such meetings with unaffiliated entities and their consumers.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

## 860-038-0620

### Access to Books and Records

(1) An electric company must provide the Commission with full access to all of the electric company's and affiliates' books and records in order to review all transactions between an electric company and its Oregon affiliates.

(2) An electric company and its affiliates shall maintain separate books and records, and, whenever possible, prepare unconsolidated financial statements.

(3) An electric company and its competitive operations shall maintain sufficient records to allow for an audit of the transactions between an electric company and its competitive operations. At its

discretion, the Commission may require an electric company to initiate, at the electric company's expense, an audit of the transactions between an electric company and its competitive operations performed by an independent third party.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

## 860-038-0640

### Compliance Filings

By June 1 of each odd numbered year, an electric company must file a verified report prepared by an independent third-party regarding the electric company's compliance with OAR 860-038-0500 through 860-038-0620 for the prior two calendar years.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 6-2006, f. & cert. ef. 5-11-06

## DIVISION 39

### NET METERING RULES

## 860-039-0005

### Scope and Applicability of Net Metering Facility Rules

(1) OAR 860-039-0010 through 860-039-0080 (the "net metering rules") establish rules governing net metering facilities interconnecting to a public utility as required under ORS 757.300. Net metering is available to a customer-generator only as provided in these rules. These rules do not apply to a public utility that meets the requirements of ORS 757.300(9).

(2) For good cause shown, a person may request the Commission waive any of the net metering facility rules.

(a) A public utility and net metering applicant may mutually agree to reasonable extensions to the required times for notices and submissions of information set forth in these rules for the purpose of allowing efficient and complete review of a net metering application.

(b) If a public utility unilaterally seeks waiver of the timelines set forth in these rules, the Commission must consider the number of pending applications for interconnection review and the type of applications, including review level and facility size.

(3) As used in OAR 860-039-0010 through 860-039-0080:

(a) "ANSI C12.1 standards" means the standards prescribed by the 2001 edition of the American National Standards Institute, Committee C12.1 (ANSI C12.1), entitled "American National Standard for Electric Meters – Code for Electricity Metering," approved by the C12.1 Accredited Standard Committee on July 9, 2001.

(b) "Applicant" means a person who has filed an application to interconnect a net metering facility to an electric distribution system.

(c) "Area network" means a type of electric distribution system served by multiple transformers interconnected in an electrical network circuit in order to provide high reliability of service. This term has the same meaning as the term "secondary grid network" as defined in IEEE standard 1547 Section 4.1.4 (published July 2003).

(d) "Customer-generator" means a customer-generator as defined in ORS 757.300(1)(a).

(e) "Electric distribution system" means that portion of an electric system which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises.

(f) "Equipment package" means a group of components connecting an electric generator with an electric distribution system, and includes all interface equipment including switchgear, inverters, or other interface devices. An equipment package may include an integrated generator or electric production source.

(g) "Fault current" means electrical current that flows through a circuit and is produced by an electrical fault, such as to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase.

(h) "Generation capacity" means the nameplate capacity of the power generating device(s). Generation capacity does not include the effects caused by inefficiencies of power conversion or plant parasitic loads.

(i) "Good utility practice" means a practice, method, policy, or action engaged in or accepted by a significant portion of the electric industry in a region, which a reasonable utility official would expect,

in light of the facts reasonably discernable at the time, to accomplish the desired result reliably, safely and expeditiously.

(j) "IEEE standards" means the standards published in the 2003 edition of the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, entitled "Interconnecting Distributed Resources with Electric Power Systems," approved by the IEEE SA Standards Board on June 12, 2003, and in the 2005 edition of the IEEE Standard 1547.1, entitled "IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems," approved by the IEEE SA Standards Board on June 9, 2005.

(k) "Impact study" means an engineering analysis of the probable impact of a net metering facility on the safety and reliability of the public utility's electric distribution system.

(l) "Interconnection agreement" means an agreement between a customer-generator and a public utility, which governs the connection of the net metering facility to the electric distribution system, as well as the ongoing operation of the net metering facility after it is connected to the system. An interconnection agreement will follow the standard form agreement developed by the public utility and filed with the Commission.

