

ORDER NO. 14 434

ENTERED DEC 16 2014

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 583

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Rulemaking to Streamline eFiling and
Other Housekeeping Changes

ORDER

DISPOSITION: RULE MODIFICATIONS ADOPTED

I. INTRODUCTION

In this order, we amend rules to streamline the procedures for filing and serving documents in contested cases and other formal proceedings. The amendments eliminate the need to file paper copies in most instances, and generally eliminate the need for stakeholders to provide service of filings on other parties.

We will hold a workshop in Portland with our stakeholders to address any questions about the new eFiling rules prior to implementation.

II. BACKGROUND

On September 15, 2014, we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. On September 17, 2014, we provided notice of the rulemaking and copies of the proposed amendments to all interested persons on the service lists established under OAR 860-001-0030(1)(b) and to legislators specified in ORS 183.335(1)(d). The Secretary of State published notice of the rulemaking in the October 2014 *Oregon Bulletin*.

We held a rulemaking hearing on October 30, 2014. We accepted comments on the proposed amendments through November 21, 2014.

Portland General Electric (PGE); PacifiCorp, dba Pacific Power; Idaho Power Company, Northwest Natural Gas Company, dba NW Natural; the Citizens' Utility Board of Oregon (CUB); the Industrial Customers of Northwest Utilities (ICNU); and Sierra Club filed comments to the proposed amendments.

III. DISCUSSION

Most rulemaking participants generally support the proposed amendments. Their comments raised specific issues regarding due process, filing of confidential documents, service of voluminous documents, use of shared workspace, and dispute resolution. We address each issue below.

A. Due Process - Amendments to OAR 860-001-0180

Currently, a party to a contested case proceeding must file paper and electronic copies of documents with the Commission, and serve copies of all filings on each party. A party must also file a certificate of service with the Commission attesting that copies had been served on other parties.

Under the proposed rules, a party is required, in most instances, to file only an electronic copy of the document with the Commission. The filing of the electronic copy also effectuates service, so that the filing party is not required to directly serve the parties or file a certificate of service. The Commission, rather than the filing party, is responsible for serving the documents on other parties.

1. Comments

PacifiCorp believes that eliminating the requirement that a party directly serve other parties raises due process concerns. PacifiCorp is concerned that the delay between filing of a document and the Commission's subsequent service on other parties may cause confusion about the timeliness of service and the calculation of due dates for responsive pleadings. PacifiCorp notes that the Commission currently emails parties a notice of filing after it has received a filing, but explains that parties often receive the notice hours, if not a day or two, after the document was filed with the Commission.

2. Discussion

We adopt the amendments as proposed. The changes will greatly reduce the need for a party to file paper copies and provide service to other parties. We will bear responsibility for providing service and will do so by posting the documents to eDockets and notifying parties with an email link to the posting.

In conjunction to these amendments, we are making changes to our internal processes that address PacifiCorp's due process concerns. PacifiCorp is correct that the current email

notice of a filing does not occur contemporaneously with the filing of the document. This is due to the fact that we treat the physical (paper) copy—not the electronic copy—as the official filing, and do not notify parties of the filing until we receive the paper copy. Once the amended rules are effective, we will treat the electronic copy of a document as the official filing, and will provide service to other parties within minutes of receipt. The notice of filing also serves as the certificate of service by providing evidence of when service was made.

We are also making changes to the Filing Center to ensure that parties receive timely service of filings. We are moving the Filing Center from the Commission Office to the Administrative Hearings Division, where additional staff will be available to process filings. In addition, although we discourage parties from making last minute filings, the Filing Center will be staffed with personnel who work past 5 p.m. so that any unavoidable last minute filings may be processed and served timely.

B. Filing and Service of Confidential Documents - Amendments to OAR 860-001-0170(1)(f) and (g), OAR 860-001-0180(2)(a), and OAR 860-001-0540(2)

The proposed amendments require a party to file and serve physical copies of any document that contains information that has been designated as confidential. The rules further require that the documents must be received on or before the filing due date to be considered timely.

1. Comments

Several rulemaking participants contend the proposed filing and service deadline for confidential documents creates a logistical problem. They explain that, due to the reluctance to send confidential information electronically, a party would need to mail the confidential documents two days before the actual due date to ensure that they are timely received. They request the rule continue to require redacted copies be filed on the due date and allow confidential documents to be delivered later.

2. Discussion

We acknowledge the participant's concerns and modify the rules to continue the current practice and allow confidential copies to be received within two business days of the date the redacted versions were filed or served.

C. Filing of Voluminous Documents - Amendments to OAR 860-001-0170(3) and OAR 860-001-0180(2)(b)

The proposed amendments require a party to file and serve physical copies of any filing that is more than 100 pages in size. The amendments also require the filing party to contact the Filing Center to determine the number of physical copies of voluminous documents to be filed with the Commission.

a. Comments

The participants raise two issues related to the filing of voluminous documents. First, PGE and PacifiCorp recommend that the requirement for physical service of voluminous filings be eliminated. Both utilities believe that the ultimate intent of eFiling is to reduce the need for paper copies, and note that most parties have already opted out of receiving physical service of documents regardless of the size of the filing.

ICNU and CUB oppose PGE’s and PacifiCorp’s recommendation. ICNU notes that PGE’s most recent rate case filing exceeded 800 pages in length. ICNU and CUB believe that a utility has greater resources to serve copies of voluminous filings rather than requiring intervenors to print the filings themselves.

Second, PacifiCorp recommends that the number of required physical copies be stated in the rules. PacifiCorp contends it is administratively burdensome for a party to contact the Filing Center every time a filing exceeds 100 pages.

b. Discussion

We will retain the 100 page threshold for paper filings and service. We share the goal of reducing the amount of paper filings, but will continue—at this time—to require a party to file and serve voluminous filings.

We adopt, in part, PacifiCorp’s recommendation to adopt specified numbers of copies required for voluminous filings. For general rate cases and integrated resource plans, a utility must supplement electronic initial, amended, and supplemental application filings with 20 physical copies. We decline to establish specific numbers required for other voluminous filings, however, given variety of possible filings. Accordingly, we retain the language to require the filing party to coordinate with the Filing Center to determine the number of copies required for miscellaneous voluminous documents.

D. Dispute Resolution – Amendments to OAR 860-021-0015, OAR 860-034-0060, OAR 860-036-0025, and OAR 860-037-0025

The proposed amendments make certain changes to rules governing disputes between a customer and a utility. Among other things, the changes clarify the process for determining whether a customer is entitled to continued or restored service pending the resolution of an informal or formal complaint. The changes also delegate certain authority to our Consumer Services Division and Administrative Law Judges.

1. Comments

NW Natural, PGE, Idaho Power, and PacifiCorp believe that the proposed amendments to the dispute resolution processes go beyond housekeeping changes necessary to implement new eFiling requirements. These utilities propose that these changes—particularly the delegation of authority to the Consumer Services Division and ALJs—be addressed in a separate rulemaking to allow a sufficient opportunity for review and discussion.

2. Discussion

We agree that identified amendments address matters outside the scope of eFiling requirements and do not adopt them. We make changes to the rules only as necessary to be consistent with other rule changes.

E. Use of Shared Workspace – OAR 860-001-0480(5) and OAR 860-001-0540(2)

We are currently developing a shared online workspace for parties to post and access data requests and discovery. The proposed amendments address the use of this shared workspace in Commission proceedings.

1. Comments

The rulemaking participants raise two issues and two questions about the use of an online workspace. First, PacifiCorp believes that the use of an online workspace should be limited to discovery, and recommends the Commission not adopt proposed language allowing parties to post workpapers used to support testimony. Second, PacifiCorp recommends that rules governing the online workspace provide guidelines regarding service. PacifiCorp notes that, because the Commission may limit the number of online workspace users to reduce costs, the service list in each proceeding may not match the online workspace user list.

PacifiCorp and PGE also ask whether all parties will receive notice of and be able to view all non-confidential data requests and responses.

2. *Discussion*

We do not adopt PacifiCorp's request to limit the use of the online workspace to discovery. PacifiCorp does not explain why parties should be allowed to post workpapers associated with a data response, but not workpapers used to support testimony.

We also conclude there is no need to adopt PacifiCorp's request to add language regarding service. We have no plans to limit the number of online workspace users. All party representatives listed on a service list will receive notice of filings posted to the workspace.

Finally, we make one revision in response to questions about notice and access to the online workspace. The workspace that we expect to implement will not provide automatic notice upon posting. Rather, the posting party will be prompted to indicate whether it would like to "share" the posting. This prompt, if selected, will provide notice of the posting to all parties, who will then be able to view the posting. Accordingly, we add language to clarify that service is satisfied upon the uploading of the papers to the workspace and electing to share that upload with the parties.

F. *Miscellaneous Provisions*

We address other miscellaneous recommendations as follows:

1. *Portable Data Storage Device- OAR 860-001-0070(3), OAR 860-001-0170(1)(a) & (c)*

We adopt NW Natural's recommendation to add language throughout our rules to permit the use of other types of portable storage devices, such as a USB flash drive, to submit electronic filings.

2. *Commission Address – OAR 860-001-0000*

We adopt, in part, PacifiCorp's recommendation to remove our physical address from the rules and replace it with a reference to our internet home page for the most up-to-date information on how best to contact us.

3. *Data Responses – OAR 860-001-0540*

We do not adopt PacifiCorp's request to change the deadline for filing data responses from 14 days back to 10 business days. As PacifiCorp notes, we changed the deadline to 14 days from 10 business days in a prior rulemaking. We adhere to our prior decision and retain the 14-day deadline.

4. *Doubled-Sided Copies – OAR 860-001-0140(3)*

We adopt Sierra Club's request to retain language encouraging that documents be printed on both sides of the page on recycled paper when possible. We had proposed deleting this language given the rulemaking's general move to electronic filings, but agree the request should be retained for those situations when physical filing and service is required.

IV. CONCLUSION

We adopt the rule amendments consistent with this order, and make other editorial changes throughout for clarity. The adopted rules are set forth in Appendix A.

IV. ORDER

IT IS ORDERED that:

1. The changes to OAR 860-001-0020, 860-001-0070, 860-001-0140, 860-001-0150, 860-001-0160, 860-001-0170, 860-001-0180, 860-001-0300, 860-001-0310, 860-001-0340, 860-001-0350, 860-001-0410, 860-001-0420, 860-001-0480, 860-001-0540, 860-016-0000, 860-016-0020, 860-016-0021, 860-016-0025, 860-016-0030, 860-016-0050, 860-021-0015, 860-022-0005, 860-022-0047, 860-023-0151, 860-025-0060, 860-027-0300, 860-028-0070, 860-029-0100, 860-032-0002, 860-032-0005, 860-033-0006, 860-034-0060, 860-034-0300, 860-036-0025, 860-036-0605, 860-037-0025, 860-037-0410, 860-038-0400, 860-038-0420, and 860-082-0085; and new rule 860-001-0400 are adopted.

- 2. The rule changes become effective upon filing with the Secretary of State.

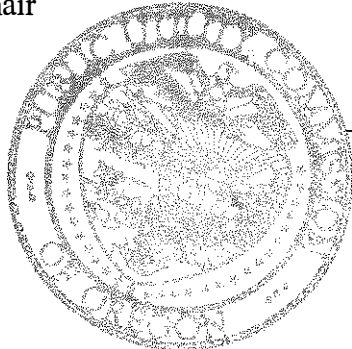
Made, entered, and effective DEC 16 2014.

Susan Ackerman

Susan K. Ackerman
Chair

John Savage

John Savage
Commissioner



Stephen M. Bloom

Stephen M. Bloom
Commissioner

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

DIVISION 1
GENERAL

860-001-0020

Hours of Operation, Location, and Contact Information, Hours of Operation

~~(1) The Commission's location and contact information is:~~

~~(a) Physical Location: Public Utility Commission of Oregon 550 Capitol St N.E.
Suite 215 Salem OR 97301-2567~~

~~(b) Consumer Services Section/Consumer Complaints:~~

~~Salem: (503) 378-6600~~

~~Oregon outside Salem: (800) 522-2404~~

~~Fax: (503) 378-5743~~

~~Consumer Complaint Procedure on the website:~~

~~<http://www.puc.state.or.us/PUC/consumer/comppro.shtml>~~

~~(c) Telephone/Fax (for other than consumer issues):~~

~~Commission Reception: (503) 373-7394~~

~~Administrative Hearings Division: (503) 378-4372 or (503) 378-2849 Fax: (503) 378-6163~~

~~TTY (Oregon Relay Service): (800) 735-2900~~

~~TTY RSPF Programs (OTAP, TDAP, OTRS): (800) 648-3458~~

~~(d) Website homepage: <http://www.puc.state.or.us/>~~

~~(e) Filing Center: Electronic mail: PUC.FilingCenter@state.or.us Phone: (503) 373-0886 Fax: (503) 378-5505~~

~~(f) Mailing Address: Public Utility Commission of Oregon Attn: Filing Center PO Box 2148 Salem OR 97308-2148~~

~~(g) Delivery Address: Public Utility Commission of Oregon Attn: Filing Center 550 Capitol St NE Suite 215 Salem OR 97301-2567~~

~~(2) Office Hours: Commission offices are open to the public between 8:00 a.m. and 5:00 p.m., Monday through Friday, except on legal holidays as defined in ORS 187.010 or when the Commission's office is closed by a Department of Administrative Services directive.~~

(2) Location and general contact information: The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information is available on the Commission's website:

<http://www.puc.state.or.us>

(a) Physical Location: 3930 Fairview Industrial Drive SE, Salem, OR 97302

(b) Mailing Address: PO Box 1088, Salem, OR 97308-1088.

(c) Telephone:

(A) Local to Salem: (503) 373-7394, TTY (Oregon Relay Service): (800)-735-2900;

(B) Consumer Services: (800) 522-2404;

(C) Telephone Assistance Programs: (800) 848-4442, TTY (800) 648-3458.

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-001-0070**Confidential Information**

(1) This rule applies to information submitted under a claim of confidentiality under the Public Records Law, but does not apply to information designated as confidential under a protective order in a contested case proceeding.

(2) At the time of submission, a person may designate a document or portion of a document as containing confidential information. A designation must be made in good faith and be limited to information that qualifies for protection. The person asserting confidentiality must state the legal basis for the claim of confidentiality.

(3) Unless otherwise provided by Commission order, confidential information submitted under this rule must be **clearly labeled on each electronic page as confidential and identified as confidential in the document name, or** printed on yellow paper, separately bound, and placed in a sealed container **or provided on a portable data storage device clearly labeled with the word CONFIDENTIAL and placed in a sealed container. Spreadsheets containing confidential information must be labeled with "confidential" in the header or footer.** To the extent practicable, the provider must place only the portions of the document that contain confidential information in the container. The confidential information on each page must be clearly marked by inserting [Confidential] before and after the portion of information that is confidential. The container must be marked "CONFIDENTIAL." Multiple sealed containers may be mailed in one package.

(4) Confidential information submitted to the Commission is exempt from public disclosure to the extent provided under the Public Records Law, ORS 192.410 through 192.505.

(5) Any failure to comply with the requirements in this rule may result in the submission not being treated as including confidential information or being returned to the provider for correction and resubmission.

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 192.420-192.505, & 756.040

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

Filing Requirements**860-001-0140****General**

(1) **The Commission requires the use of its Filing Center for the filing of documents in agency proceedings. Contact information for the Filing Center is as follows:**

(a) Electronic mail: PUC.FilingCenter@state.or.us.

(b) Phone: (503)378-6678 Fax: (503) 378-6163.

(c) Mailing Address: Filing Center, Public Utility Commission of Oregon, PO Box 1088, Salem, OR 97308-1088.

(d) Delivery Address: Filing Center, Public Utility Commission of Oregon, 3930 Fairview Industrial Drive SE, Salem, OR 97302.

(2) Documents submitted to the Commission must include the name of the person submitting the document, the person's physical and electronic mail addresses, and the

person's telephone number. If applicable, the name of the business or organization that person represents must also be included.

(23) If possible, documents should fit on an 8-1/2-by-11-inch page and have at least 1 inch margins when printed.

(34) **When the filing or serving of physical copies is required, Documents should be printed on both sides if possible. The Commission encourages the use of recycled paper and printing on both sides of the page. Tariff filings of 100 pages or more must be filed single-sided.**

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-001-0150

Filing Dates

(1) Except as modified by statute or by these rules **in this division**, a document is filed on the date received by the Commission at Salem, Oregon, between the hours of 8 a.m. and 5 p.m., Pacific Time.

(2) The period of time for doing an act governed by these rules is determined by excluding the first day and including the last day. For example, if a motion is **served filed** on September 18, then any response (due 15 days after **service filing** of the motion) must be filed by October 3. If the due date falls on a Saturday, Sunday, legal holiday as defined in ORS 187.010, or when the Commission office is closed by a Department of Administrative Services directive, then the filing is due on the next business day.

