

Secretary of State

**NOTICE OF PROPOSED RULEMAKING\***

A Statement of Need and Fiscal Impact accompanies this form.

Public Utility Commission

860

Agency and Division

Administrative Rules Chapter Number

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**RULE CAPTION**

In the Matter of a Rulemaking to Delete the Sunset Provision in OAR 860-022-0070.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

**ADOPT:**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**AMEND:**

860-022-0070

**REPEAL:**

**Renumber:** Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**Amend and Renumber:** Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority: ORS**

Chapter 183, 756.040, 757.210 and 757.259

**Other Authority:**

**Statutes Implemented: ORS**

757.210 & 757.259

*Continued on next page*

**Continuation of ... NOTICE OF PROPOSED RULEMAKING\*****RULE SUMMARY**

The spring earnings review established in OAR 860-022-0070(7) was effective for two years beginning 2007 and allowed a potential extension after the second year. However, on October 21, 2008, in its Order No. 08-504, the Commission adopted a Purchased Gas Adjustment Mechanism that now includes an annual spring earnings review. The proposed amendment to OAR 860-022-0070 eliminates the sunset provision (section 7) of the spring earnings review.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

02/23/2009	Close of Business	Diane Davis	diane.davis@state.or.us	12/30/2008
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Last Day (m/d/yyyy) and Time  
for Public Comment

Printed Name

Email Address

Date Filed

Please enter date as m/d/yyyy or mm/dd/yyyy

\*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday.

ARC 923-2003

Secretary of State

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Public Utility Commission

860

Agency and Division

Administrative Rules Chapter Number

In the Matter of a Rulemaking to Delete the Sunset Provision in OAR 860-022-0070.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

a Rulemaking to Delete the Sunset Provision in OAR 860-022-0070.

Statutory Authority: ORS

Chapter 183, 756.040, 757.210 and 757.259

Other Authority:

Stats. Implemented: ORS

757.210 &amp; 757.259

Need for the Rule(s):

The spring earnings review established in OAR 860-022-0070(7) was effective for two years beginning 2007 and allowed a potential extension after the second year. Commission Order 08-504 in Docket UM 1286 adopted a Purchased Gas Adjustment Mechanism that now includes an annual spring earnings review. The mechanism adopted in Order No. 08-504 eliminates the annual fall earnings review and requires that the sunset provision of OAR 860-022-0070 spring earnings review be removed.

Documents Relied Upon, and where they are available:

Commission Order No. 08-504 available online at <http://apps.puc.state.or.us/orders/2008ords/08-504.pdf>*Continued on next page*

**Continuation of ... STATEMENT OF NEED AND FISCAL IMPACT****Fiscal and Economic Impact:**

Any potential impact is the result of the mechanism adopted in Commission Order 08-504. The amendment is proposed to comply with the Commission decision in docket UM 1286.

**Statement of Cost of Compliance:****1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

The economic impact to the Public Utility Commission and the regulated utilities subject to the rule is expected to be negligible because the resulting activities are currently part of the routine operations and can be handled at existing staffing levels. The proposed rules do not directly impact other state agencies, local governments or the general public.

**2. Cost of compliance effect on small business (ORS 183.336):****a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:**

This rule applies to Commission-regulated investor-owned gas utilities. None of these entities are small businesses.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

Because this rulemaking codifies existing requirements, there are no projected additional reporting, recordkeeping, other administrative activities, or professional services required for compliance.

**c. Equipment, supplies, labor and increased administration required for compliance:**

No additional equipment, supplies, labor or increased administration are anticipated for compliance.

**How were small businesses involved in the development of this rule?**

Small businesses were not affected by this rule and were not involved in the development of this rule.

Administrative Rule Advisory Committee consulted?:

Yes  No

If not, why?:

This rule change is dictated by Commission Order 08-504. Interested and impacted persons had opportunity to participate in the Commission docket, UM 1286.

02/23/2009	Close of Business	Diane Davis	diane.davis@state.or.us	12/30/2008
Last Day (m/d/yyyy) and Time for Public Comment		Printed Name	Email Address	Date Filed

Please enter date as m/d/yyyy or mm/dd/yyyy

**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