

ISSUED: February 21, 2007

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 511

In the Matter of	)	MEMORANDUM
	)	AND NOTICE OF RULEMAKING
Rulemaking to Adopt and Amend	)	HEARING
Division 011 Rules.	)	

On November 28, 2006, the Public Utility Commission of Oregon (Commission) held a workshop/hearing on the proposed rulemaking in this docket. The Commission opened this docket to codify and clarify agency practice in three areas: (1) filing and review of requests for public records under ORS Chapter 192; (2) treatment of confidential filings in the absence of a protective order; and (3) fees for Commission services and penalties for late payments, late-filed reports, and returned checks.

Based on the discussion with rulemaking participants on November 28<sup>th</sup>, I have revised the proposed rules. A copy of the revised rules is attached for your review. I rearranged the order of the rules; revised the rules on confidential information to expressly limit its application to confidential filings made in the absence of a protective order; and added language to allow a person to use any legal basis for a claim of confidentiality. I also added "submission" with "filing" of documents to recognize that some confidential documents are not officially filed with the Commission.

I also moved sections (5) and (6) from the rule on confidential information to the rule governing public records requests. OAR 860-011-0090 now sets forth the procedures the Commission will use when a public records request seeks disclosure of information designated as confidential, either under a protective order or pursuant to OAR 860-011-0080. I also modified the appeal process to give the party seeking confidentiality ten days to commence court proceedings, and added language to reference how a person can appeal the denial of a public records request. Finally, due to the various legal or contractual restrictions placed on confidential information, I eliminated any Commission retention period for confidential filings.

To allow additional comment on these revised rules, I will conduct a rulemaking hearing as follows:

**DATE:** Tuesday, March 20, 2007

**TIME:** 9:30 AM

**PLACE:** Main Hearing Room  
PUC Building, 1<sup>st</sup> Floor  
Salem, Oregon

Rulemaking participants may also provide written comment on the proposed rules by the close of business on March 28, 2007. I look forward to hearing your comments to help the Commission adopt rules that meet both the needs of the agency and those who appear before it.

Dated at Salem, Oregon, this 21st day of February 2007.

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Michael Grant  
Chief Administrative Law Judge

860-011-0080

**Confidential Information**

**(1) The Commission is committed to protect, from public disclosure, confidential information filed with the Commission or submitted to Commission staff in compliance with this rule. 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) 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." Any failure to comply with these requirements may result in the filing or submission not being accepted as one including confidential information and its return to the provider for correction and resubmission.**

**Schedule of Fees and Charges**

Unless otherwise provided, the Commission will impose the following fees and charges:

(1) Photocopies:

(a) No charge for 20 pages or less, in excess of 20 pages, per page: 25 cents (for example, if 21 pages requested, charge would be \$5 minimum plus 25 cents, for a total of \$5.25).

(b) Other government agencies, per page from first page: 05 cents.

(2) Certification of true copies of public documents (per document certification): \$10.

(3) Maps of specific area boundaries: \$15.

(4) Hearing transcripts: At cost. A copy of a public hearing transcript shall be supplied to a party without cost upon the filing with the Commission of a satisfactory affidavit of indigency, pursuant to ORS 756.521. Such a request shall be filed on a form supplied by the Commission and contain information for the Commission to use to determine the eligibility of the requesting party.

(5) Statistical reports (second and subsequent copies): \$15.

(6) Facsimile transmission (FAX) charges: No charge for first 15 pages transmitted; additional pages, per page: \$1.

(7) Audio recordings: \$5 per package.

(8) Staff research time: At cost.

(9) Annual subscription to all Commission orders or notices of specific hearings will be provided under the following schedule. Subscribers will be notified of renewal requirements on a yearly basis.

Orders: \$100; Hearing Notices: \$50.

Administrative Rules update service: \$75.

(10) Computer services: At cost.

(11) Billing: The Commission may require cash payment before honoring any request. Billings for unpaid balances may accompany mailed copies.

(12) Waiver of fees: No fee shall be charged or collected for copies of published documents furnished to or provided for routine requests for one copy of a Commission order, administrative rules, and general publications. Requests for additional copies will be subject to applicable charges.

(13) Late Fees and Penalties:

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

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

(14) Late Payments:

(a) Interest on Annual Fees: None.

(b) Interest on Residential Service Protection Fund (RSPF): 9 percent per Annum.

(c) Penalty on Annual Fees: 2 Percent per Month.

(d) Penalty on RSPF: 9 percent of Unpaid Fee, up to \$500 maximum per reporting period.

(15) Late 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 Ch. 183, 756, 757 & 759

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

Hist.: PUC 10-1994, f. & ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & ef. 2-21-96 (Order No. 96-043); PUC 3-1996, f & ef. 7-19-96 (Order No. 96-181); PUC 15-1997, f. & ef. 11-20-97 (Order No. 97-443); PUC 16-1998, f. & ef. 10-12-98 (Order No. 98-410); PUC 18-2004, f. & ef. 12-30-04 (Order No. 04-753); PUC 7-2005, f. & ef. 11-30-05 (Order No. 05-1229); PUC 8-2005, f. & ef. 12-21-05 (Order No. 05-1255)

**OAR 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 also will 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 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 Ch. 183, 756, 757 & 759**

**Stats. Implemented: ORS 192.420-192.505**

**Hist.: New**

#### **OAR 860-011-0100**

##### **Commission Publications**

**(1) 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:**

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

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

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

**(d) Bound Volume of Oregon Laws Relating to the Commission: \$15;**

**(e) Maps of specific area boundaries: \$20;**

**(f) Statistical reports: \$15;**

**(g) 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 Ch. 183, 756, 757 & 759**

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

**Hist.: New**

#### **OAR 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 Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 through 756.575

Hist.: New