(m) "Interconnection facilities study" means a study conducted by a utility for the customer-generator that determines the additional or upgraded distribution system facilities, the cost of those facilities, and the time schedule required to interconnect the net metering facility to the utility's distribution system.

(n) "Net metering facility" means a net metering facility as defined in ORS 757.300(1)(d).

(o) "Non-residential customer" means a retail electricity consumer that is not a residential customer, except "non-residential customer" does not include a customer who would be a residential customer but for the residency provisions of subsection (r) of this rule.

(p) "Point of common coupling" means the point beyond the customer-generator's meter where the customer-generator facility connects with the electric distribution system.

(q) "Public utility" has the meaning set forth in ORS 757.005 and is limited to a public utility that provides electric service.

(r) "Residential customer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential customer" does not include retail electricity customers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. "Dwelling" includes, but is not limited to, single-family dwellings, separately-metered apartments, adult foster homes, manufactured dwellings, and floating homes.

(s) "Spot network" means a type of electric distribution system that uses two or more inter-tied transformers protected by network protectors to supply an electrical network circuit. A spot network may be used to supply power to a single customer or a small group of customers.

(t) "Written notice" means a required notice sent by the utility via electronic mail if the customer-generator has provided an electronic mail address. If the customer-generator has not provided an electronic mail address, or has requested in writing to be notified by United States mail, or if the utility elects to provide notice by United States mail, then written notices from the utility shall be sent via First Class United States mail. The utility shall be deemed to have fulfilled its duty to respond under these rules on the day it sends the customer-generator notice via electronic mail or deposits such notice in First Class mail. The customer-generator shall be responsible for informing the utility of any changes to its notification address.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.300

Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

## 860-039-0010

### Net Metering Kilowatt Limit

(1) For residential customers of a public utility, these rules apply to net metering facilities that have a generating capacity of 25 kilowatts or less.

(2) For non-residential customers of a public utility, these rules apply to net metering facilities that have a generating capacity of two megawatts or less.

(3) Nothing in these rules is intended to limit the number of net metering facilities per customer-generator so long as the net metering

facilities in aggregate on the customer-generator's contiguous property do not exceed the applicable kilowatt/megawatt limit.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.300

Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### 860-039-0015

##### Installation, Operation, Maintenance, and Testing of Net Metering Facilities

(1) Except for customer-generators established as net metering customers prior to the effective date of this rule, a customer-generator of a public utility must install, operate and maintain a net metering facility in compliance with the IEEE standards.

(2) Except for customer-generators established as net metering customers prior to the effective date of this rule, a customer-generator of a public utility must install and maintain a manual disconnect switch that will disconnect the net metering facility from the public utility's system. The disconnect switch must be a lockable, load-break switch that plainly indicates whether it is in the open or closed position. The disconnect switch must be readily accessible to the public utility at all times and located within 10 feet of the public utility's meter.

(a) For customer services of 600 volts or less, a public utility may not require a disconnect switch for a net metering facility that is inverter-based with a maximum rating as shown below. [Table not included. See ED. NOTE.]

(b) The disconnect switch may be located more than 10 feet from the public utility meter if permanent instructions are posted at the meter indicating the precise location of the disconnect switch. The public utility must approve the location of the disconnect switch prior to the installation of the net metering facility.

(3) The customer-generator's electric service may be disconnected by the public utility entirely if the net metering facility must be physically disconnected for any reason.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.300

Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### 860-039-0020

##### Net Metering Facility Requirements

(1) To qualify for the Level 1 and the Level 2 interconnection review procedures set forth below, a net metering facility must be certified as complying with the following standards, as applicable:

(a) IEEE standards; and

(b) UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems (January 2001).

(2) An equipment package will be considered certified for inter-connected operation if it has been submitted by a manufacturer to a nationally recognized testing and certification laboratory, and has been tested and listed by the laboratory for continuous interactive operation with an electric distribution system in compliance with the applicable codes and standards listed in section (1) of this rule.

(3) If the equipment package has been tested and listed in accordance with this section as an integrated package, which includes a generator or other electric source, the equipment package will be deemed certified, and the public utility will not require further design review, testing or additional equipment.

