

ORDER NO. 11 444

ENTERED NOV 10 2011

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 556

In the Matter of a Rulemaking Regarding
Greenhouse Gas Emissions Requirements.

ORDER

DISPOSITION: RULES ADOPTED

I. PROCEDURAL HISTORY

These new rules result from legislation enacted by the 2009 Legislative Assembly (Senate Bill 101), codified in ORS 757.522 through 757.538, regarding the greenhouse gas emissions standard applicable to electric companies, electricity service suppliers, and natural gas companies. The proposed rules govern the implementation of the greenhouse gas emissions standard for electric companies and electricity service suppliers and set forth the restrictions on long-term financial commitments and rate impact estimating and reports. Prior to opening formal rulemaking, the Commission Staff (Staff) worked informally with stakeholders including the Oregon Department of Energy (ODOE) and regulated energy utility companies to craft the proposed rules.

On July 15, 2011, the Commission filed a Notice of Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. Notice was provided to certain legislators specified in ORS 183.335(1)(d) and to all interested persons on the service lists maintained pursuant to OAR 860-001-0030 on July 19, 2011. Notice of the rulemaking hearing was published in the August 2011 *Oregon Bulletin*. The hearing was noticed for September 16, 2011. Subsequently, the Oregon Department of Administrative Services announced furlough days for the current biennium, including September 16, 2011. On September 7, 2011, the Commission filed a revised Notice of Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. Notice of the new hearing date was provided on September 18, 2011, in the same manner to the same notification lists and legislators noted above and was published in the October 2011 *Oregon Bulletin*.

At the proposed rulemaking hearing held October 19, 2011, comments were offered by PacifiCorp, dba Pacific Power (Pacific Power), Portland General Electric Company (PGE), the Citizens' Utility Board of Oregon, Idaho Power Company, and Staff. Avista Corporation, dba Avista Utilities, stated that it would offer comments in writing only. Pacific Power and PGE requested clarification of several of the proposed provisions: Proposed OAR 860-085-0010(4), 860-085-0020(1), 860-085-0030(1)(b), and 860-085-

0030(2)(b). Staff filed written comments on October 20, 2011, addressing the requested clarifications and proposing revisions to the original proposed rules.

II. DISCUSSION

Participants at the October 19, 2011 public comment hearing were generally supportive of Staff’s proposed rules and thanked Staff for the informal workshops and draft exchanges. Substantial comments were offered at the hearing by Pacific Power and seconded by PGE. No other written comments were received.

A. OAR 860-085-0010(4).

Proposed OAR 860-085-0010 contains the definitions for the greenhouse gas emissions standard rules. Pacific Power and PGE question why the term “Combined-cycle natural gas generating facility” appears in the definitions rule when the term does not appear elsewhere in the proposed rules. Pacific Power and PGE clarified that they do not object to the substance of the definition. At the hearing, Staff explained that the term was included because it is used in ORS 757.522 through 757.536 but is undefined in those statutes. In its comments, Staff repeated the same explanation and proposed revisions to divide the proposed rule into two sections, the first to present definitions found in the rules and the second to present definitions for terms found but not defined in ORS 757.522 through 757.536.

B. OAR 860-085-0020(1).

Section (1) of proposed OAR 860-085-0020 set out a definition for “commercially available” as used in ORS 757.522 through 757.536. Pacific Power and PGE question why the term “commercially available” is defined in a separate rule and is not found in the definitions rule. Again, Pacific Power and PGE clarified that they do not object to the substance of the definition for the term. In its written comments, Staff proposed revisions to place the term in the second section of revised proposed OAR 860-085-0010 as a definition for a term used but not defined in ORS 757.522 through 757.536.

C. OAR 860-085-0020 Additional Language.

Pacific Power and PGE requested that the language from ORS 757.524(1) and (2), stating the current greenhouse gas emissions standard, be added to this proposed rule to provide clarity and consistency with the proposed ODOE rule language. Staff noted at the hearing and in its comments that in response to ODOE’s proposed rules, Staff filed comments with ODOE recommending that it not repeat the statutory language. Staff noted that it did not find a compelling reason to repeat the statutory language in the proposed rules.

D. OAR 860-085-0030(1)(b).

Section (1) of proposed OAR 860-085-0030 addresses the requirement that baseload electricity acquired by the electric company or the electricity service supplier under a long-term financial commitment is produced by a facility that complies with the greenhouse gas emissions standard. Pacific Power and PGE questioned the reference to “rates” in subsection (1)(b) regarding electricity service suppliers. In its comments, Staff offered a revision to the rule to eliminate the word and to more accurately state the demonstration process for electricity service suppliers.