(3) Filings that are incomplete or not in substantial compliance with these rules, Commission orders, ALJ rulings, or statutes may be declined or conditionally accepted. The Commission must provide the reason for declining or conditionally accepting a filing to the filer.

(4) Documents required to be filed within a specified time but that fail to substantially comply with these rules may be accepted as conditionally received to meet the filing deadline.

(5) Conditionally received filings are not considered officially filed until brought into substantial compliance with these rules, the Commission's orders, ALJ rulings, and statutes. Conditionally received filings may be rejected unless brought into compliance within one business day of notice of the deficiency. **A filer must file an amended or corrected filing to bring a conditionally accepted filing into compliance.**

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-001-0160

Filing Requirements in Rulemaking Proceedings

(1) Written comments on proposed rules and other documents submitted in rulemaking proceedings must be filed with the ~~Commission's~~ Filing Center at the address listed in OAR 860-001-0020140. **Filing by electronic mail is preferred, but physical documents will be accepted.**

~~(a) Documents may be filed by mail, personal delivery, electronic mail, or any other means of delivery.~~

~~(ab)~~ To be considered by the Commission, a document must be received by the deadline for the submission of written comments specified in the notice of proposed rulemaking.

~~(be)~~ Documents must include the docket number assigned by the Commission to the rulemaking proceedings.

(2) Written comments on a proposed rule must comply with OAR 860-001-0210(3).

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-001-0170

Filing Requirements in Contested Case and Declaratory Ruling Proceedings

(1) Every pleading or other document submitted to the Commission in contested case or declaratory ruling proceedings must be filed electronically with the ~~Commission's~~ Filing Center on or before the date due. ~~The filing must include an electronic copy of the signed certificate of service described in OAR 860-001-0180(5).~~ All filings must be labeled with the applicable docket number, a description of the filing, and the date filed. Electronic copies of non-confidential documents must not be password protected, **or have any PDF security features enabled.**

(a) Documents may be electronically filed by sending the filing as an attachment to an electronic mail message addressed to the ~~Commission's~~ Filing Center, **or** by personally delivering or mailing a ~~compact disk (CD) or DVD~~ **portable data storage device** to the Filing Center, ~~or by uploading the filing on the Commission's website.~~ If a ~~CD or DVD~~ **portable data storage device** is delivered or mailed to the Filing Center, it must be received on or before the date due to be considered timely filed.

(b) Electric copies of documents must be in text-searchable format and provided in either Microsoft Word, Microsoft Excel, or .pdf (Adobe Acrobat) format, unless otherwise permitted by the ALJ. ~~A party must provide a Microsoft Word version of any document, if possible, upon the ALJ's request.~~

(c) **An electronic mail message to the Filing Center and its attachments filing submitted as an attachment to an electronic mail message must be less than 20 megabytes in size, and include the docket number, party name, and title of the filing in the subject line of the electronic mail message. Filings larger than 20 megabytes may be divided into multiple electronic mail messages. Each message must be numbered sequentially, and the subject line of the message must include "E-mail x of y," where x equals the message**

number and y equals the total number of messages. Filings larger than 20 megabytes may also be provided to the Filing Center on a portable data storage device.

~~(d) Filings larger than 20 megabytes may be divided into multiple electronic mail messages. Each message must be numbered sequentially, and the subject line of the message must include "E-mail x of y," where x equals the message number and y equals the total number of messages. Filings larger than 20 megabytes must also be provided to the Filing Center on CD or DVD. The CD or DVD must be sent to the Filing Center with the original filing as described in section (2)~~The subject line of each electronic mail message to the Filing Center must include the docket number (if one is assigned), the party name or identifier, and the title or type of filing. For example, for a brief filed by the Citizens' Utility Board of Oregon in UE XXX, the subject line is UE XXX CUB Brief; and for a new application from NW Natural for financing authorization, the subject line is NWN New UF Application.

(e) If a document relates to multiple dockets that are officially consolidated, then the filer should file the document ~~should be filed~~ in the lead docket only. If a document relates to multiple dockets that are not officially consolidated, then the filer must file the document ~~must be filed electronically~~ in each docket, even if all dockets are following the same procedural schedule.

(f) When electronically filing a redacted version of a filing that contains confidential information, the filer must file the confidential version so that it is received by the Filing Center within 2 business days after the date the redacted version was electronically filed. ~~If a document contains confidential information, then a redacted version will be accepted for electronic filing, but only if the original confidential document is personally delivered or sent by first class mail, postage prepaid, to the Filing Center on the date the redacted document was electronically filed.~~

(g) When filing a document that is entirely confidential, the filer must electronically file a cover letter. The filer must file the confidential version so that it is received by the Filing Center within 2 business days after the date that the cover letter was electronically filed. ~~If an entire filing is confidential, then a cover letter will be accepted for electronic filing, but only if the original confidential document is personally delivered or sent by first class mail, postage prepaid, to the Filing Center on the date the cover letter was electronically filed.~~

~~(2) The signed original of any pleading or other document filed in contested case or declaratory ruling proceedings must be sent by first class mail, postage prepaid, or personal delivery to the Commission's Filing Center at the address listed in OAR 860-001-0020.~~

~~(a) The original document must be personally delivered or mailed on the date the electronic copy of the document is filed.~~

~~(b) The original document must be signed and dated and include the original, signed certificate of service as described in OAR 860-001-0180(5).~~

~~(c) The original document and the copies required in section (3) must be sent in the same envelope or container if possible. Simultaneous filings in multiple dockets must be sent in separate envelopes or containers for each docket. Multiple envelopes or~~

containers submitted in the same docket may be enclosed in one mailing or delivery package.

(23) Parties must supplement an electronic filing with physical copies of certain filings. For general rate revisions filed under OAR 860-022-0019, integrated resource plans filed under OAR 860-038-0080, the utility must provide 20 physical copies. For filings of more than 100 pages, parties must coordinate with the Filing Center to determine the number of physical copies to be filed. the following documents, the specified number of copies must be sent with the original document:

- (a) Initiating and Responsive Pleadings, including Comments: 5 copies.**
- (b) General rate revisions filed under OAR 860-022-0019:**
 - (A) Utility initial filing: 30 copies; and**
 - (B) Work papers: 3 paper copies if reasonably capable of being reproduced in written format; if not, 3 copies on CD or DVD.**
- (c) Motions and Replies: 2 copies.**
- (d) Testimony filed under OAR 860-001-0480: 5 copies.**
- (e) Briefs filed under OAR 860-001-0650: 5 copies.**
- (f) Applications for Allocation of Territory filed under OAR 860-025-0000 through 860-025-0050, 860-034-0440 through 860-034-0495, or 860-036-0900 through 860-036-0925: 3 copies.**
- (g) Financing applications filed under OAR 860-027-0020 through 860-027-0035, 860-036-0715 through 860-036-0725, or 860-037-0515 through 860-037-0525: 3 copies.**
- (h) Affiliated interest applications filed under OAR 860-027-0040 through 860-027-0044, 860-036-0730 through 860-036-0738, or 860-037-0530 through 860-037-0545: 3 copies.**

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-001-0180

Service in Contested Case and Declaratory Ruling Proceedings

(1) The Commission maintains an official service list for each contested case and declaratory ruling proceeding. The service list is posted on the Commission's website or may be obtained by contacting the **Commission Filing Center**.

(a) Each party must identify at least one party representative to receive service, and may identify no more than three party representatives to receive service.

(b) Parties may designate party representatives in an initiating pleading, petition to intervene, or separate document. Parties must notify the **Commission Filing Center** and all other parties in writing of any change in contact information.

(2) Except as otherwise provided by statute or rule, a party completes service of any document by filing it electronically with the Filing Center. must serve by electronic mail copies of all documents filed in contested case or declaratory ruling proceedings on every party representative included on the official service list.

(3) A party ~~must also need only~~ serve physical copies of a document in person, by first-class mail, or by any other reasonable means of delivery if:

(a) The document contains information that has been designated as confidential under a general protective order, and the protective order requires service of physical copies; ~~Parties must use electronic service to serve a redacted copy of the document and provide physical copies of the confidential portions of the document. Service must conform with the requirements in the applicable general protective order;~~

(b) The filing is more than 100 pages, unless the party has requested not to receive physical ~~agrees to receive electronic~~ service of voluminous filings; ~~or~~

(c) A party has requested and received permission from the ALJ to receive physical service of all documents; ~~or~~

(d) Physical service is required by rule or statute.

~~(3) Service is considered timely if the electronic mail is sent on the day the document is filed. Service by electronic mail is complete when the electronic mail message leaves the sender's electronic mail server. Parties providing service by electronic mail are encouraged to request electronic return receipts and must take all reasonable steps to ensure successful delivery.~~

(4) Service of physical copies of a document is considered timely if the copy is ~~delivered in person on the date received within two business days of the date~~ the document is ~~was~~ filed with the Commission Filing Center, ~~or the copy is mailed by first-class mail, postage pre-paid, on the date the document is filed with the Commission.~~

(5) If service of physical copies is required in a contested case or declaratory ruling proceeding, then the filer must include a certificate of service with its filing to the Filing Center. The certificate must include the means of physical service, date of physical service, a list of the party representatives and addresses served, and a certifying signature. A certificate of service must be filed with every pleading or other document filed in contested case or declaratory ruling proceedings. The certificate of service must:

~~(a) Include a signed certification that the document was served on all party representatives included in the official service list for the proceedings;~~

~~(b) List the names of the party representatives served;~~

~~(c) State the means of service to each party representative and the electronic or physical address served; and~~

~~(d) State the date of service.~~

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

Contested Case and Declaratory Ruling Proceedings

860-001-0300

Practice Before the Commission

Participation in Contested Case and Declaratory Ruling Proceedings; Intervention

(1) Under ORS 774.180, the Citizens' Utility Board has the right to intervene in any Commission proceedings by filing a notice of intervention that includes the names and addresses of the representatives to be included on the service list.

(2) Any other person may file a petition to intervene in contested case proceedings before the Commission. A sample petition to intervene forms may be obtained by contacting the Administrative Hearings Division at puc.hearings@state.or.us or (503) 378-6678 found at http://www.puc.state.or.us/PUC/admin_hearings/Petition_to_Intervene_Form.shtml. The petition to intervene must contain the following information:

- (a) The petitioner's name and contact information, including telephone number, physical address, and electronic mail address;
- (b) The name and contact information of the petitioner's attorney or authorized representative, including telephone number, physical address, and electronic mail address;
- (c) If the petitioner is an organization, the number of members in and the purpose of the organization;
- (d) The nature and extent of the petitioner's interest in the proceedings;
- (e) The issues petitioner intends to raise at the proceedings; and
- (f) Any special knowledge or expertise of the petitioner that would assist the Commission in resolving the issues in the proceedings.

(3) Staff and parties named in the pleading initiating Commission action are original parties and need not petition to intervene. All original parties must provide the Commission with the names and contact information, including telephone number, physical address, and electronic mail address, of the party representatives to be included on the service list.

(4) Any person may file a petition to intervene in declaratory ruling proceedings before the Commission. In addition to the requirements in section (2) of this rule, the petition to intervene must also state whether the intervenor accepts:

- (a) The statement of facts as set forth in and for the purposes of the petition for declaratory ruling; and
- (b) The statement of the questions presented in the petition for declaratory ruling.

~~(5) The petitioner must serve the petition to intervene on the other parties to the proceedings.~~

~~(56)~~ A party may object to a petition to intervene. Objections must be filed within 10 days of ~~service~~ the filing of the petition to intervene unless otherwise directed by an ALJ. The petitioner may file a reply to an objection within 7 days of ~~service~~ the filing of the objection.

~~(67)~~ If the Commission or ALJ finds the petitioner has sufficient interest in the proceedings and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or delay the proceedings, then the Commission or ALJ must grant the petition. The Commission or ALJ may impose appropriate conditions upon any

intervenor's participation in the proceedings, such as restricted access to confidential information. The ALJ may rule on a petition to intervene at a prehearing conference.

(78) A person may ask to be listed as an "interested person" in a particular proceedings. An interested person receives electronic mail notifications of filings made and documents issued by the Commission or ALJ in that particular proceeding. ~~copies of the orders, rulings, notices, or other documents issued by the Commission or ALJ in the proceeding, but does not receive documents filed by Staff or other parties.~~ An interested person is not a party to the proceedings, and is not entitled to file pleadings, present evidence for the record, conduct cross-examination of witnesses, become a signatory to a protective order, or file briefs.

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 183.417, 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-001-0310

Representation and Ethical Conduct

(1) All persons appearing in proceedings in a representative capacity must conform to the standards of ethical conduct required of attorneys appearing before the courts of Oregon. If a person does not conform to these standards, then the Commission may decline to permit the person to appear in a representative capacity in any proceedings.

(2) Except for Staff, a party to contested case proceedings may be represented by an authorized representative who is not an attorney.

(a) A party's initial pleading in the proceedings must designate the party's authorized representative.

(b) The ALJ has authority to limit an authorized representative's presentation of evidence, examination, and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record. The ALJ may not allow an authorized representative who is not an attorney to present legal argument except to the extent authorized in ORS 183.457.

(c) Changes to the designation of authorized representative must be made by written notice to the Commission Filing Center ~~with copies served on the other parties to the proceedings.~~

(3) Staff may represent the Commission in a contested case hearing in the following proceedings:

(a) Actions initiated by the Commission to recover telecommunications assistive devices, the value of devices which the recipients fail to return, or the cost of repairing equipment that the recipient returned in a damaged condition; and

(b) Denial or termination of Oregon Telephone Assistance Program benefits.

(4) Staff acting under the provisions of section (3) may not give legal advice to the Commission and may not present legal argument in contested case hearings, except to the extent authorized by this section.

(a) "Legal Argument" includes arguments on:

(A) The jurisdiction of the Commission to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Commission

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions to the Commission in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the hearing.

(5) If the ALJ determines that statements or objections made by Staff appearing under section (3) involve legal argument as defined in this rule, the ALJ will provide reasonable opportunity for Staff to consult with the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 183.452-183.458, 756.040 & 756.500 - 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10; PUC 1-2014, f. & cert. ef. 1-9-14

860-001-0340

Ex Parte Communications

(1) Ex parte communications are discouraged and, if made, must be disclosed to ensure an open and impartial decision-making process.

(2) Except as provided in this rule, an ex parte communication is any oral or written communication that:

(a) Is made by a person directly to a Commissioner or presiding ALJ outside the presence of any or all parties of record in pending contested case or declaratory ruling proceedings;

(b) Is made without notice to or an opportunity for rebuttal by all parties; and

(c) Relates to the merits of an issue in the proceedings.

(3) For purposes of this rule, a contested case or declaratory ruling proceeding is pending when the Commission or ALJ issues the first scheduling notice.

(4) A person who has an ex parte communication must promptly notify the presiding ALJ that the communication occurred.

(5) Upon notice of or receipt of an ex parte communication, the presiding ALJ must promptly notify the parties of record of the communication and place the following in the record:

(a) The name of each person who made the communication and the person's relationship, if any, to a party in the case;

(b) The date and time of the communication;

(c) The circumstances under which the communication was made;

(d) A summary of the matters discussed;

(e) A copy of any written communication; and

(f) Other relevant information concerning the communication.

(6) The presiding ALJ may require the person responsible for the ex parte communication to provide the disclosure and notice of the communication required by this rule.

(7) Within 10 days of the service filing date of the notice, a party may file a written rebuttal of the facts or contentions contained in the ex parte communication, ~~with service on the parties of record in the proceeding.~~

(8) The provisions of this rule do not apply to communications that:

(a) Address procedural issues, such as scheduling or status inquiries, or requests for information having no bearing on the merits of the case;

(b) Are made to a Commissioner or presiding ALJ by a member of Staff who is not a witness in the proceedings;

(c) Are made to a Commissioner or presiding ALJ by an Assistant Attorney General who is not representing Staff in the proceedings;

(d) Are made in rulemaking proceedings conducted under ORS 183.325 through 183.410; or

(e) The presiding ALJ determines are not subject to this rule, including communications from members of the public that are made part of the administrative file or communications that are the subject of in camera proceedings.

(9) To avoid inadvertent ex parte communications, a person planning to meet individually with a Commissioner or ALJ must indicate whether the discussion will relate to pending proceedings and, if so, which proceedings.

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 183.417, 183.462, 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-001-0350

Settlements

(1) In all Commission contested case proceedings, some or all of the parties may enter into a settlement of any or all issues at any time during the proceedings.

(2) A settlement discussion is any communication between two or more parties for the purpose of resolving issues pending in contested case proceedings. Examples of communications not constituting settlement discussions for purposes of this rule include communications primarily for the purpose of discovery and communications occurring before initiation of docketed proceedings.

(3) Without the written consent of all parties, any statement, admission, or offer of settlement made during settlement discussions is not admissible in any Commission proceedings, unless independently discoverable or offered for other purposes allowed under ORS 40.190.

(4) Parties may agree in writing that the information exchanged exclusively within the context of any settlement discussion is confidential.