(4) If the equipment package includes only the interface components (switchgear, inverters, or other interface devices), an interconnection applicant must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and consistent with the testing and listing specified for the package. If the generator or electric source being utilized with the equipment package is consistent with the testing and listing performed by the nationally recognized testing and certification laboratory, the equipment package will be deemed certified, and the public utility will not require further design review, testing or additional equipment.

(5) A net metering facility must be equipped with metering equipment that can measure the flow of electricity in both directions, comply with ANSI C12.1 standards and OAR 860-023-0015. The public utility will install the required metering equipment at the utility's expense.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.300

Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### 860-039-0025

##### Application for Net Metering Interconnection

(1) An application for interconnection review will be submitted on a standard form, available from the public utility and posted on the public utility's website. The application form will require the following types of information:

(a) The name of the applicant and the public utility involved;

(b) The type and specifications of the net metering facility;

(c) The level of interconnection review sought; e.g., Level 1, Level 2 or Level 3;

(d) The contractor who will install the net metering facility;

(e) Equipment certifications;

(f) The anticipated date the net metering facility will be operational; and

(g) Other information that the utility deems is necessary to determine compliance with these net metering rules.

(2) Within three business days after receiving an application for Level 1 or Level 2 interconnection review, the public utility will provide written or electronic mail notice to the applicant that it received the application and whether the application is complete. If the application is incomplete, the written notice will include a list of all of the information needed to complete the application.

(3) An applicant will retain its original queue position for an interconnection request if the applicant resubmits its application at a higher level of review within 30 business days of a utility's denial of the application at a lower level of review.

(4) Each public utility will designate an employee or office from which an applicant can obtain basic application forms and information through an informal process. On request, the public utility must provide all relevant forms, documents, and technical requirements for submittal of a complete application for interconnection review under these net metering rules, as well as specific information necessary to contact the public utility representatives assigned to review the application.

(5) On request, the public utility must meet with an applicant who qualifies for Level 2 or Level 3 interconnection review to assist them in preparing the application.

(6) A public utility will not be responsible for the cost of determining the rating of equipment owned by a customer-generator or of equipment owned by other local customers.

(7) At the time of application, an applicant may choose to simultaneously submit an executed public utility's standard form interconnection agreement.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.300

Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### 860-039-0030

##### Level 1 Net Metering Interconnection Review

(1) A net metering facility meeting the following criteria is eligible for Level 1 interconnection review:

(a) The facility is inverter-based; and

(b) The facility has a capacity of 25 kilowatts or less.

(2) The public utility must approve interconnection under the Level 1 interconnection review procedure if:

(a) The aggregate generation capacity on the distribution circuit to which the net metering facility will interconnect, including the capacity of the net metering facility, will not contribute more than 10 percent to the distribution circuit's maximum fault current at the point on the high voltage (primary) level that is nearest the proposed point of common coupling.

(b) A net metering facility's point of common coupling will not be on a transmission line, a spot network, or an area network.

(c) If a net metering facility is to be connected to a radial distribution circuit, the aggregate generation capacity connected to the circuit, including that of the net metering facility, will not exceed 10 percent (15 percent for solar electric generation) of the circuit's total annual peak load, as most recently measured at the substation.

(d) If a net metering facility is to be connected to a single-phase shared secondary, the aggregate generation capacity connected to the shared secondary, including the net metering facility, will not exceed 20 kilovolt-amps.

(e) If a single-phase net metering facility is to be connected to a transformer center tap neutral of a 240 volt service, the addition of the net metering facility will not create a current imbalance between the

two sides of the 240 volt service of more than 20 percent of nameplate rating of the service transformer.

(3) Within 10 business days after the public utility notifies a Level 1 applicant that the application is complete, the public utility must notify the applicant that:

(a) The net metering facility meets all applicable criteria and the interconnection will be approved upon installation of any required meter upgrade, completion of any required inspection of the facility, and execution of an interconnection agreement; or

(b) The net metering facility has failed to meet one or more of the applicable criteria and the interconnection application is denied.

(4) If a public utility does not notify a Level 1 applicant in writing or by electronic mail whether the interconnection is approved or denied within 20 business days after the receipt of an application, the interconnection will be deemed approved. Interconnections approved under this section remain subject to section 7 below.

