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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 412

In the Matter of a Rulemaking to Amend)
OAR 860-038-0080(5)(a).) ORDER

DISPOSITION: RULE AMENDED; TEMPORARY RULE REPEALED

During a special public meeting held August 29, 2000, the Commission adopted a number of rules implementing SB 1149, including OAR 860-038-0005(28) and OAR 860-038-0080(5). Order No. 00-596, issued September 28, 2000. OAR 860-038-0005(28) established a cutoff of 30 kW (kilowatt) as the dividing line between large and small nonresidential consumers. OAR 860-038-0080(5) provided a process by which an electric company or nonresidential consumer could challenge the 30 kW cutoff, thereby changing the definition of large nonresidential consumer. The Building Owners and Managers' Association – Portland (BOMA) and the City of Portland asked the Commission to open a rulemaking docket under the process outlined in OAR 860-038-0080(5). The Commission granted the request during its regular public meeting on November 7, 2000 (Docket AR 394).

OAR 860-038-0080(5)(a) states that after a request is made to change the definition of large nonresidential consumer, the Commission shall initiate a proceeding "on an expedited basis . . . to obtain a Commission decision on this issue . . . prior to March 1, 2001." On February 20, 2001, Staff recommended that the Commission adopt a temporary rule amending OAR 860-038-0080(5)(a) to eliminate two provisions: (1) the expedited procedure and (2) the March 1, 2001, deadline. At its February 20, 2001, public meeting, the Commission adopted a temporary rule amending OAR 860-038-0080(5) as requested and opened this rulemaking docket to permanently amend OAR 860-038-0080(5). Order No. 01-203, issued March 1, 2001.

Notice of the rulemaking and a statement of the fiscal impact were filed with the Oregon Secretary of State on March 15, 2001. Notice of the rulemaking was published in the Oregon Bulletin on April 1, 2001. Persons were given until April 23, 2001, to file public comment. No comments were filed, and a hearing was not requested.

We agree that the rule should be permanently amended. Deleting the language "on an expedited basis" and "[t]he schedule shall be set to obtain a Commission decision on this issue as soon as practical prior to March 1, 2001" from Section (5)(a) are minor changes which have minimal impact on everyone.

As we stated in Order No. 01-203 adopting the temporary rule, it was apparent to us that additional time was needed to resolve the issue of the cutoff between large and small nonresidential consumers. Specifically, there are outstanding issues and activities involving the development of standard offers by utilities that may affect our determination in AR 394. We hope to obtain additional information about these issues within the coming months.

As we are uncertain as to when these outstanding issues affecting AR 394 will be resolved, we do not want to establish a new decision deadline in our rules. Over the course of drafting rules to comply with SB 1149 requirements, we have needed to modify our rules and adopt temporary rules on several occasions. This usually has occurred when specific dates have been placed in the rules regarding Commission decisions. The process of adopting temporary and new permanent rules to change dates leads to unnecessary work for all involved. Therefore, this rule will remain silent as to when a Commission decision will issue. However, as we previously stated, a target date of early July for a decision in AR 394 is reasonable.

ORDER

IT IS ORDERED that:

1. Proposed amended rule OAR 860-038-0080(5)(a) is adopted as set forth in Appendix A.
2. Temporary OAR 860-038-0080(5)(a) is repealed on the effective date of the amended rule.
3. The amended rule will be effective upon filing with the Oregon Secretary of State.

Made, entered, and effective _____.

BY THE COMMISSION:

Vikie Bailey-Goggins
Commission Secretary

A party may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

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) 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 residential and small nonresidential 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 Oregon large nonresidential consumers' share of an electric company's generating resources;

(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, the Oregon large nonresidential 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 in the 12 months ending September 30, 2001, to total Oregon retail load measured in weather-normalized kilowatt-hour sales in the 12 months ending September 30, 2001. To the extent such shares are not known as of October 1, 2001, the electric company will use estimates until relevant data are available.

(3) On or before November 1, 2000, 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 Oregon residential and small nonresidential consumers' share of the electric company's load, and the amount that is attributable to the Oregon large nonresidential consumers' share of the electric company's load;

(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 residential and small nonresidential 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 the 12 months ending September 30, 2001, 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 residential and small nonresidential 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 residential and small nonresidential 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 rates filed by the electric company on October 1, 2000; and

(iii) An estimate of the cost-of-service rates for Oregon residential and small nonresidential 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 schedule in the contested case proceeding must be set to produce a Commission decision on the resource plan by September 1, 2001. The Commission's order must identify those resources that, at the option of the electric company, may be auctioned immediately, 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. Until a resource plan is approved by the Commission, the ongoing valuation method described in OAR 860-038-0140 will be used to establish transition charges and credits.

(5) An electric company or any nonresidential consumer may propose to change the definition of "large nonresidential consumer" provided in OAR 860-038-0005(23), by making a written request to the Commission no later than October 15, 2000, in which case the following shall apply;

(a) The Commission shall initiate a proceeding open to all interested parties to determine ~~on an expedited basis~~ whether to change the definition of "large nonresidential consumer." ~~The schedule shall be set to obtain a Commission decision on this issue as soon as practical prior to March 1, 2001.~~

(b) The Commission shall only change the definition of "large nonresidential consumer" if the Commission determines it is in the public interest based on the following factors, and such other factors as the Commission deems relevant:

(A) Each electric company may have the same definition of large nonresidential consumer;

(B) For each class of consumers deemed "large nonresidential consumers," prices for electricity services, taking into account transition charges, transition credits, and incentive payments, if any, should not materially exceed prices for electricity services such class of consumers would pay under a cost-of-service rate;

(C) Consistent with ORS 757.646, the Commission should define large non-residential consumers to encompass as many nonresidential consumers as is feasible; and

(D) The potential benefits available due to new products, service options, and product innovations.

(c) Notwithstanding section (5) of this rule, each electric company shall file its resource plan on November 1, 2000, based on the definition of "large nonresidential consumer" contained in OAR 860-038-0005. In the event the Commission modifies the definition of "large nonresidential consumer" pursuant to section (5) of this rule, each electric company shall promptly modify its resource plan to reflect such change; and

(d) Each electric company shall identify the changes that would be necessary to implement any alternate definition of "large nonresidential consumer" proposed by a party to the proceeding initiated pursuant to this section (5) of this rule.

(6) 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 electric company must implement the Resource Plan consistent with OAR 860-038-0100 and a process for administrative valuation to be specified by rule. Until a Resource Plan is implemented, including the establishment of final values for generating resources, the electric company must determine transition charges and credits using an ongoing valuation method permitted under OAR 860-038-0140.

(7) 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 October 1, 2001, through December 31, 2002:

(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, 2003, transition charges and transition credits will be calculated without regard to subsection (7)(b) of this rule.

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

Stats. Implemented: ORS 756.040 & 757.600 through 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00 (Order No. 00-596); PUC 5-2001 (Temp) f. & cert. ef. 2-6-01 (Order No. 01-153)