(5) Subject to the signing of an applicable confidentiality agreement, all parties may attend a meeting in which Staff participates to discuss settlement. Staff must provide to all

parties to the proceedings reasonable prior notice of any settlement meeting in which Staff intends to participate. The notice must include the time and place of the settlement meeting, the party or parties involved, and the issues to be discussed. Once Staff has given notice of a settlement meeting involving a particular issue, additional notice of continuing settlement meetings involving the same issue need only be provided to parties attending the initial meeting or parties who request continuing notice. Persons who are not associated with a party may not attend a settlement meeting without the consent of all participating parties.

(6) For purposes of ORS 192.502(4), the Commission obligates itself to protect from disclosure any document submitted in confidence during settlement discussions.

(7) Settlements must be memorialized in a written stipulation signed by the settling parties, ~~served on the parties on the service list for the docket~~, and filed for review by the Commission. With the stipulation, the parties must file:

(a) An explanatory brief or written testimony in support of the stipulation, unless waived by the Commission or ALJ; and

(b) A motion to offer the stipulation and any testimony as evidence in the proceeding, together with witness affidavits in support of the testimony.

(8) Within 15 days of the filing of a stipulation, a party may file written objections to the stipulation or request a hearing. Upon request or its own motion, the Commission or ALJ may set another time period for objections and request for hearing. Objections may be on the merits or based upon failure of Staff or a party to comply with this rule. The Commission or ALJ may hold a hearing to receive testimony and evidence regarding the stipulation. The Commission or ALJ may require evidence of any facts stipulated. The parties must be afforded notice and an opportunity to submit proof if such evidence is requested.

(9) A stipulation is not binding on the Commission. The Commission may adopt or reject a stipulation, or propose that a stipulation be modified prior to approval. If the Commission proposes to modify a stipulation, the Commission must explain its decision and, if necessary, provide the parties sufficient opportunity on the record to present evidence and argument to support the stipulation. No further hearing need be held when a review hearing has already been held under section (8) of this rule and the Commission or ALJ determines that the issues were fully addressed in the prior hearing.

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 183.417, 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

Pleadings and Motions

860-001-0400

General

The Commission treats pleadings and motions differently.

(1) Pleadings are used to address formal requests to initiate a proceeding or for Commission authorization. There are two types of pleadings.

(a) Initiating pleadings include applications, petitions, and complaints.

(b) Responsive pleadings include answers, protests, responses, and replies.

(2) Motions are requests seeking a ruling in a Commission proceeding. There are two types of motions.

(a) Substantive motions address the rights or duties of a party or seek summary determination of any or all issues in the proceeding, such as a motion to dismiss.

(b) Procedural motions address the means by which the Commission regulates its proceedings; for example, a motion to modify a schedule.

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 183.417, 756.040 & 756.500 – 756.575

Hist.: New

860-001-0410

Pleadings Requirements

(1) All pleadings must be signed by the person filing the pleading or an authorized representative. By signing a pleading, the signatory makes the certification in ORCP 17C. For electronic filings, a person may use any identifier that is adopted by the person with the intent to authenticate a document (for example, “/s/John Doe”).

(2) Applications, petitions, complaints, and other initiating pleadings must include:

(a) The filer’s name and contact information, including telephone number, physical address, and electronic mail address;

(b) The name and contact information, including telephone number, physical address, and electronic mail address of any other party named in the filing;

(c) A clear and concise statement of the authorization, action, or relief sought;

(d) Appropriate references to the statutory provision or other authority under which the filing is made; and

(e) Other information as required by the Commission’s rules.

(3) Answers, protests, and other responsive pleadings must be in writing and must include:

(a) The filer’s name and address;

(b) The identification of the initiating pleading to which the response is made, including the docket number if one had been assigned; and

(c) A specific response to the pleading including, if necessary, an answer to material allegations and affirmative defenses.

(4) Unless otherwise directed by the Commission or ALJ, responses must be filed within the following timeframes:

(a) An answer to a complaint, application, or petition must be filed within 20 days after the pleading is ~~served~~**filed**.

(b) An answer to a consumer complaint under OAR 860-021-0015 must be filed within 15 days after the Commission serves the complaint.

(c) An answer to a petition to intervene must be filed within 10 days after ~~service~~**filing** of the petition.

(d) An answer to a complaint under OAR 860-029-0100 must be filed within 10 days after the Commission serves the complaint.

(e) An answer to any other type of pleading must be filed within 15 days after the pleading is **served filed**.

(5) A reply to a responsive pleading is not permitted unless otherwise allowed by the Commission or ALJ.

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-001-0420

Motions, Responses, and Replies

~~(1) A motion is a request to the Commission or ALJ for a ruling or other action. A motion must be made in writing unless otherwise allowed by the Commission or ALJ.~~

~~(2) For purposes of these rules, “substantive motions” address the rights or duties of a party or seek summary determination of any or all issues in the proceedings. Substantive motions include a motion to dismiss. “Procedural motions” address the means by which the Commission regulates its proceedings; for example, a motion to modify a schedule.~~

~~(3) Before filing a procedural motion, the moving party must make a good faith effort to confer with other parties to seek agreement about the subject of the motion. A procedural motion must describe the effort to confer and the result of the effort.~~

~~(34) A motion against an initiating or responsive pleading under OAR 860-001-0400 must be filed within 10 days after the pleading is **served filed**.~~

~~(45) A party may file a response to a motion. A response to a substantive motion must be filed within 15 days of **service filing** of the motion. A response to a procedural motion must be filed within 7 days of **service filing** of the motion.~~

~~(56) The moving party may file a reply to a response to a substantive motion within 7 days of **service filing** of the response. The moving party is not permitted to file a reply to a response to a procedural motion unless permitted by the ALJ.~~

~~(67) If expedited consideration of a motion is requested, the moving party must:~~

- ~~(a) Certify that the moving party has attempted to contact the other parties to the proceedings to discuss the motion and state whether the parties support the motion;~~
- ~~(b) Identify the request for expedited consideration in the document caption; and~~
- ~~(c) Include a request to shorten the time for responses and, if applicable, replies.~~

~~(78) Unless granted by the ALJ, a request for an extension or other related motion does not stay a pending due date.~~

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-001-0480

Testimony and Exhibits

(1) Unless otherwise directed by the ALJ, all written testimony and exhibits must be paginated in the top right corner as follows:

Party Name/Exhibit Number

Witness Last Name/Page Number

(2) Each party must consecutively number its written testimony and exhibits, beginning with 100. Within each round of testimony, each witness or witnesses testifying jointly must be designated with a separate numbering series. For example, Mr. Smith, Staff's first witness in the first round of testimony, would be assigned Staff/100. Ms. Jones, Staff's second witness in first round, would be assigned Staff/200. Mr. Smith's second round of testimony would be assigned Staff/300. Each attachment must be marked as a separate exhibit. For example, the first attachment to Staff/100 would be marked as Staff/101. A separate numbering series must also be used to identify all exhibits marked at hearing.

(3) Each page of a multipage exhibit must be marked with a page number. Pages within each exhibit must be marked consecutively, beginning with page 1.

(4) The ALJ may waive the requirement of marking each page of voluminous photocopied documents.

(5) ~~At the time of~~ **When** filing testimony and exhibits, the filing party must simultaneously ~~serve~~ **provide** a copy of all work papers to Staff, the utility named in the initiating pleading, and all other parties that have asked to receive a copy. **If a shared workspace is being used for data requests and responses, this provision is satisfied by uploading the work papers to that workspace and electing to share the upload with other authorized users.** As used in this rule, work papers consist of documents that show the source, calculations, and details supporting the testimony and other exhibits submitted. ~~Parties must provide electronic copies of work papers if available.~~

(6) Within the time specified by the ALJ, each party must file a list, in numerical order, of the written testimony and exhibits the party offered during the proceedings. The list must specify the document, witness, number of pages, and whether the exhibit was received into evidence.

(7) When testimony or exhibits are offered in evidence at a hearing and were not previously filed, the offering party must give copies to each party, the Commission, and the ALJ. When practicable, the parties must distribute copies of exhibits before or at the beginning of the hearing.

(8) When relevant evidence offered by a party is included in a book, paper, or document containing irrelevant material, the party offering the exhibit must plainly designate the relevant material offered:

(a) If irrelevant material is included in the exhibit and would encumber the record, then the exhibit may be excluded. The exhibit may be marked for identification and the relevant material may be read into the record if properly authenticated.

(b) If the Commission or ALJ directs, a copy of the relevant portions of the exhibit may be received as evidence. The offering party must offer copies of the document to all other parties appearing at the hearing. The parties must be afforded an opportunity to examine the exhibit and to offer in evidence other relevant portions of the exhibit.

(9) Papers and documents on file with the Commission may be introduced by reference to number, date, or by any other method of identification satisfactory to the Commission or ALJ.

(10) The Commission or ALJ may direct that the testimony of a witness, including supporting exhibits, be submitted in writing prior to hearing. Unless otherwise directed by the Commission or ALJ, written testimony, when sworn to orally or in writing by the witness under oath to be true, will be received in the same manner as an exhibit. The written testimony must be double-spaced, prepared in question and answer or narrative form, and contain a statement of the qualifications of the witness. The written testimony is subject to rules of admissibility and cross-examination.

(11) The Commission or ALJ may direct that demonstrative evidence be reduced to a diagram, map, photograph, or similar representation.

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 183.450, 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-001-0540

Data Requests

(1) A party may submit data requests to any other party, subject to the discovery rules in the ORCP. Data requests are written interrogatories or requests for production of documents. Data requests must be answered within 14 days from the date of service. Each data request must be answered fully and separately in writing or by production of documents, or objected to in writing.

(2) A party submitting a data request must serve the request on all parties to the proceedings. **For nonconfidential requests, service may be made by electronic mail or by electronic mail notification of upload to a designated shared workspace for data requests and responses.** If the request contains confidential information, then the submitting party must serve a complete copy on all parties eligible to receive confidential information under the terms of a protective order and a redacted copy to all other parties. **The complete confidential copy must be served using means identified in the protective order. Nonconfidential data requests and responses submitted to the Staff of the Commission must be sent to PUC.Datarequest@state.or.us. If a designated shared workspace is being used for data requests and responses, the notification of uploaded data requests and responses must be sent to PUC.Datarequest@state.or.us.**

(3) The party answering the data request must provide a response **or an electronic mail notification of upload to a designated shared workspace** to the submitting party and all other parties that filed a written request for a copy of the response. A party must agree to be bound by the applicable protective order to be eligible to receive a response containing confidential information.

(4) A party may offer into evidence data requests and the answers to the data requests. Any objection to substance or form of a data request or answer must be attached to the submitted data request or answer with specific reference and grounds. Every remedy available to a party using deposition procedures is available to a party using data requests.

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(5) Except when requested by the Commission or ALJ, or when seeking resolution of a discovery dispute under these rules, data requests are not filed with the ~~Commission's~~ Filing Center or provided to the ALJ.

Stat. Auth.: ORS 756.040 & 756.060

Stats. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: PUC 5-2010, f. & cert. ef. 10-22-10

860-016-0000

Definitions and Filing Dates

As used in Division 016 of the rules:

- (1) "The Act" means the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996.
- (2) "Arbitration" means the submission of a dispute for resolution by a neutral third party appointed by the Commission pursuant to Section 252(b) of the Act.
- (3) "Commission" means the Public Utility Commission of Oregon.
- (4) "Mediation" means a process in which a neutral third party assists negotiating parties to reach their own solution pursuant to Section 252(a)(2) of the Act.
- (5) "Petitioner" means a person who has filed a petition for arbitration under the Act.
- (6) "Respondent" means the party to a negotiation, which did not make the request for arbitration.

(7) Filing dates are calculated and enforced per OAR 860-001-0150.

Stat. Auth.: ORS 183 & ORS 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 25-2001, f. & cert. ef. 11-5-01; PUC 6-2002, f. & cert. ef. 2-13-02

860-016-0020

Agreements Arrived at Through Negotiation

(1) Upon receiving a request for interconnection, services, or network elements pursuant to Section 251 of the Act, the affected telecommunications carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier.

(2) The negotiating parties may ask a mediator outside the Commission to help them reach agreement. If they request the Commission to mediate, the Commission will use an Administrative Law Judge (ALJ) or a member of the utility Staff to mediate. Only the negotiating parties and the mediator will participate in mediation sessions.

(3) After the parties reach agreement under Section 252(a) of the Act, they must file an application with the Commission seeking approval of the agreement, or for approval of an amendment to an approved agreement on file with the Commission. The application must include ~~an original plus two copies of~~ the negotiated agreement and a completed Carrier-to-Carrier Agreement Checklist. A copy of the checklist is available on the Commission's website. The parties may also include any other supporting information with their application. **The application and checklist must be filed electronically as required in OAR 860-001-0170.**

~~(4) The negotiating parties must supplement the filing with an exact copy of the negotiated agreement and checklist in electronic form as required in OAR 860-001-0170.~~

(5) The Commission will approve or reject the agreement within 90 days of filing, with written findings as to any deficiencies. Prior to rejecting the agreement, the Commission will notify the negotiating parties of its intended action and provide an opportunity for the carriers to respond. The grounds for rejection are that the agreement:

- (a) Discriminates against a carrier not a party to the agreement; or
- (b) Is not consistent with the public interest, convenience, and necessity. Applicable Commission policies will be a factor in public interest, convenience, and necessity determinations.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 25-2001, f. & cert. ef. 11-5-01; PUC 6-2002, f. & cert. ef. 2-13-02; PUC 12-2004(Temp), f. & cert. ef. 8-31-04 thru 2-26-05; PUC 2-2005, f. & cert. ef. 2-11-05; PUC 11-2006, f. & cert .ef. 12-15-06

860-016-0021

Wholesale Promotions

(1) A carrier intending to offer a wholesale promotion that would modify the terms of a Carrier-to-Carrier Agreement must provide the Commission and other telecommunications carriers notice of the promotion at least 30 days prior to the effective date of the promotion. The notice to the Commission must include:

(a) A copy of a form contract, containing the terms and conditions of the promotional offering that would be submitted as an amendment to an existing Carrier-to-Carrier Agreement; and

(b) A description of the means used to notify other telecommunications carriers of the promotion.

(2) The offering carrier must file the notice with the Commission ~~an original plus two copies of the form contract. With the filing, the offering carrier and~~ must include a completed Carrier-to-Carrier Agreement Checklist, a copy of which is available on the Commission's ~~Internet~~ website. The notice and checklist must be filed electronically as required in OAR 860-001-0170. ~~The carrier must supplement the filing with an exact copy of the contract and checklist in electronic form as required in OAR 860-001-0170.~~

(3) The Commission will approve the form contract unless it finds that the contract, if filed as an amendment to an interconnection agreement, would be subject to rejection under OAR 860-016-0020(54).

(4) If another carrier accepts the promotional offering, the offering and accepting carriers must file, within ~~ten~~**10** days of execution by the parties, an amendment to an existing Carrier-to-Carrier Agreement incorporating the exact terms and conditions of the approved amendment in the form contract. Any such filed amendment will be deemed effective upon the later of the Commission approval of the form contract or execution of the amendment by the parties.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 12-2004(Temp), f. & cert. ef. 8-31-04 thru 2-26-05; PUC 2-2005, f. & cert. ef. 2-11-05; PUC 11-2006, f. & cert .ef. 12-15-06

860-016-0025**Adoption of Previously Approved Agreement or Statement of Generally Available Terms**

(1) If a requesting telecommunications carrier decides to adopt an identical agreement or an identical individual arrangement contained in an agreement, pursuant to Section 252(i) of the Act and 47 CFR Section 51.809, with the exception of the adopting party's name and new effective date, previously approved by and on file with the Commission, or a Statement of Generally Available Terms approved by the Commission under OAR 860-016-0040, it **shall must** file notice of the adoption with the Commission. The notice **shall must** include a completed Carrier-to-Carrier Agreement Checklist.

(2) ~~The requesting carrier shall also submit a copy of the checklist in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. The notice documents must be filed electronically as required in OAR 860-001-0170.~~

(3) If the notice is filed jointly with the affected telecommunications carrier, the adoption **shall** become effective on the date filed.

(4) If the notice is filed unilaterally by the requesting telecommunications carrier, the requesting telecommunications carrier **shall must** simultaneously provide notice of the adoption to the affected carrier. The affected carrier may then file objections to the adoption within 21 calendar days of such notice. If no objections are filed, the adoption **shall** become effective on the 22nd day after filing.

(5) An affected carrier may object to an adoption on the following grounds:

(a) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement;

(b) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible;

(c) There is new federal or state law that requires modification of the agreement proposed to be adopted;

(d) The agreement proposed to be adopted has expired or been cancelled; or

(e) The proposed adoption is unlawful.