(5) Within three business days after sending the notice to an applicant that the proposed interconnection meets the Level 1 requirements, a public utility must notify the applicant whether:

(a) An inspection of the net metering facility for compliance with the net metering rules is required prior to the operation of the facility; and

(b) An interconnection agreement is required for the net metering facilities. If required, the public utility must also execute and send to the applicant a Level 1 interconnection agreement, unless the applicant has already submitted such an agreement with its application for interconnection.

(6) On receipt of any required executed interconnection agreement from the applicant and satisfactory completion of any required inspection, the public utility will approve the interconnection, conditioned on compliance with all applicable building codes.

(7) A customer-generator will notify the public utility of the anticipated start date for operation of the net metering facility at least five business days prior to starting operation, either through the submittal of the interconnection agreement or in a separate notice. If the public utility requires an inspection of the net metering facility, the applicant will not begin operating the facility until satisfactory completion of the inspection.

(8) If an application for Level 1 interconnection review is denied because it does not meet one or more of the applicable requirements in this section, an applicant may resubmit the application under the Level 2 or Level 3 interconnection review procedure, as appropriate.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.300  
Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

## 860-039-0035

### Level 2 Net Metering Interconnection Review

(1) A public utility must apply the following Level 2 interconnection review procedure for an application to interconnect a net metering facility that meets the following criteria:

(a) The facility has a capacity of two megawatts or less; and

(b) The facility does not qualify for or failed to meet applicable Level 1 interconnection review procedures.

(2) The public utility must approve interconnection under the Level 2 interconnection review procedure if:

(a) The aggregate generation capacity on the distribution circuit to which the net metering facility will interconnect, including the capacity of the net metering facility, will not cause any distribution protective equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the electric distribution system, to exceed 90 percent of the short circuit interrupting capability of the equipment. In addition, a net metering facility will not be connected to a circuit that already exceeds 90 percent of the short circuit interrupting capability, prior to interconnection of the facility.

(b) If there are posted transient stability limits to generating units located in the general electrical vicinity of the proposed point of common coupling, including, but not limited to within three or four transmission voltage level busses, the aggregate generation capacity, including the net metering facility, connected to the distribution low voltage side of the substation transformer feeding the distribution circuit containing the point of common coupling will not exceed 10 megawatts.

(c) The aggregate generation capacity connected to the distribution circuit, including the net metering facility, will not contribute more

than 10 percent to the distribution circuit's maximum fault current at the point on the high voltage (primary) level nearest the proposed point of common coupling.

(d) If a net metering facility is to be connected to a radial distribution circuit, the aggregate generation capacity connected to the electric distribution system by non-public utility sources, including the net metering facility, will not exceed 10 percent (or 15 percent for solar electric generation) of the total circuit annual peak load. For the purposes of this subsection, annual peak load will be based on measurements taken over the 12 months previous to the submittal of the application, measured for the circuit at the substation nearest to the net metering facility.

(e) If a net metering facility is to be connected to three-phase, three wire primary public utility distribution lines, a three-phase or single-phase generator will be connected phase-to-phase.

(f) If a net metering facility is to be connected to three-phase, four wire primary public utility distribution lines, a three-phase or single-phase generator will be connected line-to-neutral and will be effectively grounded.

(g) If a net metering facility is to be connected to a single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the net metering facility, will not exceed 20 kilovolt-amps.

(h) If a net metering facility is single-phase and is to be connected to a transformer center tap neutral of a 240 volt service, the addition of the net metering facility will not create a current imbalance between the two sides of the 240 volt service that is greater than 20 percent of the nameplate rating of the service transformer.

(i) A net metering facility's point of common coupling will not be on a transmission line.