E. OAR 860-085-0030(2)(b).

Section (2) of proposed OAR 860-085-0030 provided guidance for calculation procedures for the demonstration required regarding baseload electricity acquired under a long-term financial commitment. Subsection (2)(a) addresses carbon dioxide and subsection (2)(b) addresses additional greenhouse gases. Pacific Power and PGE questioned if subsection (2)(b) is necessary since the current standard applies only to carbon dioxide, and if the standard changes to include any other greenhouse gas, Staff may propose a rule revision at that time. At the hearing, Staff explained that the language in question was proposed to accommodate greenhouse gas emissions that may be included in the standard in the future. CUB offered support for leaving the language in the section. In its written comments, Staff proposed eliminating the language questioned by Pacific Power and PGE.

F. OAR 860-085-0050(3).

Proposed OAR 860-085-0050 set out the reporting requirements for electric and natural gas companies. Section (3) requires a “best-efforts” calculation of energy consumption. In its written comments, Staff notes that the term “best-efforts” was identified as problematic language and revised its proposed rule to delete the term.

G. Resolution


Staff’s proposed revisions to its proposed rules address the questions and concerns expressed by the rulemaking hearing participants. The proposed rules, as revised by Staff’s October 20, 2011 comments, should be adopted.

III. ORDER

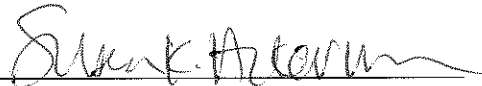
IT IS ORDERED that:

1. Revised proposed OAR 860-085-0005 through 860-085-0050, as set forth in Appendix A, are adopted.
2. The rules become effective upon filing with the Secretary of State.

Made, entered, and effective NOV 10 2011.



John Savage
 Commissioner



Susan K. Ackerman
 Commissioner

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



DIVISION 085
GREENHOUSE GAS EMISSIONS REQUIREMENTS

860-085-0005Scope and Applicability of Greenhouse Gas Emissions Requirements

(1) OAR 860-085-0005 through 860-085-0050 (the "Greenhouse Gas Emissions Requirements") govern implementation of the greenhouse gas emissions standard for electric companies and electricity service suppliers, under ORS 757.522 through 757.538, and natural gas companies.

(2) Upon request or its own motion, the Commission may waive any of the Greenhouse Gas Emissions Requirements if good cause is shown.

Stat. Auth.: ORS 756.040, 757.538

Stats. Implemented: 757.538

Hist.: NEW

860-085-0010Definitions

(1) As used in OAR 860-085-0010 through 860-085-0050:

(a) "Baseload electricity" has the meaning given that term in ORS 757.522.

(b) "Carbon dioxide equivalent" means a unit of measurement that allows the effect of different greenhouse gases and other factors to be compared using carbon dioxide as a standard unit for reference.

(c) "Cogeneration facility" means a facility that produces electric energy and steam or other forms of useful thermal energy (such as heat) by cogeneration that is used for industrial, commercial, heating, or cooling purposes.

(d) "Commission" has the meaning given that term in ORS 756.010.

(e) "Electric company" has the meaning given that term in ORS 757.600.

(f) "Electricity service supplier" has the meaning given that term in ORS 757.600.

(g) "Generating facility" has the meaning given that term in ORS 757.522.

(h) "Greenhouse gas" has the meaning given that term in ORS 468A.210.

(i) "Greenhouse gas emissions" means gaseous emissions expressed as a carbon dioxide equivalent.

(j) "Greenhouse gas emission factors" means the factors, and procedure for use of these factors, as published in United States Environmental Protection Agency publication AP-42 Compilation of Air Pollutant Emission Factors, 2009 Update.

(k) "Long-term financial commitment" has the meaning given that term in ORS 757.522.

(l) "Low-carbon emissions resource" means a generating facility with a greenhouse gas emission rate that is no more than the greenhouse gas emissions standard.

(m) "Natural gas company" has the meaning given that term in ORS 772.610.

(n) Useful thermal energy" means kilowatt hours (kWh) of energy actually sent to be used in a process (whether it be in the form of steam, water, air, products of combustion, or product) net of the kWh of energy discharged from the process as waste (whether it be in the form of steam, water, air, or products of combustion).

(2) As used in ORS 757.522 through 757.536:

(a) "Combined-cycle natural gas generating facility" means a generating facility that employs one or more combustion turbine generators (gas turbine) fueled by natural gas to generate electricity, and one or more gas turbine exhaust heat recovery steam generators producing steam for generation of additional electricity using one or more steam turbine generators (steam turbine).

(b) "Commercially available" means available for purchase and in operation in the United States at no less than 80 percent of rated output (adjusted for the elevation and ambient temperature at the installed location) for no less than 7000 hours during the preceding year.

[The publication referred to or incorporated by reference in this rule is available for review at the Public Utility Commission.]