(6) If the affected carrier files objections, the requesting carrier may file a reply within 14 calendar days after the objections are filed. An assigned Administrative Law Judge (ALJ) **shall will** schedule a conference within **five5** business days after the reply is filed, to be held as soon thereafter as practicable. At the conference, the ALJ **shall will** determine whether the issues raised by the affected carrier's objection can be resolved based on the pleadings and all supporting documentation, or whether further proceedings are necessary. If further proceedings are necessary, the ALJ **shall will** establish a schedule for resolving the dispute on an expedited basis. Pending resolution of the dispute, other provisions of the proposed adoption not contested by the affected carrier will become effective.

Stat. Auth.: ORS 183 & 756

Stat. Implemented: 47 USC 252

Hist.: PUC 25-2001, f. & cert. ef. 11-5-01; PUC 6-2002, f. & cert. ef. 2-13-02; PUC 11-2006, f. & cert. ef. 12-15-06

860-016-0030**Arbitration of Disputes**

(1) Negotiating parties may engage the services of an outside arbitrator rather than file a petition with the Commission. If the negotiating parties petition the Commission to arbitrate their dispute, the Commission will use an ALJ as arbitrator unless workload constraints necessitate the use of an outside arbitrator.

(2) A petition for arbitration must contain:

(a) **Identification of the parties' representatives, including contact information with electronic mail addresses;**

(b) A statement of all unresolved issues;

(bc) A description of each party's position on the unresolved issues;

(ed) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute. Wherever possible, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously approved by the Commission; **and**

(de) Documentation showing that the request complies with the time requirements of the Act.

(3) Respondent may file a response within 25 days of the request for arbitration. In the response, the respondent **shall** ~~must~~ address each issue listed in the request, describe the respondent's position on those issues, and identify and present any additional issues for which the respondent seeks resolution.

(4) The arbitration will be conducted in a manner similar to a contested case proceeding, and the arbitrator will have the same authority to conduct the arbitration process as an ALJ has in conducting hearings under the Commission's rules. However, the arbitration process will be streamlined to meet the Act's timelines. An early conference will be held to discuss processing of the case, and to receive the proposal put forth by each party. The arbitrator will establish the schedule, and decide whether an oral hearing would be helpful. After the oral hearing or other procedures (for example, rounds of comments), each party will submit its "final offer" proposed agreement. The arbitrator will choose between the two final offers. However, if neither offer is consistent with the Act and Commission policies, the arbitrator will make an award that meets those requirements.

(5) Formal discovery procedures will be allowed only to the extent deemed necessary by the arbitrator. Parties will be required to cooperate in good faith in voluntary, prompt, and informal exchanges of information relevant to the matter. Unresolved discovery disputes will be resolved by the arbitrator upon request of a party. The arbitrator will order a party to provide information if ~~he/she~~ **the arbitrator** determines the requesting party has a reasonable need for the requested information and that the request is not overly burdensome.

(6) Only the two negotiating parties will have full party status. The arbitrator may confer with Staff for assistance throughout the arbitration process. If Staff assistance is desired, the arbitrator will notify (by telephone or other means) the parties at least 24 hours before the consultation with Staff. The parties may attend or listen to the consultation and may respond in a manner allowed by the arbitrator.

(7) To keep the process moving forward, appeals to the Commission will not be allowed during the arbitration process. An arbitrator may certify a question to the Commission if deemed necessary.

(8) To accommodate the need for flexibility, the arbitrator may use procedures that vary from those set out here if ~~he/she~~ **the arbitrator** deems it helpful in a particular arbitration, as long as the procedures are fair, treat the parties equitably, and substantially comply with the procedures listed here.

(9) Each arbitration award must:

- (a) Ensure that the requirements of sections 251 and 252 of the Act and any valid applicable Federal Communications Commission regulations under that section are met;
- (b) Establish interconnection and network element prices consistent with the Act;
- (c) Establish a schedule for implementation of the agreement; and
- (d) Be consistent with Commission policies.

(10) After an arbitration award is submitted to the Commission, notice will be served on those who have indicated a desire to receive notice of mediated and arbitrated agreements. Any person may then file comments within 10 days of service of the award.

(11) The Commission will accept or reject an arbitration award within 30 days.

(12) Within 14 days after the Commission issues its arbitration decision, petitioner must prepare an interconnection agreement complying with the terms of the arbitration decision and serve it on respondent. **Within 10 days of service of this interconnection agreement, Respondent shall must** either sign and file the agreement, or file objections to it, ~~within 10 days of service of it.~~ If objections are filed, respondent **shall must** state how the agreement fails to comply with the arbitration decision, and offer substitute language complying with the decision. The Commission will approve or reject a filed interconnection agreement within 30 days of its filing, or the agreement will be deemed approved. If petitioner, without respondent's consent, fails to timely prepare and serve an interconnection agreement on respondent, respondent may file a motion requesting the Commission dismiss the petition for arbitration with prejudice. The Commission may grant such motion if the petitioner's failure to timely prepare and serve the interconnection agreement was the result of inexcusable neglect on the part of petitioner.

Stat. Auth.: ORS 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 11-2006, f. & cert .ef. 12-15-06

860-016-0050

Petitions for Enforcement of Interconnection Agreements

(1) ~~Purpose of rule.~~ This rule specifies the procedure for a telecommunications provider, as defined in OAR 860-032-0001, to file a complaint for the enforcement of an interconnection agreement ~~that was previously approved by the Commission. For purposes of this rule, the term "interconnection agreement" is an agreement~~ executed pursuant to the Telecommunications Act of 1996 (the Act). This includes interconnection agreements, resale agreements, agreements for the purchase or lease of unbundled network elements (UNEs), or statements of generally available terms and conditions (SGATs),

whether those agreements were entered into through negotiation, mediation, arbitration, or adoption of a prior agreement or portions of prior agreements. Section (131) of this rule specifies procedures for complaints alleging that telecommunications utilities have engaged in prohibited acts under ORS 759.455.

(2) At least 10 days prior to filing a complaint for enforcement, complainant must give written notice to defendant and the Commission that complainant intends to file a complaint for enforcement. The notice must identify the provisions in the agreement that complainant alleges were or are being violated and the specific acts or failure to act that caused or are causing the violation, and whether complainant anticipates requesting temporary or injunctive relief. On the same day the notice is filed with the Commission, complainant must serve a copy of the notice on defendant's authorized representative, attorney of record, or designated agent for service of process. Complainant must also serve the notice on all persons designated in the interconnection agreement to receive notices;

(3) ~~The complaint.~~A complaint for enforcement of an interconnection agreement must contain the following:

(a) ~~Contain a~~ statement of specific facts demonstrating that the complainant telecommunications provider conferred with defendant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

(b) ~~Include a~~ copy of ~~the~~ written notice, required by section (2), to the defendant telecommunications provider indicating that the complainant intends to file a complaint for enforcement ~~of the interconnection agreement, as described in subsection (3)(a) below;~~

(c) ~~Include a~~ copy of the interconnection agreement or the portion of the interconnection agreement that the complainant contends was or is being violated. If a copy of the entire interconnection agreement is provided, complainant must specify provisions at issue. If the interconnection agreement adopted a prior agreement or portions of prior agreements, the complaint must also indicate the provisions adopted in those agreements;

(d) ~~Contain a~~ statement of the facts or ~~a statement of the~~ law demonstrating defendant's failure to comply with the agreement and complainant's entitlement to relief. The statement ~~of entitlement to relief~~ must indicate that the remedy sought is consistent with the dispute resolution provisions in the agreement, if any. Statements of facts must be supported by written testimony ~~or one or more~~with affidavits, made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits;

(e) ~~The complaint may d~~Designate up to three persons~~one additional person~~ to receive copies of other pleadings and documents; ~~and~~

(f) ~~Complainant shall also file with the complaint, as a separate document, Include~~ any motions for affirmative relief, filed as a separate document and ~~Motions for injunctive or temporary relief must be~~ clearly marked. Nothing in this subsection ~~shall~~ precludes complainant from filing a motion subsequent to the filing of the complaint if the motion is based upon facts or circumstances unknown or unavailable to complainant at the time the complaint was filed; and

(g) ~~Complainant shall also file with the complaint, as a separate document, include~~ an executive summary, filed as a separate document not to exceed 8 pages, outlining the issues and relief requested. ~~Such summary shall be no more than eight pages.~~

~~(34) Service of the complaint. The complaint for enforcement must be served as follows~~ On the same day the complaint is filed with the Commission,:

~~(a) At least ten days prior to filing a complaint for enforcement with the Commission, complainant must give written notice to defendant and the Commission that complainant intends to file a complaint for enforcement. The notice must identify the provisions in the agreement that complainant alleges were or are being violated and the specific acts or failure to act that caused or is causing the violation and whether the complainant anticipates requesting temporary or injunctive relief. The notice must be served in the same manner as set forth in subsections (b) and (c) below, except that complainant must also serve the notice on all persons designated in the interconnection agreement to receive notices;~~

~~(b) Complainant must serve a copy of the complaint for enforcement on defendant's authorized representative, attorney of record, or designated agent for service of process~~ the same day the complaint is filed with the Commission. Service may be by electronic mail, fax, or overnight mail, ~~provided but~~ the complaint must arrive at defendant's location on the same day the complaint is filed with the Commission. Service by electronic mail or fax must be followed by a hard physical copy the next day ~~in~~ by overnight mail delivery; and

~~(c) Complainant must serve a copy of the complaint for enforcement on defendant's authorized representative, attorney of record, or designated agent for service of process.~~

~~(45) Within 10 business days after service of the complaint, defendant may file The answer. An answer with the Commission. Any allegations raised in the complaint and not addressed in the answer are deemed admitted. The answer must comply with the following:~~

~~(a) The answer must e~~ Contain a statement of specific facts demonstrating that the ~~responding telecommunications provider~~ defendant conferred with complainant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

~~(b) The answer must r~~ Respond to each allegation set forth in the complaint and ~~must~~ set forth all affirmative defenses;

~~(c) The answer must e~~ Contain a statement of the facts or ~~a statement of the~~ law supporting defendant's position. Statements of facts must be supported by written testimony or one or more affidavits, made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits; and

~~(d) The answer may d~~ Designate one additional up to three persons to receive copies of other pleadings and documents;

~~(e6) On the same day as the answer is filed, the defendant must also file its response to any motion filed by complainant and its motions for affirmative relief. Each response~~

~~and each motion must be filed as a separate filing. Any allegations raised in the complaint and not addressed in the answer are deemed admitted; and~~

~~(f) Defendant shall file with the answer, as a separate document, a response to any motion filed by complainant, and any motion defendant wishes to file that seeks affirmative relief.~~ Nothing in this subsection shall preclude defendant from filing a motion subsequent to the filing of the answer if the motion is based upon facts or circumstances unknown or unavailable to defendant at the time the answer was filed.

(7) On the same day the answer is filed with the Commission, defendant must serve a copy of the answer to the complainant's authorized representative, attorney of record, or designated agent for service of process.

~~(5) Service of the answer. The answer must be served as follows:~~

~~(a) Defendant must file a copy of the answer with the Commission within ten business days after service of the complaint for enforcement;~~

~~(b) Defendant must deliver a copy of the answer to complainant the same day the answer is filed with the Commission, in the manner set forth in subsections (3)(b) and (3)(c) above;~~

~~(c) Defendant must serve a copy of the answer on the complainant's attorney, as listed in the complaint, or the person who signed the complaint, if complainant has no attorney.~~

~~(6) The reply. Complainant must file a reply to an answer that contains affirmative defenses within five business days after the answer is filed. On the same day the reply is filed with the Commission, complainant must serve a copy of the reply to defendant's authorized representative, attorney of record, or designated agent for service of process. The reply must be served in the manner set forth in subsections (3)(b) and (3)(c) above. If the reply contains new facts or legal issues not raised in the complaint, the reply must also comply with subsection (2)(d) above.~~

~~(7) Cross-complaints or counterclaims. A cross-complaint or counterclaim shall must be answered within the ten business day time frame allowed for answers to complaints.~~

~~(8) Conference. The Commission will conduct a conference regarding each complaint for enforcement of an interconnection agreement.~~

~~(a) The Administrative Law Judge (ALJ) will schedule a conference within five business days after the answer is filed, to be held as soon thereafter as is practicable. At the discretion of the ALJ, the conference may be conducted by telephone;~~

~~(b) Based on the complaint and the answer, all supporting documents filed by the parties, and the parties' oral statements at the conference, the ALJ will determine whether the issues raised in the complaint can be determined on the pleadings and submissions without further proceedings or whether further proceedings are necessary. If further proceedings are necessary, the ALJ will establish a procedural schedule. The procedural schedule may include a mandatory mediation session. Either party may request that a person other than the ALJ preside over the mediation. Nothing in this subsection is intended to prohibit the bifurcation of issues where appropriate;~~

~~(c) In determining whether further proceedings are necessary, the ALJ will consider, but is not limited to, the positions of the parties; the need to clarify evidence through the~~

examination of witnesses; the complexity of the issues; the need for prompt resolution; and the completeness of the information presented;

(d) The ALJ may make oral rulings on the record during the conference on all matters relevant to the conduct of the proceeding.

~~(911) Discovery.~~ A party may file with the complaint or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue.

~~(120) Expedited procedure.~~ When warranted by the facts, the complainant or defendant may file a motion requesting that an expedited procedure be used. The moving party **shall must** file a proposed expedited procedural schedule along with its motion. The ALJ will schedule a conference to be held as soon ~~after the motion is filed~~ as is practicable, to determine whether an expedited schedule is warranted.

(a) The ALJ **shall will** consider whether the issues raised in the complaint or answer involve a risk of imminent, irrevocable harm to a telecommunications provider and to the public interest;

(b) If a determination is made that an expedited procedure is warranted, the ALJ **shall will** establish a procedure that ensures a prompt resolution of the merits of the dispute, consistent with due process and other relevant considerations. The ALJ **shall will** consider, but is not bound by, the moving party's proposed expedited procedural schedule;

(c) An expedited procedure may be appropriate if the complainant shows that its ability to provide telecommunications services will be substantially harmed unless the Commission acts promptly. In general, the Commission will not entertain a motion for expedited procedure where the dispute solely involves the payment of money.

~~(131)~~ Procedures for complaints alleging violation of ORS 759.455.

(a) An answer under section ~~(45)~~ of this rule **shall must** be filed with the Commission and served on the complainant within ~~ten~~ **10** calendar days after service of the complaint;

(b) A reply under section ~~(68)~~ of this rule **shall must** be filed with the Commission and served on the defendant within ~~five~~ **5** calendar days after the answer is filed;

(c) The ALJ **shall will** schedule a conference to be held ~~in person or by telephone~~ not later than 15 calendar days after the complaint is filed;

(d) A hearing **shall will** begin no later than 30 days after the complaint is filed;

(e) The ALJ may consult with the Commission Staff in the manner set forth in OAR 860-016-0030(6).

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: ORS 756.040, 756.518, 759.030(1), 759.455, Ch. 1093, OL 1999 & 47 USC | 252

Hist.: PUC 7-1999, f. & cert. ef. 10-18-99; PUC 7-2000, f. & cert. ef. 5-3-00; PUC 21-2002, f. & cert. ef. 12-9-02; PUC 1-2005, f. & cert. ef. 2-2-05

860-021-0015

Dispute Resolution

(1) When a dispute occurs between a customer or applicant and a utility about any **bill, charge, or service**, the utility must:

(a) Thoroughly investigate the matter;

(b) and promptly report the results of its investigation to the **customer or applicant/complainant**;

(c) Inform the complainant of the right to have a utility supervisor review any dispute;

(d) . Each utility must prepare a written record **of the dispute show** including the name and address of the **customer or applicant/complainant** involved, the date **the complaint was received, the issues in and character of the** dispute, and the disposition of the matter; **and**

(e) . The utility must retain records of the dispute for **at least 36 months after the investigation is closed.**

(2) ~~The utility shall inform the customer or applicant of the right to supervisory review of any dispute, including but not limited to, establishment of credit and termination of service. If the utility and complainant cannot resolve thea dispute is not resolved, the utility shall~~ **must notify/inform** the **customer or applicant of the Commission's dispute resolution procedure and its toll-free telephone number. complainant of the right to contact the Consumer Services Section and request assistance in resolving the dispute. The utility must provide the following contact information for the Consumer Services Section:**

(a) Telephone: 503-378-6600; 1-800-522-2404; TTY 711;

(b) Mailing address: Public Utility Commission of Oregon, Consumer Services Section, PO Box 1088, Salem, Oregon 97308;

(c) Physical address: Public Utility Commission of Oregon, 3930 Fairview Industrial Drive SE, Salem, Oregon 97302;

(d) Electronic mail address: puc.consumer@state.or.us; and

(e) Website:

http://www.puc.state.or.us/consumer/customer%20complaint%20process.pdf.

(3) ~~A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services Division. The Commission shall notify the utility upon receipt of such a request.~~ **The Consumer Services Section will investigate any dispute upon request to determine whether it can be resolved as an informal complaint.**

~~(4) The Commission's Consumer Services Division shall assist the complainant and the utility in an effort to reach an informal resolution of the dispute.~~

~~(54) If the Consumer Services Section cannot resolve thea registered dispute cannot be resolved informally, the Commission's Consumer Services Division shall advise the complainant may of the right to file a formal written complaint with the Commission under ORS 756.500. The formal complaint must be submitted on an approved form available from the Consumer Services Section.~~

(a) The complaint shall state the facts of the dispute and the relief requested must be filed electronically with the Filing Center at PUC.FilingCenter@state.or.us.