(j) If a net metering facility's proposed point of common coupling is on a spot or area network, the interconnection will meet the following additional requirements:

(A) For a net metering facility that will be connected to a spot network circuit, the aggregate generation capacity connected to that spot network from the net metering facilities, and any generating facilities, will not exceed five percent of the spot network's maximum load;

(B) For a net metering facility that utilizes inverter-based protective functions, which will be connected to an area network, the net metering facility, combined with any other generating facilities on the load side of network protective devices, will not exceed 10 percent of the minimum annual load on the network, or 500 kilowatts, whichever is less. For the purposes of this paragraph, the percent of minimum load for solar electric generation net metering facility will be calculated based on the minimum load occurring during an off-peak daylight period; and

(C) For a net metering facility that will be connected to a spot or an area network that does not utilize inverter-based protective functions, or for an inverter-based net metering facility that does not meet the requirements of paragraphs (A) or (B) of this subsection, the net metering facility will utilize low forward power relays or other protection devices that ensure no export of power from the net metering facility, including inadvertent export (under fault conditions) that could adversely affect protective devices on the network.

(3) Within 15 business days after notifying a Level 2 applicant that the application is complete, the public utility must perform an initial review of the proposed interconnection to determine whether the interconnection meets the applicable criteria. During this initial review, the public utility may, at its own expense, conduct any studies or tests it deems necessary to evaluate the proposed interconnection and provide notice to the applicant of one of the following determinations:

(a) The net metering facility meets the applicable requirements and that interconnection will be approved following any required inspection of the facility and fully executed interconnection agreement. Within three business days after this notice, the public utility will provide the applicant with an executable interconnection agreement;

(b) The net metering facility failed to meet one or more of the applicable requirements, but the public utility determined that the net metering facility may be interconnected consistent with safety, reliability, and power quality. In this case, the public utility will notify the applicant that the interconnection will be approved following any required inspection of the facility and fully executed interconnection agreement. Within five business days after this notice, the public

utility will provide the applicant with an executable interconnection agreement;

(c) The net metering facility failed to meet one or more of the applicable requirements, but additional review may enable the public utility to determine that the net metering facility may be interconnected consistent with safety, reliability, and power quality. In such a case, the public utility will offer to perform additional review to determine whether minor modifications to the electric distribution system would enable the interconnection to be made consistent with safety, reliability and power quality. The public utility will provide to the applicant a nonbinding, good faith estimate of the costs of such additional review, or such minor modifications, or both. The public utility will undertake the additional review or modifications only after the applicant consents to pay for the review or modifications, or both; or

(d) The net metering facility failed to meet one or more of the applicable requirements, and that additional review would not enable the public utility to determine that the net metering facility could be interconnected consistent with safety, reliability, and power quality. In such a case, the public utility will notify the applicant that the interconnection application has been denied, and will provide an explanation of the reason(s) for the denial, including a list of additional information, or modifications to the net metering facility, or both, which would be required in order to obtain an approval under Level 2 interconnection procedures.

(4) An applicant that receives an interconnection agreement under subsection (3)(a) or (3)(b) of this rule must:

(a) Execute the agreement and return it to the public utility at least 10 business days prior to starting operation of the net metering facility (unless the public utility does not so require); and

(b) Indicate to the public utility the anticipated start date for operation of the net metering facility.

(5) The public utility may require a public utility inspection of a net metering facility for compliance with these net metering rules prior to operation, and may require and arrange for witness of commissioning tests as set forth in IEEE standards. The public utility must schedule any inspections or tests under this section promptly and within a reasonable time after submittal of the application. The applicant may not begin operating the net metering facility until after the inspection and testing is completed.

(6) Approval of interconnected operation of any Level 2 net metering facility must be conditioned on all of the following occurring:

(a) Approval of the interconnection by the electrical code official with jurisdiction over the interconnection;

(b) Successful completion of any public utility inspection or witnessing, or both, of commissioning tests requested by the public utility; and

(c) Passing of the planned start date provided by the applicant.

(7) If an application for Level 2 interconnection review is denied because it does not meet one or more of the requirements in this section, the applicant may resubmit the application under the Level 3 interconnection review procedure.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.300

Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

## 860-039-0040

### Level 3 Net Metering Interconnection Review

(1) The public utility must apply the Level 3 review procedure for an application to interconnect a net metering facility that meets the following criteria:

(a) The facility has a capacity of two megawatts or less; and

(b) The facility does not qualify or failed to meet Level 2 interconnection review procedures.

