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BEFORE THE PUBLIC UTILITY COMMISSION**

OF OREGON

AR 408

In the Matter of a Temporary Rulemaking) ORDER
to Amend OAR Chapter 860, Division)
038

DISPOSITION: TEMPORARY RULES ADOPTED

The Commission adopted a number of Oregon Administrative Rules implementing Senate Bill 1149, during special public meetings held August 29, and December 18, 2000. *See* Order No. 00-596, issued September 28, 2000 and Order No. 01-073, issued January 3, 2001.

Subsequently, the 2001 Oregon Legislature passed House Bill 3633, amending the statutes¹ governing electric restructuring. Two issues affected by the amendments include a delay in the commencement of direct access from October 1, 2001 to March 1, 2002, and the requirement that electric companies offer a cost-of-service option to large nonresidential consumers. This bill, which contained an emergency clause, was signed by the Governor on July 20, 2001, and became effective immediately.

To implement the delay from October 1, 2001, to March 1, 2002, for the commencement of direct access, the following rules have been modified:

- 860-038-0005 (53) Definitions
- 860-038-0160 (4) & (6) Transition Costs and Credits
- 860-038-0220 (1) & (3) Portfolio Options
- 860-038-0240 (1) Cost-of-Service Rate
- 860-038-0250 (1) Nonresidential Standard Offer
- 860-038-0260 (1), (4) & (5) Direct Access

Rule 860-038-0220 (3) is amended to change the initial portfolio service period from 15 to 10 months.

Rule 860-038-0220 (7) is deleted to reflect the Commission's decision at the March 20, 2001, Public Meeting, to adopt the Portfolio Advisory Committee's recommendation to require open enrollment for portfolio options. The subsequent section

¹ ORS 757.603, 757.612, 757.642, and 757.687 and section 2, chapter 865, Oregon Laws 1999

numbers are changed as follows: Section (8) to (7); Section (9) to (8); and Section (10) to (9).

Rule 860-038-0240 (1) & (2) are amended to delete language that limits the cost-of-service option to residential and small nonresidential consumers.

Rules 860-038-0420 (7) & (8) are amended for housekeeping purposes. Rule 860-038-0420 (7) is changed to correct a numbering error. Rule 860-038-0420 (8) is changed to replace the rule language of 860-0380-0420 (3) – (6) with the rule cite. The change from rule language to rule cite will ensure that 860-038-0420 (8) remains current even if 860-038-0420 (3) – (6) is amended. The changes to 860-038-0420 (7) & (8) do not amend the intent of the current rule.

Other Commission rules will need to be revised to implement the change in effective date for direct access as well as other changes required by HB 3633, but those rule changes are being considered in docket AR 417, another proceeding that is currently open before the Commission or will be considered in the permanent rule docket opened by this order.

At a Commission Public Meeting on September 11, 2001, Staff recommended that the Commission adopt temporary rules amending the above Oregon Administrative Rules in Division 038 to align the rules with the amended statutory requirements of HB 3633 to prevent serious prejudice to the public interest, as well as the housekeeping changes to 860-038-0220 (7), and 860-038-0420 (7) & (8). There are two areas where serious prejudice could occur. The first is that the Commission rules in Chapter 860, Division 038 immediately became inconsistent with the statutes that HB 3633 amended. That happened because HB 3633 has an emergency clause that made the changes in the statutes effective immediately, giving the Commission no time to react by using the normal rulemaking process. The second area of serious prejudice to the public interest is that the current rules, now inconsistent with the amended statutes, could cause confusion for consumers.²

Staff also recommends that the Commission simultaneously open another rulemaking, docket AR 426, to permanently adopt the temporary rules of this docket, as well as make other necessary changes.

The Commission finds it necessary to adopt these temporary rules and to open a permanent rulemaking.

² A business, with the current rules in hand, could assume it has the right to receive direct access service beginning October 1, 2001, and make business decisions based on that assumption.

ORDER

IT IS ORDERED that:

1. The temporary rules attached as Appendix A are adopted.
2. The temporary rules shall be effective for a maximum of 180 days beginning September 11, 2001.
3. A new rulemaking docket is opened to permanently amend the temporary rules adopted in this order and to consider other Staff-proposed changes.

Made, entered, and effective _____.

BY THE COMMISSION:

Vikie Bailey-Goggins
Commission Secretary

A person 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.