(b) If complainant does not have access to electronic mail,

(A) The complaint may be mailed, faxed, or delivered to the Filing Center at the address set out in OAR 860-001-0140; and

(B) The complaint must include a request for waiver of electronic service and filing requirements. This request is included on the form available from the Commission's Consumer Services Division.

(c) The Commission will serve the complaint on the utility. The Commission may electronically serve the utility with the complaint if the electronic mail address is verified prior to service of the complaint and the delivery receipt is maintained in the official file.

(d) The utility shall must answer the complaint within 15 days of service of the complaint by the Commission.

(e) The Commission matter shall will determine a procedural schedule after the utility's answer is filed. The utility must serve a copy of its answer on the complainant. then be set for expedited hearing. A hearing may be held on less than ten days' notice when good cause is shown.

(A) If the utility files a motion to dismiss, the complainant may file a response within 15 days of the motion. If the complainant responds, the complainant must file the response with the Filing Center and send a copy to the utility. The Commission may make a decision on the formal complaint based on the information in the complaint, the utility's response and motion to dismiss, and the complainant's response to the utility's motion; or

(B) The Commission may set a procedural schedule for the complaint proceedings, including but not limited to, scheduling dates for receiving additional information from the parties, telephone conferences, or a hearing. A hearing may be held on less than 10 days' notice when good cause is shown.

(56) Upon filing a formal complaint, the complainant may request a hearing to determine whether the complainant is entitled to continued or restored service pending the resolution of the complaint. Unless extraordinary circumstances exist, the Commission will conduct the hearing by telephone within 3 business days. Notice of the hearing will be provided to the complainant and the utility at least 12 hours before the date and time of the hearing. Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.

(67) A ~~customer or applicant~~ complainant who has a registered dispute or formal complaint pending with the Commission shall be entitled to continued or restored service provided:

(a) Service was not terminated for ~~tampering with utility property, stealing, diverting, or using unauthorized service, theft of service~~ or failure to establish credit;

(b) A bona fide dispute exists in which the facts asserted by the ~~customer or applicant~~ entitle the ~~complainant~~ customer or applicant to service;

(c) When termination is based on nonpayment, the customer ~~or applicant makes adequate arrangement to avoid future loss to the utility, such as prepaying estimated monthly utility~~ agrees to pay undisputed charges; and

(d) The ~~complainant~~ customer or applicant diligently pursues conflict resolution under the Commission's rules.

~~(87) If the conditions in section (67) of this rule are not satisfied, the utility has no obligation to provide continued service. A utility discontinuing service because of a failure to meet the conditions of subsections (67)(c) or (67)(d) of this rule shall must give the customer five-day notice served in the same manner as provided by OAR 860-021-0405 or 860-021-0505, whichever applies, except the notice need only describe the defect in performance, the date and time when utility service will terminate, and the toll-free number of the Commission's Consumer Services Division. In deciding whether the conditions are met, the utility shall consult with the Commission's Consumer Services Division. A customer or applicant who has filed a formal complaint, the utility, or the Commission's Consumer Services Division may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the utility, and the Commission's Consumer Services Division at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.~~

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.500 & 756.512

Hist.: PUC 164, f. 4-18-74. ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 4-1985, f. & ef. 4-22-85 (Order No. 85-350); PUC 5-1987, f. & ef. 7-2-87 (Order No. 87-723); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & ef. 5-7-98 (Order No. 98-188); PUC 8-1999, f. & cert. ef. 10-18-99; PUC 19-2001, f. & cert. ef. 6-21-01; PUC 11-2003, f. & cert. ef. 7-3-03; PUC 6-2013, f. & cert. ef. 8-7-13

860-022-0005**Tariff Specifications for Energy Utilities and Large Telecommunications Utilities**

(1) Form and style of tariffs:

(a) ~~All tariffs must be in loose leaf form so changes can be made by reprinting and inserting a single leaf;~~

(b) Each energy or large telecommunications utility must designate the initial tariff as PUC Oregon No. 1, and designate successive tariffs with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(c) The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used; and

(d) Separate tariffs must be filed for electric, telecommunications, telegraph, gas, heat, or for any other service entered.

(2) Size of tariffs and copies required: an

(a) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(b) Energy and large telecommunication utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. ~~The utility must supplement the filing with an exact copy of the tariff~~ in electronic form as required in OAR 860-001-0170. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.205

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 176, f. 11-17-76, ef. 12-1-76 (Order No. 76-806); PUC 15-1987, f. & ef. 12-3-87 (Order No. 87-1185); PUC 8-1995, f. & cert. ef. 8-30-95 (Order No. 95-858); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

860-022-0047**Recovery of Certain Facility Relocation Costs**

(1) This rule provides a means for a utility to recover from its customers the unreimbursed costs of facility relocation activities required by a public body, as provided in ORS 758.025.

(2) As used in this rule:

(a) "Facility" or "facilities" refers to a utility's tangible plant which ordinarily has a service life of more than one year that provides utility service, and is included in the utility's books of account as Telecommunications Plant in Service (account 2001. 47 C.F.R. 32).

(b) "Facility costs" represent the cost of materials installed because of a facility relocation required by a public body.

(c) "Nonfacility costs" are those non-material costs (e.g. labor) incurred to place or move utility facilities and which are authorized for recovery by the utility under this rule.

(d) "Public body" has the meaning given that term in ORS 174.109.

(e) "Recoverable relocation costs" has the meaning given in ORS 758.025(5)(a).

(f) "Undepreciated value of facilities replaced" represents the net book value (original cost minus accumulated depreciation) of the facilities removed or retired.

(g) "Utility" means a telecommunications utility or competitive telecommunications provider, as those terms are defined in ORS 759.005.

(3) A telecommunications utility that is not subject to rate-of-return regulation, including a utility regulated under ORS 759.255 may, after participating in the process described in 758.025(3), petition the Commission for approval to recover from its customers prudent costs incurred for the relocation of facilities required by a public body that are not otherwise paid or reimbursed from another source.

(4) The utility's petition must follow the requirements of filing ~~and service~~ for contested cases found in OAR Chapter 860, Division 001 and include:

(a) The name of the utility as it appears on its certificate of authority.

(b) The name, telephone number, electronic mail address, and mailing address of the person to be contacted for additional information about the petition.

(c) The name, telephone number, electronic mail address, and mailing address of the person to be contacted for regulatory information, if different from the person specified in subsection (b) of this section.

(d) A general description of the relocation project or projects including a statement as to why the relocation was necessary and unavoidable, and a description of the locations and public bodies involved.

(e) A statement that, for each project identified in subsection (d) above, the utility participated in the planning and design process described in ORS 758.025(3).

(f) Evidence from each public body that the public body required the utility to relocate its facilities within the public body's jurisdiction.

(g) A general statement of the overall impact on the utility of the relocation project or projects.

(h) One or more schedules of costs for which the utility seeks recovery. The utility must:

(A) Include in its petition only those costs directly related to a relocation required by a public body.

(B) Exclude any costs subject to reimbursement from other sources, such as state or federal highway funds.

(C) Identify capital and expense costs separately.

(D) Identify facility and nonfacility costs separately.

(E) Exclude all costs related to improvements and upgrades, except that costs related to mandatory conversions ordered by a public body may be included.

(F) Ensure that all schedules, plant records, and job costs meet FCC accounting requirements (47 C.F.R. 32).

(G) Limit recoverable facility costs to the undepreciated value of the facilities replaced.

(i) The utility's proposed allocation of costs between services, customers, jurisdictions, or other groups as appropriate.

(j) The utility's proposed method of cost recovery.

(A) Approved relocation costs may be recovered by one or more line items on customer bills.

(B) The utility may propose alternative forms of cost recovery subject to Commission review and approval.

(C) Line items must not be described on the customer's bill as a tax or other mandatory government fee.

(k) The utility's proposed time period for cost recovery. A utility may recover its cost over no less than twelve months, subject to an annual true up.

(l) A copy of the customer notice required by section (8) of this rule.

(m) An affidavit of notice required by section (10) of this rule.

(5) The petition may include any other relevant information the utility wishes the Commission to consider.

(6) If the utility designates any portion of the petition to be confidential, it must provide an affidavit stating the legal basis for the claim of confidentiality and comply with the requirements of OAR 860-001-0070 or 860-001-0080.

(7) The petition must be filed at least 90 days before the proposed effective date of the cost recovery.

(8) The customer notice (notice) must include:

(a) The name of the utility as it normally appears on a customer bill.

(b) A statement that the utility has petitioned the Commission for recovery of certain mandatory facility relocation costs.

(c) The proposed impact on the customer's bill and the proposed duration of any cost recovery billing.

(d) The proposed effective date of cost recovery billing.

(e) A statement that customers may submit objections or comments regarding the petition to the Commission within 45 days of receipt of the notice.

(f) The name, telephone number, electronic mail address, and mailing address of the utility's contact person for more information.

(9) The utility must provide the notice:

(a) To all customers whose bills will be affected if the requested cost recovery is approved by the Commission.

(b) To affected customers on or before the date the utility submits its petition for cost recovery to the Commission.

(c) To persons who are not customers of the utility if the utility seeks cost recovery from those persons. The utility must explain in its petition why those persons should contribute to the utility's cost recovery. The utility must provide notice to those persons at the same time as the utility provides notice to its customers.

(10) The affidavit of notice must include:

(a) A certificate of service stating when and by what means (for example, direct mail, bill message, bill insert, or electronic mail) the notice was provided to the persons identified in section (9) above.

(b) A statement of efforts taken by the utility to provide notice in those instances when service was not completed.

(11) The utility must identify in its petition its recoverable costs that are substantial and beyond the normal course of business, subject to Commission review and approval.

(12) In its review of the petition under ORS 758.025(5), the Commission will:

(a) Verify the utility's participation in the design and planning process described in ORS 758.025(3).

(b) Verify the relocation costs for which the utility requests recovery.

(c) Determine the allocation of costs between interstate and intrastate services, geographic areas, customers and services.

(d) Prescribe the method of cost recovery.

(13) The Commission may audit any relocation costs or other information submitted by the utility.

(14) The Commission may administratively approve an unopposed petition without a hearing. For good cause, the Commission may suspend the effective date of a petition (whether opposed or unopposed) without a hearing for a period not to exceed six months.

(15) If opposition to the petition is filed with the Commission within 45 days of service of the notice, the Commission will schedule a conference to determine the schedule and proceedings necessary to complete its review of the petition. Contested cases will follow the procedures in OAR Chapter 860, Division 001.

(16) The utility must file the approved surcharge (or other approved cost recovery mechanism) in its tariff and price list before it can bill the surcharge to its customers.

(17) With respect to relocation of utility facilities required by a public body, this rule does not supersede any franchise agreement, ordinance, or applicable state law.

(18) This rule applies to relocations for which construction began on or after January 1, 2010.

Stat. Auth.: ORS Ch. 183, 756, 758 & 759

Stats. Implemented: ORS 758.025

Hist.: PUC 5-2012, f. & cert. ef. 8-23-12

860-023-0151**Annual Report on Electric Reliability**

(1) On or before May 1 of each year, an electric company must file with the Commission a report that includes the information set forth in section (2) of this rule for the reporting period. The electric company must file the report in ~~both paper and~~ electronic form. The electric company must make electronic copies of the report available to the public upon request. For paper copies requested by the public, the electric company may charge a reasonable cost for production of the copy.

(2) The annual Electric Service Reliability Report must contain:

(a) The results of the calculated SAIDI, SAIFI, and MAIFI_E indices required by OAR 860-023-0111. The electric company must also report this information on a system-wide basis compared with the previous four years' performance, and on a reliability reporting area basis compared with the previous four years' performance.

(b) A summary of system-wide and reliability reporting area sustained interruption causes compared to the previous four-year performance. Cause categories to be evaluated include:

- (A) Loss of Supply — Transmission;
- (B) Loss of Supply — Substation;
- (C) Distribution — Equipment;
- (D) Distribution — Lightning;
- (E) Distribution — Planned;
- (F) Distribution — Public;
- (G) Distribution — Vegetation;
- (H) Distribution — Weather (other than lightning);
- (I) Distribution — Wildlife;
- (J) Distribution — Unknown; and
- (K) Distribution — Other.

(c) A listing of the Major Events experienced during the reporting period, including reliability reporting area involved; operating areas involved; dates involved; T_{MED} applied; interruption causes; and SAIDI, SAIFI, and CAIDI impacts to customers for the Event on both a reliability reporting area basis and a system-wide basis.

(d) A listing of the T_{MED} values that will be used for each reliability reporting area for the forthcoming annual reporting period compared with the previous four years of T_{MED} values.

(e) A summary of the characteristics of the systems covered under OAR 860-023-0091(4) and estimation methodologies covered by OAR 860-023-0101(3) and 860-023-0111(3) for the collection of interruption data, calculation of reliability information, and facilitation of interruption restoration and mitigation.

(f) A summary addressing the changes that the electric company has made or will make in the collection of data and the calculation, estimation, and reporting of reliability information. The electric company must explain why the changes occurred and explain how the change affects the comparison of newer and older information.

(g) A map showing the reliability reporting areas and operating- areas.

(h) A listing of circuits by reliability reporting area and substation, indicating circuit voltage and number of customers connected.

(3) This rule is effective beginning January 1, 2012.

ORDER NO. 14 456

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 757.020
Hist.: PUC 10-2011, f. 10-14-11, cert. ef. 1-1-12

860-025-0060**Reinstatement of Carrier of Last Resort (COLR) Obligations**

(1) Any resident or occupant of the property for which the Commission allowed an exemption of the COLR obligations under OAR 860-025-0055, or the exempted COLR utility, may petition the Commission to reinstate the COLR obligations.

(2) The petition for reinstatement of the COLR obligations must be filed as set forth in OAR 860-001-0140 and 860-001-0170 and include the information required in OAR 860-001-0400(2) and the proposed effective date of COLR obligations reinstatement.

(3) Within 14 days of the filing of a complete petition for reinstatement of the COLR obligations, the Commission ~~shall~~**will electronically** serve notice of the petition on the COLR identified in the petition (unless the petitioner is the exempted COLR), the Commission's general notification list, and the service list of the docket under which the COLR exemption was granted.

(4) The Petitioner must serve notice of the petition upon:

(a) The property owner or developer;

(b) The residents within the property that the COLR is able to identify.

(5) The Commission ~~shall~~**will** conduct contested case proceedings, including a public hearing, to determine if the existing public convenience and necessity require reinstatement of the COLR obligations. The petitioner has the burden of proving that the COLR should be reinstated. Parties to the proceedings may present in support of or opposition to the petition for the Commission's consideration:

(a) Evidence of the willingness of at least 60 percent of the occupants or residents of the property (including the Petitioner) to subscribe to the utility's service and pay for the incremental cost of providing the service;

(b) Evidence of the estimated costs of the telecommunications utility, cooperative corporation, or municipality to serve the exempted area that are over and above the original cost to serve;

(c) The service record of the Alternative Service Provider, including but not limited to, statistics about complaints, delays, and service quality;

(d) Legal argument or evidence as to why reinstating COLR obligations to the telecommunications utility, cooperative corporation, or municipality is or is not in the public interest; and

(e) Other relevant evidence that the parties wish to be considered by the Commission.

(6) If the Commission determines that the existing public convenience and necessity requires reinstatement of the COLR obligations to the exempted COLR:

(a) The COLR may not be required to incur any costs until the incremental costs necessary to construct the facilities to provide service have been received from the parties identified in section 5(a) of this rule. The COLR may not unreasonably deny payment terms in lieu of one-time payments; and

(b) The COLR must receive from the existing provider (if any) the access necessary for the COLR to install and maintain its facilities, including necessary easements, before the Commission requires the COLR to re-establish service. The existing provider may not unreasonably deny such access.

ORDER NO. 14 456

Stat. Auth: ORS 756.060, 759.036, & 759.506
Stat. Implemented: ORS 759.506
Hist.: PUC 4-2011, f. & cert. ef. 8-26-11

860-027-0300**Use of Deferred Accounting by Energy and Large Telecommunications Utilities**

(1) As used in this rule:

(a) "Amortization" means the inclusion in rates of an amount which has been deferred under ORS 757.259 or 759.200 and which is designed to eliminate, over time, the balance in an authorized deferred account. Amortization does not include the normal positive and negative fluctuations in a balancing account;

(b) "Deferred Accounting" means recording the following in a balance sheet account, with Commission authorization for later reflection in rates:

(A) Electric companies, gas utilities, and steam heat utilities: a current expense or revenue associated with current service, as allowed by ORS 757.259; or

(B) Large telecommunications utilities: an amount allowed by ORS 759.200.