(2) Following receipt of a Level 3 application and within three business days of a request from the applicant, the public utility must provide pertinent information to the applicant, such as the available fault current at the proposed interconnection location, the existing peak loading on the lines in the general vicinity of the net metering facility, and the configuration of the distribution lines at the proposed point of common coupling.

(3) Within seven business days after receiving a complete application for Level 3 interconnection review, the public utility must provide an impact study agreement to the applicant, which will include a non-binding, good faith cost estimate for an impact study to be per-

formed by the public utility. The impact study will be conducted in accordance with good utility practice and must:

(a) Detail the impacts to the electric distribution system that would result if the net metering facility were interconnected without modifications to either the net metering facility or to the electric distribution system;

(b) Identify any modifications to the public utility's electric distribution system that would be necessary to accommodate the proposed interconnection; and

(c) Focus on power flows and utility protective devices, including control requirements; and

(d) Include the following elements, as applicable:

(A) A load flow study;

(B) A short-circuit study;

(C) A circuit protection and coordination study;

(D) The impact on the operation of the electric distribution system;

(E) A stability study, along with the conditions that would justify including this element in the impact study;

(F) A voltage collapse study, along with the conditions that would justify including this element in the impact study; and

(G) Additional elements, if approved in writing by Commission staff prior to the impact study.

(4) After the applicant executes the impact study agreement and pays the public utility the amount of the good faith estimate, the public utility will complete the impact study and will notify the applicant within 30 calendar days of one of the following results:

(a) Only minor modifications to the public utility's electric distribution system are necessary to accommodate interconnection. In such a case, the public utility will send the applicant an interconnection agreement that details the scope of the necessary modifications and a non-binding, good faith estimate of their cost; or

(b) Substantial modifications to the public utility's electric distribution system are necessary to accommodate the proposed interconnection. In such a case, the public utility must provide a non-binding, good faith estimate of the cost of the modifications, which must be accurate to within plus or minus 25 percent. In addition, the public utility must offer to conduct, at the applicant's expense, an interconnection facilities study that must identify the types and cost of equipment needed to safely interconnect the applicant's net metering facility.

(5) If the proposed interconnection may affect electric transmission or delivery systems other than those controlled by the public utility, operators of those other systems may require additional studies to determine the potential impact of the interconnection on those systems. If such additional studies are required, the public utility will coordinate the studies but will not be responsible for their timing. The applicant will be responsible for the costs of any such additional studies required by another affected system. Such studies will be conducted only after the applicant has provided written authorization.

(6) If an applicant requests a facilities study under subsection (4)(b), the public utility must provide an interconnection facilities study agreement. The interconnection facilities study agreement must describe the work to be undertaken in the interconnection facilities study and must include a non-binding, good faith estimate of the cost to the applicant for completion of the study. Upon the execution by the applicant of the interconnection facilities study agreement, the public utility will conduct an interconnection facilities study to identify the facilities necessary to safely interconnect the net metering facility with the public utility's electric distribution system, and to propose a non-binding, good faith estimate of the cost of those facilities and the time required to build and install those facilities.

(7) Upon completion of an interconnection facilities study, the public utility must provide the applicant with the results of the study and an executable interconnection agreement. The agreement must list the conditions and facilities necessary for the net metering facility to safely interconnect with the public utility's electric distribution system, and must include a non-binding, good faith estimate of the cost of those facilities and the estimated time required to build and install those facilities.

(8) If the applicant wishes to interconnect, it must execute the interconnection agreement and return it to the public utility at least 10 business days prior to starting operation of the net metering facility (unless the public utility does not so require), pay a deposit of not more than 50 percent of the estimated cost of the facilities identified in the

interconnection facilities study, complete installation of the net metering facility, and agree to pay the public utility the actual installed cost of the facilities needed to interconnect as identified in the interconnection facilities study.

(9) Within 15 business days after notice from the applicant that the net metering facility has been installed, the public utility will inspect the net metering facility and will arrange to witness any commissioning tests required under IEEE standards. The public utility and the applicant will select a date by mutual agreement for the public utility to witness commissioning tests.