Stat. Auth.: ORS 756.040, 757.538

Stats. Implemented: 757.538

Hist.: NEW

860-085-0020

Greenhouse Gas Emissions Standard Applicable to Electric Companies and Electricity Service Suppliers

Electric companies and electricity service suppliers will be given an opportunity to comment regarding a proposed modification of the greenhouse gas emissions standard. Electric companies and electricity service suppliers must consider in their comments the effects of modifying the greenhouse gas emissions standard on their system reliability and overall costs to their electricity consumers in this state.

Stat. Auth.: ORS 756.040, 757.538

Stats. Implemented: 757.538

Hist.: NEW

860-085-0030

Emissions Standard-Based Restrictions on Long-Term Financial Commitments by Electric Companies or Electricity Service Suppliers

(1) Unless the Commission has already made a determination under ORS 757.536(b)(3), an electric company or electricity service supplier must demonstrate to the Commission that the baseload electricity acquired under a long-term financial commitment is produced by a generating facility that complies with the greenhouse gas emissions standard:

(a) For electric companies, the demonstration required in this section must be made when the electric company first seeks recovery of costs of a long-term financial commitment.

(b) For electricity service suppliers, the demonstration required in this section must be made when the electricity service supplier first seeks certification renewal after making a long-term financial commitment.

(2) For electricity supplied from long-term financial commitments for which emissions can readily be determined with specificity, the demonstration required in section (1) of this rule for those sources must use the emissions calculation procedures provided in OAR 340-215-0010 through 340-215-0060, or greenhouse gas emission factors.

(3) For the demonstration required in section (1) of this rule, electric companies and electricity service suppliers must identify long-term financial commitments for which emissions cannot readily be determined with any specificity. The electric companies and electricity service suppliers must propose for approval by the Commission the greenhouse gas emissions rate to be applied to these sources.

(4) Electric companies and electricity service suppliers may submit to the Commission for determination under ORS 757.531(2)(c) a plan for a generating facility to be a low-carbon emissions resource.

Stat. Auth.: ORS 756.040, 757.538
Stats. Implemented: 757.538
Hist.: NEW

860-085-0040

Commission Review of Plans and Rates to Ensure Compliance with Greenhouse Gas Emissions Standard Rules

ORS 757.536(1) does not apply to a facility that meets one or more of the requirements for exemption set forth by ORS 757.531(2).

Stat. Auth.: ORS 756.040, 757.538
Stats. Implemented: 757.538
Hist.: NEW

860-085-0050

Rate Impact Estimating and Reports

(1) Electric companies and natural gas companies must submit a report to the Commission by July 1 of even numbered years, beginning in 2012, presenting estimates of, and analysis methods used and assumptions made in estimating the impacts to customer rates for meeting the following Oregon energy consumption based greenhouse gas emission reduction goals by January 1, 2020:

(a) Ten percent below 1990 levels, under ORS 468A.205; and

(b) Fifteen percent below 2005 levels.

The rate impacts must be presented as the percent of change compared to a base case with no greenhouse gas emission reduction goals.

(2) Electric companies and natural gas companies must use analysis methods and assumptions that are technically and economically feasible, and that contain all life-cycle costs.

(3) Electric companies and natural gas companies must include a calculation of their Oregon energy consumption based greenhouse gas emissions for 1990 (estimated actual), 2005 (estimated actual) and 2020 (projected) in the report required in section (1) of this rule.

(4) For electric companies the calculation required in section (3) of this rule must:

(a) Utilize greenhouse gas emission factors for the specific generating technology used at each electric company's own generating facilities. An electric company's own generating facilities include company-owned resources and wholesale purchases from specific generating units, less wholesale sales from those specific generating units.

(b) Utilize the greenhouse gas emission rate proposed by the electric company and approved by the Commission for net market purchases, standard offer sales, and electricity service suppliers where generating technology cannot readily be determined with specificity.

(5) For natural gas companies the calculation required in section (3) of this rule must reflect greenhouse gas emissions due to all natural gas company operations, activities and facilities.

(6) The Commission will develop estimates of the rate impacts for electric companies and natural gas companies to meet the following alternative greenhouse gas emission reduction goals for 2020:

(a) Ten percent below 1990 levels, as specified in ORS 468A.205; and

(b) Fifteen percent below 2005 levels.

(7) The Commission will submit a report presenting the estimates and explaining the analysis used to develop the estimates to the appropriate interim committee of the Legislative Assembly prior to November 1 of each even-numbered year.

(8) Sections (1) through (7) of this rule are repealed on January 2, 2020.

Stat. Auth.: ORS 756.040, 2009 Or Laws, Ch 751, § 9

Stats. Implemented: 757.538; 2009 Or Laws, Ch 751, § 9

Hist.: NEW