(2) Expiration: Any authorization to use a deferred account **shall** expire 12 months from the date the deferral is authorized to begin. If a deferral under ORS 757.259 or 759.200 is reauthorized, the reauthorization **shall** expire 12 months from the date the reauthorization becomes effective.

(3) Contents of Application: **An** application for deferred accounting, by an energy or large telecommunications utility or a customer, **shall** must include:

(a) A description of the utility expense or revenue for which deferred accounting is requested;

(b) The reason(s) deferred accounting is being requested and a reference to the section(s) of ORS 757.259 or 759.200 under which deferral may be authorized;

(c) The account proposed for recording of the amounts to be deferred and the account which would be used for recording the amounts in the absence of approval of deferred accounting;

(d) An estimate of the amounts to be recorded in the deferred account for the 12-month period subsequent to the application; and

(e) A copy of the notice of application for deferred accounting and list of persons served with the notice.

(4) Reauthorization: **An** application for reauthorization to use a deferred account **shall** must be made not more than 60 days prior to the expiration of the previous authorization for the deferral. **An** application for reauthorization **shall** must include the requirements set forth in subsections (3)(a) through (3)(e) of this rule and, **in addition**, the following information:

(a) A description and explanation of the entries in the deferred account to the date of the application for reauthorization; and

(b) The reason(s) for continuation of deferred accounting.

(5) Exceptions: Authorization under ORS 757.259 or 759.200 to use a deferred account is necessary only to add amounts to an account, not to retain an existing account balance and not to amortize amounts which have been entered in an account under an authorization by the Commission. Interest, once authorized to accrue on unamortized balances in an account, may be added to the account without further authorization by the Commission, even though authorization to add other amounts to an account has expired.

(6) Notice of Application: The applicant **shall must** serve a notice of application upon all persons who were parties in the energy or large telecommunications utility's last general rate case. If the applicant is other than an energy or large telecommunications utility, the applicant **shall must** serve a copy of the application upon the affected utility. A notice of application **shall must** include:

(a) A statement that the applicant has applied to the Commission for authorization to use deferred accounting; or for an order requiring that deferred accounting be used by an energy or large telecommunications utility;

(b) A description of the utility expense or revenue for which deferred accounting is requested;

(c) The manner in which ~~an interested~~ person can obtain a copy of the application;

(d) A statement that any person may submit to the Commission written comment on the application by the date set forth in the notice, which date may be no sooner than 25 days from the date of the application; and

(e) A statement that the granting of the application will not authorize a change in rates, but will permit the Commission to consider allowing such deferred amounts in rates in a subsequent proceeding.

(7) Public Meetings: Unless otherwise ordered by the Commission, applications for use of deferred accounting will be considered at the Commission's public meetings.

(8) Reply Comments: Within ten days ~~of after~~ the due date for comments ~~on the application from interested persons~~, the applicant, and the energy or large telecommunications utility if the utility is not the applicant, may file reply comments with the Commission, ~~and shall serve those comments on persons who have filed the initial comments on the application.~~ **Filing dates for reply comments are calculated and enforced per OAR 860-001-0150.**

(9) Amortization: Amortization in rates of a deferred amount ~~shallis only be allowed in a proceeding only as authorized by the Commission, whether initiated by the energy or large telecommunications utility or another party.~~ The Commission may authorize amortization of such amounts only for utility expenses or revenues for which the Commission previously has authorized deferred accounting. Upon request for amortization of a deferred account, the energy or large telecommunications utility **shall must** provide the Commission with its financial results for a 12-month period or for multiple 12-month periods to allow the Commission to perform an earnings review. The period selected for the earnings review will encompass all or part of the period during which the deferral took place or must be reasonably representative of the deferral period. Unless authorized by the Commission to do otherwise:

(a) An energy utility **shall may** request that amortizations of deferred accounts commence no later than one year from the date that deferrals cease for that particular account; and

(b) In the case of ongoing balancing accounts, the energy utility **shall may** request amortization at least annually, unless amortization of the balancing account is then in effect; or

(c) A large telecommunications utility **shall may** request amortization of deferred accounts as soon as practical after the deferrals cease but no later than in its next rate proceeding.

(10) An electric company customer may prepay under ORS 757.259(11) all or a portion of its obligation of deferred power supply expense. The obligation must be calculated as the customer's pro rata share of the utility's total energy usage within the state of Oregon during 2001, multiplied by the unrecovered deferral balance at the time of prepayment. When such customer has prepaid its obligation in full, the customer may no longer be charged the power supply adjustment related to the deferral.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.105, 757.259 & 759.200

Hist.: PUC 11-1988, f. & cert. ef. 6-9-88 (Order No. 88-597); PUC 2-1990, f. & cert. ef. 3-2-90 (Order No. 90-235); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 4-1998, f. & cert. ef. 2-24-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 6-2004(Temp), f. & cert. ef. 3-24-04 thru 9-20-04; PUC 14-2004, f. & cert. ef. 9-7-04; PUC 7-2005, f. & cert. ef. 11-30-05

860-028-0070**Resolution of Disputes for Proposed New or Amended Contractual Provisions**

(1) This rule applies to a complaint alleging a violation of ORS 757.273, 757.276, 757.279, 757.282, 759.655, 759.660, or 759.665.

(2) In addition to the generally applicable hearing filing and contested case procedures contained in OAR chapter 860, division 001, the procedures set forth in this rule shall apply to a complaint that an existing or proposed contract is unjust and unreasonable.

(3) The party filing a complaint under this rule is the "complainant." The other party to the contract, against whom the complaint is filed, is the "respondent."

(4) Before a complaint is filed with the Commission, one party must request, in writing, negotiations for a new or amended attachment agreement from the other party.

(5) Ninety (90) calendar days after one party receives a request for negotiation from another party, either party may file with the Commission for a proceeding under ORS 757.279 or 759.660.

(6) The complaint must contain each of the following:

(a) Proof that a request for negotiation was received at least 90 calendar days earlier. The complainant must specify the attempts at negotiation or other methods of dispute resolution undertaken since the date of receipt of the request and indicate that the parties have been unable to resolve the dispute.

(b) A statement of the specific attachment rates, terms and conditions that are claimed to be unjust or unreasonable.

(c) A description of the complainant's position on the unresolved provisions.

(d) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute.

(e) All information available as of the date the complaint is filed with the Commission that the complainant relied upon to support its claims:

(A) In cases in which the Commission's review of a rate is required, the complaint must provide all data and information in support of its allegations, in accordance with the administrative rules set forth to evaluate the disputed rental rate.

(B) If the licensee is the party submitting the complaint, the licensee must request the data and information required by this rule from the owner. The owner must supply the licensee the information required in this rule, as applicable, within 30 calendar days of the receipt of the request. The licensee must submit this information with its complaint.

(C) If the owner does not provide the data and information required by this rule after a request by the licensee, the licensee must include a statement indicating the steps taken to obtain the information from the owner, including the dates of all requests.

(D) No complaint by a licensee will be dismissed because the owner has failed to provide the applicable data and information required under paragraph (6)(e)(B) of this rule.

(7) **The Commission will serve a copy of the complaint upon the respondent. Service may be made by electronic mail if the Commission verifies the respondent's electronic mail address prior to service of the complaint and a delivery receipt is maintained in the official file.** Within 30 calendar days of ~~receiving a copy~~ service of the complaint, the respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions.

(8) If the Commission determines after a hearing that a rate, term or condition that is the subject of the complaint is not just, fair, and reasonable, it may reject the proposed rate, term or condition and may prescribe a just and reasonable rate, term or condition.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

860-029-0100

Resolution of Disputes for Proposed Negotiated Power Purchase Agreements

(1) This rule applies to a complaint, filed pursuant to ORS 756.500, regarding the negotiation of a Qualifying Facility power purchase agreement **for facilities with a capacity greater than 10 MWs**. These provisions supplement the generally applicable **hearing filing and contested case** procedures contained in OAR chapter 860, division 001.

(2) Before a complaint is filed with the Commission, the Qualifying Facility must have followed the procedures set forth in the applicable public utility's tariff regarding negotiated power purchase agreements.

(3) At any time after ~~sixty~~**60** calendar days from the date a Qualifying Facility has provided written comments to the public utility regarding the public utility's draft power purchase agreement, the Qualifying Facility may file a complaint with the Commission asking for adjudication of any unresolved terms and conditions of its proposed agreement with the public utility.

(4) A Qualifying Facility filing a complaint under this rule is the "complainant." The public utility against whom the complaint is filed is the "respondent."

(5) The complaint must contain each of the following, as described by the complainant:

(a) A statement that the Qualifying Facility provided written comments to the utility on the draft power purchase agreement at least 60 calendar days before the filing of the complaint.

(b) A statement of the attempts at negotiation or other methods of informal dispute resolution undertaken by the negotiating parties.

(c) A statement of the specific unresolved terms and conditions.

(d) A description of each party's position on the unresolved provisions.

(e) A proposed agreement encompassing all matters, including those on which the parties have reached agreement and those that are in dispute.

(6) Along with the complaint, the Qualifying Facility must submit written direct testimony that includes all information upon which the complainant bases its claims.

(7) **The Commission will serve a copy of the complaint upon the respondent. Service may be made by electronic mail if the Commission verifies the respondent's electronic mail address to service of the complaint and a delivery receipt is maintained in the official file.** Within 10 calendar days of service of the complaint, the respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions. The respondent may also identify and present any additional issues for which the respondent seeks resolution.

(8) Along with its response the respondent must submit written direct testimony that includes all information upon which the respondent relies to support its position.

(9) An assigned Administrative Law Judge (ALJ) will conduct a conference with the parties to identify disputed issues, to establish a procedural schedule and to adopt procedures for the complaint proceeding. To accommodate the need for flexibility and to implement the intent of this streamlined complaint process, the ALJ retains the discretion to adopt appropriate procedures provided such procedures are fair, treat the parties equitably, and substantially comply with this rule. Such procedures may include, but are not limited to, hosting a technical workshop, holding a hearing, or submitting written comments.

(10) Only the counterparties to the agreement will have full party status. The ALJ may confer with members of the Commission Staff for technical assistance.

(11) After the hearing, or other procedures set forth in section (9), if the Commission determines that a term or provision of the proposed agreement is not just, fair, and reasonable, it may reject the proposed term or provision and may prescribe a just and reasonable term or provision. The Commission's review is limited to the open issues identified in the complaint and in the response.

(12) Within 15 business days after the Commission issues its final order, the public utility must prepare a final version of the power purchase agreement complying with the Commission decision and serve it upon the Qualifying Facility. Within 10 days of service of the final power purchase agreement, the Qualifying Facility and the public utility may sign and file the agreement with the Commission, may request clarification whether the agreement terms comply with the Commission order, or may apply for rehearing or reconsideration of the order. The terms and conditions in the power purchase agreement will not be final and binding until the agreement is executed by both parties.

(13) The provisions of any power purchase agreement approved pursuant to this rule apply only to the parties to the agreement and are not to be considered as precedent for any other power purchase agreement negotiation or adjudication.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

PUC 3-2008, f. & cert. ef. 7-8-08

860-032-0002**Notice and Procedures for a Proceeding Initiated Under Division 032**

(1) All notices initiating a proceeding under this Division, including, but not limited to, applications, petitions, complaints, and other pleadings, **shall must** be served on all telecommunications providers and all persons on the Commission's ~~telecommunications~~ **new application** mailing list. Any person wishing to be included on the list **shall must** submit his/ **or** her name, electronic mail address, and mailing address to the Commission's Administrative Hearings Division. ~~A person need not comply with the requirement of providing an electronic mail address upon the filing with the Commission a written statement of inability to obtain such an address.~~

(2) Except as otherwise provided, every proceeding under this Division **shall will** follow the procedures in ORS 756.500 et seq. and the Commission's rules of procedure.

(3) Any person submitting information under the Commission's rules may request that the information be held in confidence pursuant to the public records law, ORS 192.500.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020 & 759.025

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 10-1998, f. & cert. ef. 4-28-98; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 9-2001, f. & cert. ef. 3-21-01; PUC 4-2003, f. & cert. ef. 3-11-03

860-032-0005**Application for New or Amended Certificate of Authority, or to Transfer Authority**

(1) ~~No~~ **A** person ~~shall may not~~ provide intrastate telecommunications service on a for-hire basis, or transfer a certificate of authority to provide such service, except as authorized by the Commission.

(2) Any person intending to provide intrastate telecommunications service in Oregon, or to transfer a certificate of authority to provide such service, **shall must** file an application, on a form prescribed by the Commission. A copy of the applicable application form is available on the Commission's website.

(3) ~~The applicant(s) shall also submit a copy of t~~The application and any subsequent amendments **must be filed electronically as set forth in OAR 860-001-0140 and 860-001-0170 in electronic format compatible with Adobe Acrobat Reader or Rich-Text Format. The electronic copy may be an unsigned version of the application. An applicant need not comply with this requirement upon the filing with the Commission a written statement of inability to file an electronic copy.**

(4) Applicant(s) must complete all applicable parts of the application. If an application, in any material respect, is incomplete, inaccurate, false, or misleading, the Commission **shall may** reject the application.

(5) An application for a new or amended certificate **shall must** contain:

- (a) A request for classification as a telecommunications utility or competitive provider;
- (b) The name, mailing address, telephone number, and electronic mail address of the applicant;

(c) A description of the service the applicant seeks to provide, including designation of such service as local exchange, shared, or interexchange service, and a designation of such service as switched or non-switched service, and a description of how applicant will provide such service;

(d) A description of the territory where the service is to be offered. An application to provide local exchange service **shall must** include a description and map of the local exchange service boundaries or a list of the local exchanges to be served;

(e) The names of affiliated interests of the applicant, as defined in OAR 860-032-0001, which are certified to provide or are actually providing telecommunications service in Oregon;

(f) A list of each certificate of authority to provide service in Oregon, which was granted to applicant or to an affiliated interest, whether such certificate is in effect or canceled; and

(g) In addition to the requirements of subsections (5)(a) through (f) of this rule, an application to provide shared service **shall must**:

(A) Describe the user group to whom service will be provided;

(B) List the street address of the building(s) where service will be provided; and

(C) If service will be provided to a user group located in two or more buildings, the application **shall must** include a clear, precise, legible map, of the area to be served.

(6) An application to transfer a certificate of authority **shall must** contain:

(a) The names, mailing addresses, telephone numbers, and electronic mail addresses of the transferor and transferee;

(b) A description of the telecommunications services and service area for which authority is to be transferred; and

(c) The names of affiliated interests of the transferee, as defined in OAR 860-032-0001, which are certified to provide or are actually providing telecommunications service in Oregon.

(7) For all applications:

(a) The Commission **shall will** serve notice of the application as provided in OAR 860-032-0002(1).

(b) Within 20 days of the date of service of the notice, any person may file a protest to an application. The protest **shall must** set forth the grounds for the protest **and be filed in accordance with requirements of OAR 860-001-0140 and 860-001-0170. The protestant(s) shall also submit a copy of the protest in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. The electronic copy may be an unsigned version of the protest. A protestant need not comply with this requirement upon the filing with the Commission a written statement of inability to file an electronic copy.**

(c) The Commission may require a person filing a protest to show that it is affected by the application or that its appearance and participation will not unreasonably broaden the issues or burden the record. Failure of the telecommunications utility or cooperative to protest an application to provide local exchange service, other than shared service, **shall is** not **be** considered consent to the application.

(d) Any protestant **shall will** be made a party to the application proceeding. Other persons may be made a party upon formal request to the Commission ~~and serving copies of the request to the applicant(s) in accordance with OAR 860-001-0180.~~

(e) ~~The applicant shall serve other parties with copies of amendments and additional information submitted during the application process.~~ If an applicant intends to broaden the authority requested during the application process, it **shall must** file a new application pursuant to sections (2) through (6) of this rule. However, an applicant may narrow its request by **servicing filing** its amendment ~~on each party with the Filing Center.~~

(f) The Commission may grant or deny an application without hearing, unless a hearing is required by ORS 759.020(4).

(g) If the Commission processes the application without a hearing, the Commission staff may issue to the parties a proposed order that grants or denies the application. Within **1560** days of service of any proposed order, any party may file exceptions **or request a hearing**. Exceptions **shall must** be filed with the **Filing Center Administrative Hearings Division, Commission staff, and all parties**. Within 10 days of **service filing** of any exceptions, Commission staff and any party may file a reply. In its reply, Commission staff may modify its proposed order in response to the exceptions filed. **Filing dates for exceptions and replies are calculated and enforced per OAR 860-001-0150.**

(h) A party to the application proceeding may request rehearing or reconsideration of the order, which grants or denies the application, pursuant to ORS 756.561 and OAR 860-001-0720.

(8) For applicants who request classification as a telecommunications utility, all services proposed to be offered by the applicant **shall must** be deemed essential services. However, applicant may accompany the application with a petition to exempt some services pursuant to OAR 860-032-0025 or to price-list some or all services pursuant to OAR 860-032-0035.