(10) If the net metering facility satisfactorily passes required commissioning tests, if any, the public utility must notify the applicant in writing, within three business days after the tests, of one of the following:

(a) The interconnection is approved and the net metering facility may begin operation; or

(b) The interconnection facilities study identified necessary construction that has not been completed, the date upon which the construction will be completed and the date when the net metering facility may begin operation.

(11) If the commissioning tests are not satisfactory, the applicant will repair or replace the unsatisfactory equipment and reschedule a commissioning test.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.300  
Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### 860-039-0045

##### Net Metering Interconnection Fees and Costs

(1) A public utility may not charge an application, or other fee, to an applicant that requests Level 1 interconnection review. However, if an application for Level 1 interconnection review is denied because it does not meet the requirements for Level 1 interconnection review, and the applicant resubmits the application under another review procedure, the public utility may impose a fee for the resubmitted application, consistent with this section.

(2) For a Level 2 interconnection review, the public utility may charge fees of up to \$50.00 plus \$1.00 per kilowatt of the net metering facility's capacity, plus the reasonable cost of any required minor modifications to the electric distribution system or additional review. Costs for such minor modifications or additional review will be based on the public utility's non-binding, good faith estimates and the ultimate actual installed costs. Costs for engineering work done as part of any additional review will not exceed \$100.00 per hour. A public utility may adjust the \$100.00 hourly rate once in January of each year to account for inflation and deflation as measured by the Consumer Price Index.

(3) For a Level 3 interconnection review, the public utility may charge fees of up to \$100.00 plus \$2.00 per kilowatt of the net metering facility's capacity, as well as charges for actual time spent on any required impact or facilities studies. Costs for engineering work done as part of an impact study or interconnection facilities study will not exceed \$100.00 per hour. A public utility may adjust the \$100.00 hourly rate once in January of each year to account for inflation and deflation as measured by the Consumer Price Index. If the public utility must install facilities in order to accommodate the interconnection of the net metering facility, the cost of such facilities will be the responsibility of the applicant.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.300  
Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### 860-039-0050

##### Requirements After Approval of a Net Metering Interconnection

(1) A public utility may not require an applicant whose facility meets the criteria for interconnection approval under the Level 1 or Level 2 interconnection review procedure to perform or pay for additional tests, except if agreed to by the applicant.

(2) A public utility may not charge any fee or other charge for connecting to the public utility's distribution system or for operation of a net metering facility for the purposes of net metering, except for the fees provided for under these net metering rules.

(3) Once a net metering interconnection has been approved under these net metering rules, the public utility may not require a customer-

generator to test or perform maintenance on its facility except for the following:

(a) An annual test in which the net metering facility is disconnected from the public utility's equipment to ensure that the inverter stops delivering power to the grid;

(b) Any manufacturer-recommended testing or maintenance;

(c) Any post-installation testing necessary to ensure compliance with IEEE standards or to ensure safety; and

(d) The customer-generator replaces a major equipment component that is different from the originally installed model.

(4) When an approved net metering facility undergoes maintenance or testing in accordance with the requirements of these net metering rules, the customer-generator must retain written records for seven years documenting the maintenance and the results of testing.

(5) A public utility has the right to inspect a customer-generator's facility after interconnection approval is granted, at reasonable hours and with reasonable prior notice to the customer-generator. If the public utility discovers that the net metering facility is not in compliance with the requirements of these net metering rules, the public utility may require the customer-generator to disconnect the net metering facility until compliance is achieved.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.300  
Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### 860-039-0055

##### Net Metering Billing

(1) Each monthly billing period, the public utility will charge the customer-generator the minimum monthly charge and all applicable charges for the net electricity that the public utility supplied. Subject to sections (2) and (3) of this rule, if in a monthly billing period a customer-generator supplies to the public utility more electricity than the public utility supplies the customer-generator, the public utility will apply the excess kilowatt-hours as a cumulative credit to the customer-generator's next monthly bill. The credit for the excess kilowatt-hours will be applied at the full retail rate for each rate component on the bill that uses kilowatt-hours as the billing determinant.

(2) Unless the public utility and the customer-generator otherwise agree, the annual billing cycle will end at the end of the March billing month of each year. Should the public utility and a customer-generator reach an agreement for a billing cycle ending other than at the end of the March billing month, the public utility must inform the Commission in writing of the alternative billing period within 30 calendar days of the agreement's execution.

