

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Public Utility Commission	860
Agency and Division	Administrative Rules Chapter Number
Diane Davis	(503) 378-4372
Rules Coordinator	Telephone
PO Box 2148, Salem OR 97308-2148	
Address	

RULE CAPTION

In the Matter of Setting Regulatory Thresholds for Metered Water Systems.

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

November 5, 2009	9:30 a.m.	Public Utility Commission 550 Capitol Street NE Main Hearing Room – 1 st Floor Salem, OR 97301	Shani M. Pines
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: OAR 860-036-0010 and OAR 860-036-0030

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth. : ORS 757.005 and ORS 757.061

Other Auth.: SB 623

Stats. Implemented: ORS 757.005 and 757.061

RULE SUMMARY

This rulemaking is a requirement of SB 623, made into law by the 2009 Legislature. Currently, the Commission has regulatory thresholds for oversight and regulation of water utilities. The current average annual monthly threshold rate for residential and small commercial customers is \$33. The current average annual monthly threshold rate for large commercial water service customers is \$110. The current thresholds do not distinguish between metered and unmetered water utilities. Senate Bill 623 requires that the Commission determine a higher rate threshold for systems that are metered.

The proposed regulatory rate threshold is \$36 average annual monthly water service rate for metered, residential customers and small businesses (meter size one inch or smaller) and \$119 average annual monthly water service rate for metered, large commercial customers (meter size larger than one inch).

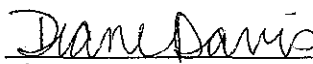
The Commission encourages participants to file written comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 539 on comments and file them by e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418. For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>. Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=15774>.

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at diane.davis@state.or.us or (503) 378-4372 by close of business November 3, 2009, to request a dial -in number. To present oral comment at the hearing, participants must attend in person.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

November 5, 2009, Close of Hearing

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

	Diane Davis	09/15/09
Signature	Printed name	Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

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 Setting Regulatory Thresholds for Metered Water Systems

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

In the Matter of: Setting Regulatory Thresholds for Metered Water Systems

Statutory Authority: ORS 757.005 and ORS 757.061 as amended by SB 623 (2009)

Other Authority: SB 623

Stats. Implemented: ORS 757.005 & 757.061

Need for the Rule(s): This rulemaking is a requirement of SB 623, passed by the 2009 Legislature and signed into law by Governor Kulongoski on June 18, 2009. Currently, the Commission has regulatory thresholds for oversight and regulation of water utilities. The current average annual monthly threshold rate for residential and small commercial customers is \$33. The current average annual monthly threshold rate for large commercial water service customers is \$110. The current thresholds do not distinguish between metered and unmetered water utilities. Senate Bill 623 requires that the Commission determine a higher rate threshold for systems that are metered.

Documents Relied Upon, and where they are available: SB 623 available online at <http://www.leg.state.or.us/09reg/measpdf/sb0600.dir/sb0623.en.pdf>

Fiscal and Economic Impact: Any fiscal and economic impact is created by the signing of SB 623 into law. The proposed rule amendments implement the changes to the ORS 757.061.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): The legislation and resulting proposed rule amendments do not require any new costs of compliance; instead, the intent is to encourage metered water systems for water utilities serving fewer than 500 customers.

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: Approximately 44 small water systems currently subject to service regulation.

Approximately 32 small investor-owned water systems currently exempt from regulation.

There are other small water systems that may be subject to the rule; however, who they are and how many is not known.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: The rule amendments do not require any new reporting, recordkeeping, or other administrative activities for compliance.

c. Equipment, supplies, labor and increased administration required for compliance: The rule amendments do not require any new equipment, supplies, labor, or increased administration for compliance.

How were small businesses involved in the development of this rule? Small businesses were not involved in the development of the rule, but the concept of SB 623 was developed and presented to Senator Johnson by a businessman who owns several small water utilities, some regulated, some not regulated. Senator Johnson ushered the bill through the legislative process.

Administrative Rule Advisory Committee consulted?: No

If not, why?: The rulemaking is required by the Legislature, and it implements the SB 623 amendments to ORS 757.061.

Diane Davis

Signature

Diane Davis

Printed name

09/15/09

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

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) **"Flat rate" means a periodic stated charge for utility service not based on metered quantity of service. Such a rate is used where service is provided on an unmetered basis.**

(17) "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).

(178) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(189) "Large commercial customer" means a commercial customer with a meter or pipe diameter of two inches or larger.

(1920) "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.

(21) **"Metered rate" means a periodic stated charge for utility service that is based on metered quantity of water consumed.**

(202) "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.

(23) "Metered system" means a water system that uses a meter to measure consumption of water and uses a metered rate as a charge to customers.

(214) "People's utility district" (PUD) means a corporation as defined in ORS Chapter 261.

(225) "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.

(236) "Rate-regulated utility" means a water utility that is not exempt from certain financial regulations and conditions under ORS 757.061.

(247) "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.

(258) "Residential customer" means a customer who receives domestic or irrigation water in residential areas and is not considered a commercial customer.

(269) "Small commercial customer" means a commercial customer with a meter or pipe diameter of less than two inches.

(2730) "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.

(31) "Unmetered system" means a water system that does not use a meter to measure consumption and uses a flat rate to charge customers.

(2832) "Utility" means any water utility, except when a more limited scope is explicitly stated.

(2933) "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 & 757.061

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 thur 6-7-04; PUC 7-2004, f. & cert. ef 4-9-04

860-036-0030

Threshold Levels of Rates and Charges for Water Utilities Serving Fewer than 500 Customers

As required by ORS 757.061(7), the Commission adopts the following maximum rates and charges for water utilities that are not rate regulated and are serving fewer than 500 customers:

(1) ~~\$33~~An annual average monthly residential rate of \$33 for unmetered water systems and \$36 for metered water systems;

(2) ~~\$33~~An annual average monthly service rate for small commercial customers with a meter or pipe diameter one inch or less of \$33 for unmetered water systems and \$36 for metered water systems;

(3) ~~\$110~~An annual average monthly service rate for large commercial customers with a meter or pipe diameter larger than one inch of \$110 for unmetered water systems and \$119 for metered water systems; and

(4) Any service connection charge, system impact fee, facilities charge, main line extension, or other similar charge must be cost based. Upon the Commission's request, a water utility must be able to demonstrate compliance with this requirement.

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; PUC 2-2008, f. & cert. ef. 5-30-08