(9) The Commission **shall** review applications for interexchange service or shared service pursuant to ORS 759.020. Applications for local exchange service, other than shared service, **shall will** be reviewed pursuant to ORS 759.020 and 759.050.

(10) For applications for local exchange service, other than shared service, the following apply in addition to provisions of sections (7) through (9) of this rule:

(a) The Commission may apply the public interest criteria from ORS 759.050(2), or the Commission may determine pursuant to ORS 759.020(3) that the affected telecommunications utility is unable to provide service; and

(b) Failure by the telecommunications utility to provide reasonable and adequate local exchange service **shall** constitute inability to provide service.

(11) Applications to transfer authority to provide telecommunications service are subject to sections (1) through (4) and (6) through (10) of this rule. With Commission approval, a telecommunications provider may transfer a certificate of authority subject to the following requirements:

(a) The transferor may transfer some or all of its authority;

(b) Transferee **shall be is** liable for all fees incurred and reports due by the transferor as of the date the transfer is approved; and

(c) All relevant conditions and restrictions which attend the authority held by the transferor will apply to the certificate held by the transferee.

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(d) When the application is granted the transferor will no longer be authorized to provide the telecommunications services that are transferred.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.025, 759.036, 759.050, 759.225 & 759.690

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1989(Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 23-1990, f. & cert. ef. 12-31-90 (Order No. 90-1918); PUC 9-1991, f. & cert. ef. 7-16-91 (Order No. 91-854); PUC 2-1998, f. & cert. ef. 2-24-98; PUC 10-1998, f. & cert. ef. 4-28-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 26-2001, f. & cert. ef. 11-5-01; PUC 4-2003, f. & cert. ef. 3-11-03

860-033-0006**Monthly RSPF Surcharge: General Provisions, Remittance Reports and Payment**

(1) The surcharge rate and the balance in the RSPF are reviewed annually by the Commission each October. The Commission may adjust the amount of the surcharge to ensure the fund has adequate resources but does not exceed six months of projected expenses. A rate adjustment ordered by the Commission following the annual review becomes effective January 1 of the year following the review.

(2) The surcharge imposed by 1987 Oregon Laws Chapter 290, Section (7)(1) does not apply to entities upon which the state is prohibited from imposing the surcharge by the Constitution or laws of the United States or the Constitution or laws of the State of Oregon including, but not limited to:

(a) Counties and political subdivisions.

(b) Federal, state and municipal government bodies or public corporations. For purposes of this rule, "public corporation" means a corporation formed by a state or local government authority for the public's benefit or for a public purpose. A regional housing authority qualifies as a public corporation.

(c) Federally chartered corporations specifically exempt from state excise taxes by federal law.

(d) Federally recognized Native-American Tribes, and tribal members who live within federally recognized Indian country and are enrolled members of the tribe with sovereignty over that Indian country.

(e) Foreign government offices and representatives that are exempt from state taxation by treaty provisions.

(f) Interconnection between telecommunications utilities, telecommunications cooperatives, competitive telecommunications services providers certified under ORS 759.020, radio common carriers and interexchange carriers.

(g) Any other agency, organization or person claiming an exemption is required to identify the authority for its claim to a provider. If a telecommunications provider is unable to determine the status of a subscriber the Commission will determine whether the subscriber is exempt.

(3) Collection of RSPF Surcharge.

(a) Each telecommunications provider must collect the RSPF surcharge by charging the specified amount to each retail subscriber with access to the telecommunications relay service, including OTAP eligible subscribers. The RSPF surcharge is applied on a telecommunications circuit designated for a particular subscriber.

(A) One subscriber line is counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity of customer premises equipment connected to each circuit.

(B) For providers of central office based services, the surcharge is applied to each line that has unrestricted connection to the telecommunications relay service. For central office based service lines that have restricted access to the OTRS, the surcharge is charged based on software design.

(b) Each cellular, wireless, or other radio common carrier must collect the RSPF surcharge by charging the specified amount to each retail subscriber with access to the

telecommunications relay service, including OTAP eligible subscribers. The surcharge is applied on a per-instrument basis.

(c) Each telecommunications provider and each cellular, wireless, or other radio common carrier must identify the surcharge on each retail customer's bill as a separate line item named "RSPF Surcharge."

(4) A telecommunications provider or a cellular, wireless, or other radio common carrier may remit surcharges due to the Commission by electronic transfer, mail or in person.

(5) The Remittance Report and surcharges are due to the Commission on or before the 21st calendar day after the close of each month and must be received in the Commission's offices no later than 5 p.m. Pacific Standard Time on the due date. A surcharge remittance or Remittance Report postmarked on the due date does not meet the requirements of this section and will not be considered as timely submitted.

(6) Each telecommunications provider and each cellular, wireless, or other radio common carrier must submit the Remittance Report and surcharge with no exceptions. If no surcharge is collected, the telecommunications provider or the cellular, wireless, or other radio common carrier must still submit its monthly Remittance Report specified in section (5) of this rule.

(7) For each billing period that a telecommunications provider or a cellular, wireless, or other radio common carrier fails to submit the surcharge fees in full on or before the due date required by these rules, the telecommunications provider or the cellular, wireless, or other radio common carrier must pay a late payment fee in accordance with OAR 860-001-0050.

(8) If the telecommunications provider or the cellular, wireless, or other radio common carrier fails to remit the surcharge in full on or before the due date, the telecommunications provider or the cellular, wireless, or other radio common carrier must pay interest in accordance with OAR 860-001-0050.

(9) If a telecommunications provider or a cellular, wireless, or other radio common carrier fails to file a Remittance Report as required by these rules, the telecommunications provider or the cellular, wireless, or other radio common carrier must pay a late report fee in accordance with OAR 860-001-0050.

(10) If the amount shown due on a Remittance Report is not paid by the due date, the Commission may issue a proposed assessment to set the sum due. The Commission may waive the late report fee, the late payment fees and the interest on the unpaid surcharge fees, or any combination thereof, if the telecommunications provider or the cellular, wireless, or other radio common carrier files a written waiver request and provides evidence showing that the telecommunications provider or the cellular, wireless, or other radio common carrier submitted the Remittance Report and surcharge fees late due to circumstances beyond its control. **The request must be filed in accordance with OAR 860-001-0140 and 860-001-0170.**

(11) The telecommunications provider or the cellular, wireless, or other radio common carrier must pay a fee in accordance with OAR 860-001-0050 for each payment returned for non-sufficient funds.

(12) The telecommunications provider or the cellular, wireless, or other radio common carrier is responsible for and must pay all costs incurred by the Commission to collect a past-due RSPF surcharge from the telecommunications provider or the cellular, wireless, or other radio common carrier.

(13) Remittance Report Records: A telecommunications provider and a cellular, wireless, or other radio common carrier must keep all records supporting each Remittance Report for three years, or if a Commission review or audit is pending, until the review or audit is complete, whichever is later.

(14) In addition to any other penalty, obligation, or remedy provided by law, the Commission may suspend or cancel the telecommunications provider's certificate of authority to provide telecommunications service in Oregon for its failure to file its Remittance Report or its failure to remit the surcharge in full.

(15) Except as otherwise provided by law, if after an audit or review the Commission determines that the telecommunications provider or the cellular, wireless, or other radio common carrier has remitted an excessive amount, the Commission will provide the telecommunications provider or the cellular, wireless, or other radio common carrier a credit in that amount against sums subsequently due from that telecommunications provider or that cellular, wireless, or other radio common carrier.

(16) A telecommunications provider or a cellular, wireless, or other radio common carrier must submit any revisions to a Remittance Report no later than three years from the due date of the Remittance Report. If the Commission concludes that a telecommunications provider or cellular, wireless, or other common carrier remitted an excessive amount and that refunding the excess would have a material and adverse financial impact on the RSPF, the Commission may enter into an agreement with the telecommunications provider or the cellular, wireless, or other radio common carrier to spread payments of the refunds over a period not to exceed three years.

(17) The RSPF Surcharge Exception Form is due annually by March 15. A telecommunications provider or a cellular, wireless, or other radio common carrier that qualifies for the exception must **electronically** submit the completed form (~~in person, electronically, or by mail~~) so that it is received in the Commission's offices no later than 5 p.m. Pacific Standard Time on March 15.

(18) In computing any period of time prescribed or allowed by these rules, the first day of the act or event is not included. The last day of the period is included, unless the last day is a Saturday or legal holiday; then the period runs until the end of the next day that is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290

Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290

Hist.: PUC 19-2003, 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 12-2009, f. & cert. ef. 11-13-09; PUC 1-2010, f. & cert. ef. 5-18-10; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13

860-034-0060

Dispute Resolution

(1) When a dispute occurs between a customer or applicant and a small telecommunications utility about any ~~bill~~, charge, or service, the utility **shall must:**

~~(a) Thoroughly investigate the matter;~~
(a) Promptly report the results of its investigation to the customer or applicant/complainant;

(c) Inform the complainant of the right to have a small telecommunications utility supervisor review any dispute;

~~(d) Each small telecommunications utility shall p~~**Prepare a written record of the dispute show**including the name and address of the ~~customer or applicant/complainant~~ involved, the date **the complaint was received, the issues in and character of the** dispute, and the disposition of the matter; **and**

~~(e) The small telecommunications utility shall r~~**Retain records of the dispute for at least 36 months after the investigation is closed pursuant to OAR 860-034-0580.**

~~(2) The small telecommunications utility shall inform the customer or applicant of the right to supervisory review of any dispute, including but not limited to, establishment of credit and termination of service. If the utility and complainant cannot resolve the~~ a dispute is not resolved, the small telecommunications utility **shall must** notify **inform** the customer or applicant **complainant of the right to contact the Consumer Services Section and request assistance in resolving the dispute. The small telecommunications utility must provide the following contact information for the Consumer Services Section:**

(a) Telephone: 503-378-6600; 1-800-522-2404; TTY 711;

(b) Mailing address: Public Utility Commission of Oregon, Consumer Services Section, PO Box 1088, Salem, Oregon 97308;

(c) Physical address: Public Utility Commission of Oregon, 3930 Fairview Industrial Drive SE, Salem, Oregon 97202;

(d) Electronic mail address: puc.consumer@state.or.us; and

(e) Website: <http://puc.state.or.us/consumer/customer%20complaint%20process.pdf> of the Commission's dispute resolution procedure and its toll-free telephone number.

~~(3) A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services Division. The Commission shall notify the small telecommunications utility upon receipt of such a request. The Consumer Services Section will investigate any dispute upon request to~~ **determine whether it can be resolved as an informal complaint.**

~~(4) The Commission's Consumer Services Division shall assist the complainant and the small telecommunications utility in an effort to reach an informal resolution of the dispute.~~

~~(5) If the Consumer Services Section cannot resolve the a registered dispute, cannot be resolved informally, the Commission's Consumer Services Division shall advise the complainant~~ **may of the right to file a formal written complaint with the Commission under**

ORS 756.500. The formal complaint must be submitted on an approved form available from the Consumer Services Section.

(a) The complaint shall state the facts of the dispute and the relief requested must be filed electronically with the Filing Center at PUC.FilingCenter@state.or.us.

(b) If the complainant does not have access to electronic mail,

(A) The complaint may be mailed or delivered to the Filing Center at the address set out in OAR 860-001-0140; and

(B) The complaint must include a request for waiver of electronic service and filing requirements. This request is included on the form available from the Commission's Consumer Services Division.

(c) The Commission will serve the complaint on the small telecommunications utility. The Commission may electronically serve the small telecommunications utility with the complaint if the electronic mail address is verified prior to service of the complaint and the delivery receipt is maintained in the official file.

(d) The small telecommunications utility shall must answer the complaint within 15 days of service of the complaint by the Commission.

(e) The Commission will determine a procedural schedule after the small telecommunications utility's answer is filed. The small telecommunications utility must serve a copy of its answer on the complainant. matter shall then be set for expedited hearing. A hearing may be held on less than ten days' notice when good cause is shown.

(A) If the small telecommunications utility files a motion to dismiss, the complainant may file a response within 15 days of the motion. If the complainant responds, the complainant must file the response with the Filing Center and send a copy to the utility. The Commission may make a decision on the formal complaint based on the information in the complaint, the small telecommunications utility's response and motion to dismiss, and the complainant's response to the utility's motion; or

(B) The Commission may set a procedural schedule for the complaint proceedings, including, but not limited to, scheduling dates for receiving additional information from the parties, telephone conferences, or a hearing. A hearing may be held on less than 10 days' notice when good cause is shown.

(65) Upon filing a formal complaint, the complainant may request a hearing to determine whether the complainant is entitled to continued or restored service pending resolution of the complaint. Unless extraordinary circumstances exist, the Commission will conduct the hearing by telephone within 3 business days. Notice of the hearing will be provided to the complainant and the small telecommunications utility at least 12 hours before the date and time of the hearing. Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.

(76) A customer or applicant complainant who has a registered dispute or formal complaint pending with the Commission shall be is entitled to continued or restored service provided:

(a) Service was not terminated for theft of service tampering with utility property, stealing, diverting, or using unauthorized service or failure to establish credit;

(b) A bona fide dispute exists in which the facts asserted by the customer or applicant entitle the customer or applicant complainant to service;

(c) When termination is based on nonpayment, the ~~complainant customer or applicant makes adequate arrangement to avoid future loss to the small telecommunications utility, such as prepaying estimated monthly utility~~ agrees to pay undisputed charges; **and**

(d) The ~~complainant customer or applicant~~ diligently pursues conflict resolution under the Commission's rules.

~~(78) If the conditions in section (67) of this rule are not satisfied, the small telecommunications utility has no obligation to provide continued service. A small telecommunications utility discontinuing service because of a failure to meet the conditions of subsections (76)(c) or (76)(d) of this rule shall must give the customer five-day notice served in the same manner as provided by OAR 860-034-0260 except the notice need only describe the defect in performance, the date and time after which utility service will terminate, and the toll-free number of the Commission's Consumer Services Division. In deciding whether the conditions are met, the small telecommunications utility shall consult with the Commission's Consumer Services Division. A customer or applicant who has filed a formal complaint, the small telecommunications utility, or the Commission's Consumer Services Division may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the small telecommunications utility, and the Commission's Consumer Services Division at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.~~

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.500

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 11-2003, f. & cert. ef. 7-3-03

Utility Rates

860-034-0300

Tariffs of Small Telecommunications Utilities

(1) Small telecommunications utilities not subject to ORS 759.175 must, upon the Commission's request, provide copies of any schedules showing rates, tolls, and charges, including all rules and regulations that in any manner affect the rates charged or to be charged for any service.

(2) Small telecommunications utilities subject to ORS 759.175 must file tariffs in accordance with the following provisions:

(a) Form and style of tariffs:

(A) ~~All tariffs must be in loose-leaf form so changes can be made by reprinting and inserting a single leaf;~~

~~(B)~~ Each small telecommunications utility must designate the initial tariff as PUC Oregon No. 1, and thereafter designate successive tariffs with the next number in consecutive numerical order. Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

~~(C)~~ The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used. Blank forms will be furnished upon request;

(b) Size of tariffs and required:

(A) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(B) Small telecommunications utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement. ~~The utility must supplement the filing with an exact copy of the tariff~~ in electronic form as required in OAR 860-001-0170. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.

(c) Tariffs must explicitly state the rates and charges for each class of service rendered, designating the area or district to which they apply;

(d) The small telecommunications utility's rules and regulations that in any manner affect the rates charged or to be charged or that define the extent or character of the service to be given must be included with each tariff;

(e) Changes in tariffs may be made by filing an entirely new tariff or by filing revised sheets which must refer to the tariffs on file. Additions to the tariff on file may be made by filing additional sheets;

(f) Each small telecommunications utility filing tariffs or schedules changing existing tariffs or schedules must submit in the advice letter or other document the following information:

(A) A statement plainly indicating the increase, decrease, or other change thereby made in existing rates, charges, tolls, or rules and regulations;

(B) A statement setting forth the number of customers affected by the proposed change and the resulting change in annual revenue; and

(C) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed change;

(g) All tariff changes must be made applicable with service rendered on and after the effective date of the changes, unless the Commission by order provides otherwise. As used in this rule, "service rendered" means units of toll calls connected, basic service provided, or likewise as the context requires;

(h) Small telecommunications utilities entering into special contracts with certain customers prescribing and providing rates, services, and practices not covered by or permitted in the general tariffs, schedules, and rules filed by such utilities are in legal effect tariffs and are subject to supervision, regulation, and control to the extent not exempted under ORS 759.040; and

(i) All special agreements designating service to be furnished at rates other than those shown in tariffs now on file in the Commission's office are rate schedules. A true and certified copy must be filed pursuant to requirements of this Division.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045 & 759.175

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 18-2004, f. & cert. ef. 12-30-04

860-036-0025

Dispute Resolution

(1) When a dispute occurs between a customer or applicant and a water utility about any ~~bill, charge, or service~~, the water utility ~~shall~~**must**:

~~(a) Thoroughly investigate the matter;~~
(a) Thoroughly investigate the matter;

~~(b) and promptly report the results of its investigation to the customer or applicant/complainant;~~

(b) and promptly report the results of its investigation to the customer or applicant/complainant;
(c) Inform the complainant of the right to have a water utility supervisor review any dispute;

~~(d) The water utility shall prepare a written record of the dispute showing the name and address of the customer or applicant/complainant involved, the date the complaint was received, the issues in and character of the dispute, and the disposition of the matter; and~~

(d) The water utility shall prepare a written record of the dispute showing the name and address of the customer or applicant/complainant involved, the date the complaint was received, the issues in and character of the dispute, and the disposition of the matter; and
(e) The utility shall retain records of the dispute pursuant to OAR 860-036-0760 for at least 36 months after the investigation is closed.

