

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

**FILED**  
7-15-15 2:22 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Public Utility Commission of Oregon

Agency and Division

860

Administrative Rules Chapter Number

Diane Davis

(503) 378-4372

Rules Coordinator

Telephone

Public Utility Commission of Oregon, PO Box 1088, Salem, OR 97308-1088

Address

**RULE CAPTION**

In the Matter of Rulemaking to Implement SB 329 Relating to Annual Fee Percentage Rate.

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

**RULEMAKING ACTION**

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

**ADOPT:**

**AMEND:**

860-021-0034, 860-021-0036, 860-032-0095, 860-034-0095, 860-036-0095, 860-037-0095

**REPEAL:**

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

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 183, 756, 757, 759

**Other Authority:**

**Statutes Implemented:**

ORS 756.310, 756.320, 756.350, and Oregon Laws 2015 Ch.289

**RULE SUMMARY**

This rulemaking implements 2015 Senate Bill 329, which raises the maximum annual fee from 0.25 percent to 0.30 percent of a utility's gross operating revenues.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 591 on comments and file them by e-mail to the Commission's Filing Center at [PUC.FilingCenter@state.or.us](mailto:PUC.FilingCenter@state.or.us).

Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=19599>. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_860/860\\_001.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_001.html).

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.

The Agency 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.

08-24-2015 5:00 p.m.

Diane Davis

[diane.davis@state.or.us](mailto:diane.davis@state.or.us)

Last Day (m/d/yyyy) and Time  
for public comment

Rules Coordinator Name

Email Address

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking accompanies this form.

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In the Matter of Rulemaking to Implement SB 329 Relating to Annual Fee Percentage Rate.

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

In the Matter of:

Rulemaking to Implement SB 329 Relating to Annual Fee Percentage Rate

**Statutory Authority:**

ORS 183, 756, 757, 759

**Other Authority:**

**Statutes Implemented:**

ORS 756.310, 756.320, 756.350, and Oregon Laws 2015 Ch.289

**Need for the Rule(s):**

The rule changes are needed to implement SB 329.

**Documents Relied Upon, and where they are available:**

2015 SB 329 and related documents found online at <https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/SB329>

**Fiscal and Economic Impact:**

The fiscal and economic impact result from the change in the law, not from the rule changes to implement the law.

**Statement of Cost of Compliance:**

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

The fiscal and economic impact result from the change in the law, not from the rule changes to implement the law. The potential cost of compliance for regulated utilities is five hundredths of a percent (0.05 percent) of their gross operating revenues. This cost may be passed on to customers through the rates paid to the regulated utilities.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

Regulated utilities (certain electric companies, natural gas and water utilities, and telecommunications providers) are subject to the annual fee. Some of the subject telecommunications providers and water companies are small businesses.

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

If or when the PUC by order changes the percentage rate for the annual fee; subject entities will need to update their systems for collection, reporting, and payment of the fee. This may involve computer programming changes. Historically, the subject utilities have been subject to the potential for a change in the fee percentage rate.

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

If or when the PUC by order changes the percentage rate of the fee assessment, subject entities may incur increased labor and administration to update systems as to the amount of the fee due, but the fee collection, reporting, and payment processes will not otherwise change for the subject entities.

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

Small businesses had the opportunity to be involved in the development of the changes to the law when SB 329 was being considered by the legislature. Small businesses were not involved in the development of the proposed rule amendments to implement the changes to the law.

**Administrative Rule Advisory Committee consulted?:No**

**If not, why?:**

The rulemaking implements fee changes approved by the legislature.

08-24-2015 5:00 p.m.

Diane Davis

diane.davis@state.or.us

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Last Day (m/d/yyyy) and Time  
for public comment

Printed Name

Email Address

**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 860-001-0050, 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 860-001-0050 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 **minimum** 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 three tenths** of one percent (~~0.2503~~) 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 860-001-0050, 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 860-001-0050 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

## **860-032-0095**

### **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) A **minimum** 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 three tenths** of one percent (~~0.2503~~ 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 860-011-0110, 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 860-011-0110 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the 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



**860-034-0095**

**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~~ **minimum** 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 three tenths** of one percent (~~0.250.3~~ 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 860-001-0050, 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 860-001-0050 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

#### **860-036-0095**

##### **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~~ three tenths of one percent (~~0.250.3~~ percent) of the Oregon revenue during the prior calendar year.
  - (b) A late statement fee in accordance with OAR 860-001-0050, 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 860-001-0050 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

### **860-037-0095**

#### **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~~ three tenths of one percent (~~0.250.3~~ percent) of the Oregon revenue during the prior calendar year.
  - (b) A late statement fee in accordance with OAR 860-001-0050, 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 860-001-0050 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