(3) The alternative billing period must be for a period of twelve months or less.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.300  
Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### 860-039-0060

##### Excess Energy from Net Metering Facilities

(1) Any unused kilowatt-hour credit accumulated by a customer-generator of a public utility at the conclusion of the annual billing cycle will be transferred, in a manner approved by the Commission, to customers enrolled in the public utility's low-income assistance programs. The public utility will value any unused kilowatt-hour credit at the applicable average annual avoided cost tariff rate.

(2) The customer-generator may not elect to receive a credit or payment for any unused credit accumulated at the conclusion of the annual billing cycle.

(3) The public utility will report in writing to the Commission by July 1 each year the unused kilowatt-hour credits and the dollar amount transferred to the low-income assistance program in the previous billing year.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.300  
Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### 860-039-0065

##### Aggregation of Meters for Net Metering

(1) For the purpose of measuring electricity usage under the net metering program, a public utility must, upon request from a customer-generator, aggregate for billing purposes a meter to which the net metering facility is physically attached ("designated meter") with one

or more meters (“additional meter”) in the manner set out in this section. This rule is mandatory upon the public utility only when:

(a) The additional meter is located on the customer-generator’s contiguous property;

(b) The additional meter is used to measure only electricity used for the customer-generator’s requirements;

(c) The designated meter and the additional meter are subject to the same rate schedule; and

(d) The designated meter and the additional meter are served by the same primary feeder.

(2) A customer-generator must give at least 60 days notice to the utility to request that additional meters be included in meter aggregation. The specific meters must be identified at the time of such request. In the event that more than one additional meter is identified, the customer-generator must designate the rank order for the additional meters to which net metering credits are to be applied, in accordance with section (4).

(3) The aggregation of meters will apply only to charges that use kilowatt-hours as the billing determinant. All other charges applicable to each meter account will be billed to the customer-generator.

(4) If in a monthly billing period the net metering facility supplies more electricity to the public utility than the energy usage recorded by the customer-generator’s designated meter, the utility will apply credits to the next monthly bill for the excess kilowatt-hours first to the designated meter, then to additional meters that have the same charges as the designated meter, and finally to other additional meters.

(5) If an additional meter changes service to a rate schedule that is different than the designated meter, the additional meter is not eligible for net metering credits for the remainder of the billing year and until such time as the additional meter receives service on the same rate schedule as the designated meter.

(6) If the designated meter changes service to a different rate schedule, aggregation of net metering credits is not allowed for the remainder of the billing year and may not occur until such time as the additional meters receive service on the same rate schedule as the designated meter.

(7) With the Commission’s prior approval, a public utility may charge the customer-generator requesting to aggregate meters a reasonable fee to cover the administrative costs of this provision pursuant to a tariff approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.300  
Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### **860-039-0070**

##### **Public Utility Maps, Records and Reports**

(1) Each public utility must maintain current maps and records of customer-generator net metering facilities showing size, location, generator type, and date of installation.

(2) By April 1 of each year, the public utility will submit to the Commission an annual report with the following summary information for the previous year:

(a) The total number of net metering facilities by resource type; and

(b) The total estimated rated generating capacity of net metering facilities by resource type.

(3) Upon request, each public utility must file with the Commission maps, records, and reports to identify, locate and summarize net metering facilities. All maps, records, and reports which the Commission may require the public utility to file must be in a form satisfactory to the Commission.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.300  
Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### **860-039-0075**

##### **Public Utility Not to Limit Net Metering Systems**

A public utility will not limit the cumulative generating capacity of net metering systems in any manner except as expressly ordered by the Commission under ORS 757.300(6).

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.300  
Hist.: PUC 8-2007, f. & cert. ef. 7-27-07

#### **860-039-0080**

##### **Net Metering Insurance**

A public utility will not require a customer-generator whose net metering facility is in compliance with the standards in paragraphs (a) and (b) of ORS 757.300(4) and the safety standards contained in these rules to purchase additional liability insurance or to name the utility as an additional insured on the customer-generator’s liability insurance policy.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.300  
Hist.: PUC 8-2007, f. & cert. ef. 7-27-07