~~(2) The water utility shall inform the customer or applicant of the right to a water utility supervisory review of any dispute, including but not limited to, establishment of credit and termination of service. If the utility and complainant cannot resolve the dispute is not resolved, the water utility shall inform notify the customer or applicant/complainant of the right to contact the Consumer Services Section and request assistance in resolving the dispute. The water utility must provide the following contact information for the Consumer Services Section:~~

~~(a) Telephone: 503-378-6600; 1-800-522-2404; TTY 711;~~
(a) Telephone: 503-378-6600; 1-800-522-2404; TTY 711;

~~(b) Mailing address: Public Utility Commission of Oregon, Consumer Services Section, PO Box 1088, Salem, Oregon 97308;~~

(b) Mailing address: Public Utility Commission of Oregon, Consumer Services Section, PO Box 1088, Salem, Oregon 97308;
(c) Physical address: Public Utility Commission of Oregon, 3930 Fairview Industrial Drive SE, Salem, Oregon 97202;

~~(d) Electronic mail address: puc.consumer@state.or.us; and~~
(d) Electronic mail address: puc.consumer@state.or.us; and

~~(e) Website: <http://puc.state.or.us/consumer/customer%20complaint%20process.pdf> of the Commission's dispute resolution procedure and its toll-free telephone number.~~

~~(3) A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services at: The Consumer Services Section will investigate any dispute upon request to determine whether it can be resolved as an informal complaint.~~

~~(a) 1-800-522-2404; TTY 711;~~
(a) 1-800-522-2404; TTY 711;

~~(b) The Commission's mailing address: PUBLIC UTILITY COMMISSION OF OREGON, CONSUMER SERVICES, PO BOX 2148, SALEM OR 97308-2148; or~~

~~(c) The Commission's street address: Public Utility Commission of Oregon, 550 Capitol Street NE Suite 215, Salem, OR 97301-2551. The Commission shall notify the water utility upon receipt of such a request.~~

~~(4) The Commission's Consumer Services shall assist the complainant and the water utility in an effort to reach an informal resolution of the dispute.~~

~~(5) If the Consumer Services Section cannot resolve the a registered dispute cannot be resolved informally, the Commission's Consumer Services shall advise the complainant may of the right to file a formal written complaint with the Commission under ORS 756.500. The formal complaint must be submitted on an approved form available from the Consumer Services Section.~~

~~(a) The complaint shall state the facts of the dispute and the relief requested must be filed electronically with the Filing Center at PUC.FilingCenter@state.or.us.~~

~~(b) If the complainant does not have access to electronic mail,~~

~~(A) The complaint may be mailed, faxed, or delivered to the Filing Center at the address set out in OAR 860-001-0140; and~~

~~(B) The complaint must include a request for waiver of electronic service and filing requirements. This request is included on the form available from the Commission's Consumer Services Section.~~

~~(c) The Commission will serve the complaint on the water utility. The Commission may electronically serve the water utility with the complaint if the electronic mail address is verified prior to service of the complaint and the delivery receipt is maintained in the official file.~~

~~(d) The water utility shall must answer the complaint within 15 days of service of the complaint by the Commission.~~

~~(e) The Commission will determine a procedural schedule after the water utility's answer is filed. The water utility must serve a copy of its answer on the complainant. matter shall then be set for hearing. A hearing may be held on less than 10 days' notice when good cause is shown.~~

~~(A) If the water utility files a motion to dismiss, the complainant may file a response within 15 days of the motion. If the complainant responds, the complainant must file the response with the Filing Center and send a copy to the utility. The Commission may make a decision on the formal complaint based on the information in the complaint, the utility's response and motion to dismiss, and the complainant's response to the utility's motion; or~~

~~(B) The Commission may set a procedural schedule for the complaint proceedings, including, but not limited to, scheduling dates for receiving additional information from the parties, telephone conferences, or a hearing. A hearing may be held on less than 10 days' notice when good cause is shown.~~

~~(56) Upon filing a formal complaint, the complainant may request a hearing to determine whether the complainant is entitled to continued or restored service pending the resolution of the complaint. Unless extraordinary circumstances exist, the Commission will conduct the hearing by telephone within 3 business days. Notice of the hearing will be provided to the complainant and the water utility at least 12 hours before the date and time of the hearing. Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.~~

~~(67) A customer complainant who has a registered dispute or formal complaint pending with the Commission shall be is entitled to continued or restored service provided:~~

~~(a) Service was not terminated for tampering with utility property, stealing, diverting, or using unauthorized service, theft of service or failure to establish credit;~~

(b) A bona fide dispute exists in which the facts asserted ~~by the customer~~ entitle the ~~customer-complainant~~ to service;

(c) When termination is based on nonpayment, the customer ~~makes adequate arrangement to avoid future loss to the water utility, such as prepaying estimated monthly water utility~~ agrees to pay undisputed charges; and

(d) The ~~complainant customer or applicant~~ diligently pursues conflict resolution under the Commission's rules.

~~(78) If the conditions in section (76) of this rule are not satisfied, the water utility has no obligation to provide continued service. A water utility discontinuing service because of a failure to meet the conditions of subsections (76)(c) or (76)(d) of this rule shall must give the customer a five-business-day disconnect notice. The notice shall must be served in the same manner as provided by OAR 860-036-0245, except that it need only describe the defect in performance, the date and time when water utility service will terminate and the toll-free number of the Commission's Consumer Services. In deciding whether the conditions are met, the water utility shall consult with the Commission's Consumer Services. The customer who has filed a formal complaint, the water utility, or the Commission's Consumer Services may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the water utility, and the Commission's Consumer Services at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.~~

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 756.500, 756.512

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-1999, f. & cert. ef. 10-18-99; PUC 18-2003, f. & cert. ef. 10-6-03

Tariffs

860-036-0605

Tariff Specifications

(1) This rule applies to rate-regulated water utilities.

(2) Form, requirements, and style of tariffs:

(a) A separate tariff must be filed for each service provided;

(b) All tariffs, including rates and rules and regulations, must be ~~typed, single-sided~~ prepared using a readable font that, when printed, will fit on 8-1/2 inch by 11 inch pages and so that changes can be made by reprinting and inserting a single page. If a tariff cannot fit on one page, use additional pages. Blank forms will be furnished by the Commission upon request;

(c) Each water utility must designate the initial tariff as PUC Oregon No. 1, and designate successive tariffs with the next number in consecutive numerical order;

(d) Supplemental information not otherwise provided by the tariff must be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(e) The tariffs must include a uniform title page and table of contents;

(f) Tariffs and supplements must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(g) Water utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement **in electronic form as required by OAR 860-001-0170**. The advice letter accompanying the tariffs must bear the signature of the issuing officer or water utility representative. Tariffs do not require a signature.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.205

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 13-2011, f. 12-29-11, cert. ef. 1-1-12

860-037-0025

Dispute Resolution

(1) When a dispute occurs between a customer or applicant and a wastewater utility about any ~~bill, charge, or service~~, the wastewater utility **shall must:**

~~(a) Thoroughly investigate the matter;~~

~~(b) and promptly report the results of its investigation to the customer or applicant/complainant;~~

(c) Inform the complainant of the right to have a wastewater utility supervisor review any dispute;

~~(d) The wastewater utility shall prepare a written record of the dispute showing including the name and address of the customer or applicant/complainant involved, the date the complaint was received, the issues in and character of the dispute, and the disposition of the matter; and~~

~~(e) The utility shall retain records of the dispute pursuant to OAR 860-037-0605 for at least 36 months after the investigation is closed.~~

~~(2) The wastewater utility shall inform the customer or applicant of the right to a wastewater utility supervisory review of any dispute including, but not limited to, establishment of credit and termination of wastewater service through disconnection of water service. If the utility and complainant cannot resolve the dispute is not resolved, the wastewater utility shall notify must inform the customer or applicant of the Commission's dispute resolution procedure and its toll-free telephone number complainant of the right to contact the Consumer Services Section and request assistance in resolving the dispute. The wastewater utility must provide the following contact information for the Consumer Services Section:~~

~~(a) Telephone: 503-378-6600; 1-800-522-2404; TTY 711;~~

~~(b) Mailing address: Public Utility Commission of Oregon, Consumer Services Section, PO Box 1088, Salem, Oregon 97308;~~

~~(c) Physical address: Public Utility Commission of Oregon, 3930 Fairview Industrial Drive SE, Salem, Oregon 97202;~~

~~(d) Electronic mail address: puc.consumer@state.or.us; and~~

~~(e) Website:~~

~~<http://puc.state.or.us/consumer/customer%20complaint%20process.pdf>.~~

~~(3) The Consumer Services Section will investigate any dispute upon request to determine whether it can be resolved as an informal complaint. A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services Section at:~~

~~(a) 1-800-522-2404 or TTY 711;~~

~~(b) The Commission's mailing address: Public Utility Commission of Oregon, Consumer Services Section, PO Box 2148, Salem OR 97308-2148; or~~

~~(c) The Commission's street address: Public Utility Commission of Oregon, 550 Capitol Street NE Suite 21, Salem OR 97301-2551.~~

~~(d) The Commission shall notify the wastewater utility upon receipt of such a request.~~

~~(4) The Commission's Consumer Services Section shall assist the complainant and the wastewater utility in an effort to reach an informal resolution of the dispute.~~

~~(5) If the Consumer Services Section cannot resolve the a registered dispute cannot be resolved informally, the Commission's Consumer Services Section shall advise the complainant may of the right to file a formal written complaint with the Commission under ORS 756.500. The formal complaint must be submitted on an approved form available from the Consumer Services Section.~~

~~(a) The complaint shall state the facts of the dispute and the relief requested must be filed electronically with the Filing Center @PUC.FilingCenter@state.or.us.~~

~~(b) If the complainant does not have access to electronic mail,~~

~~(A) The complaint may be mailed or delivered to the Filing Center at the address set out in OAR 860-001-0140; and.~~

~~(B) The complaint must include a request for waiver of electronic service and filing requirements. This request is included on the form available from the Consumer Services Division.~~

~~(c) The Commission will serve the complaint on the wastewater utility. The Commission may electronically serve the utility with the complaint if the electronic mail address is verified prior to service of the complaint and the delivery receipt is maintained in the official file.~~

~~(d) The wastewater utility shall must answer the complaint within 15 days of service of the complaint by the Commission.~~

~~(e) The Commission will determine a procedural schedule after the wastewater utility's answer is filed. The wastewater utility must serve a copy of its answer on the complainant. matter shall then be set for hearing. A hearing may be held on less than 10 days' notice when good cause is shown.~~

~~(A) If the wastewater utility files a motion to dismiss, the complainant may file a response within 15 days of the motion. If the complainant responds, the complainant must file the response with the Filing Center and send a copy to the utility. The Commission may make a decision the formal complaint based on the information in the complaint, the utility's response and motion to dismiss, and the complainant's response to the utility's motion; or~~

~~(B) The Commission may set a procedural schedule for the complaint proceedings, including, but not limited to, scheduling dates for receiving additional information from the parties, telephone conferences, or a hearing. A hearing may be held on less than 10 days' notice when good cause is shown.~~

~~(56) Upon filing a formal complaint, the complainant may request a hearing to determine whether the complainant is entitled to continued or restored service pending the resolution of the complaint. Unless extraordinary circumstances exist, the Commission will conduct the hearing by telephone within 3 business days. Notice of the hearing will be provided to the complainant and the wastewater utility at least 12 hours before the date and time of the hearing. Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.~~

~~(67) A customer/complainant who has a registered dispute or formal complaint pending with the Commission shall be is entitled to continued or restored service provided:~~

(a) Service was not terminated for tampering with utility property, stealing, diverting, or using unauthorized service, theft of service or failure to establish credit;

(b) A bona fide dispute exists in which the facts asserted ~~by the customer~~ entitle the customer complainant to service;

(c) When termination of wastewater service is based on nonpayment, the customer ~~makes adequate arrangement to avoid future loss to the wastewater utility, such as prepaying estimated monthly wastewater utility service~~ agrees to pay undisputed charges; and

(d) The complainant customer or applicant diligently pursues conflict resolution under the Commission's rules.

(78) If the conditions in section **(67)** of this rule are not satisfied, the wastewater utility has no obligation to provide continued service. A wastewater utility discontinuing water service because of a customer's failure to meet the conditions of subsections **(67)(c)** or **(67)(d)** of this rule for wastewater utility service shall must give the customer a five-business-day disconnect notice. The notice shall must be served in the same manner as provided by OAR 860-037-0245, except that it need only describe the defect in performance, the date and time when water service will be disconnected in order to terminate wastewater service and the toll-free number of the Commission's Consumer Services Section. ~~In deciding whether the conditions are met, the wastewater utility shall consult with the Commission's Consumer Services Section. The customer who has filed a formal complaint, the wastewater utility, or the Commission's Consumer Services Section may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the wastewater utility, and the Commission's Consumer Services Section at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.~~

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.500, 756.512, 757.005 & 757.061

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0410

Tariff Specifications

(1) Form and style of tariffs:

(a) ~~All tariffs must be in loose-leaf form so that changes can be made by reprinting and inserting a single leaf;~~

~~(b)~~ Each wastewater utility must designate the initial tariff as PUC Oregon No. 1, and designate successive tariffs with the next number in consecutive numerical order.

Supplemental information not otherwise provided by the tariff must be inserted in the most

appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariffs must be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(eb) The title page should be uniform. Rates, rules, and regulations must be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used. Blank forms will be furnished by the Commission upon request; and

(ec) Separate tariffs must be filed for wastewater service or for any other service entered.

(2) Size of tariffs and required:

(a) Tariffs and supplements thereto must be prepared using a readable font that, when printed, will fit on an 8-1/2 x 11 inch page; and

(b) Wastewater utilities must file with the Commission an original of each tariff, rate schedule, revision, or supplement **in electronic form as required by OAR 860-001-0170**. The advice letter accompanying the tariffs must bear the signature of the issuing officer or utility representative. The tariffs do not require a signature.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.205

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 18-2004, f. & cert. ef. 12-30-04

860-038-0400

Electricity Service Supplier Certification Requirements

(1) An electricity service supplier (ESS) must be certified by the Commission to sell electricity services to consumers.

(2) An ESS must be certified as either scheduling or nonscheduling as prescribed in OAR 860-038-0410.

(3) The initial certification fee is \$400.

(4) The annual renewal fee is \$200.

(5) An ESS applicant must file an application that contains the following information:

(a) Name of applicant, including owners, directors, partners, and officers, with a description of the work experience of key personnel in the sale, procurement, and billing of energy services or similar products;

(b) Name, address, and phone number of the ESS applicant's regulatory contact;

(c) Proof of authorization to do business in the state of Oregon;

(d) Dun and Bradstreet number, if available;

(e) Confirmation that the applicant (including owners, directors, partners, and officers) has not violated consumer protection laws or rules in the past three years;

(f) Audited financial statements of the ESS applicant (and its guarantor, if applicable) and credit reports consisting of:

(A) A balance sheet, income statement, and statement of cash flow for each of the three years preceding the filing and for the interim quarters between the end of the last audited year and the filing date; or

(B) For an applicant that has been in operation for less than three years, the audited balance sheets, income statements, and statements of cash flow for each of the years the company was in operation and for the interim quarters between the end of the last audited year and the filing date; or

(C) For an applicant that has been in operation for less than 12 months on the date the application is filed, such financial statements as are kept in the regular course of the applicant's business operations and pro-forma financial statements for a period of not less than 36 months.

(D) If audited financial statements are unavailable, the applicant may submit unaudited financial statements for each of the three years preceding the filing and for the interim quarters between the end of the last unaudited year and the filing date. The applicant must also submit a statement explaining why audited statements are not available.

(g) A showing of creditworthiness through documentation of tangible assets in excess of liabilities (i.e., tangible net worth) of at least \$1,000,000 on its most recent balance sheet and demonstration of either its own investment grade credit rating pursuant to (A) or fulfillment of bond/guaranty requirements pursuant to (B):

(A) Investment grade rating means a suitable rating on the long term, senior unsecured debt, or if this rating is unavailable, the corporate rating, of a major credit rating agency.

(B) An applicant may use any of the financial instruments listed below, in an amount commensurate with the services and products it intends to offer, to satisfy the credit requirements established by this rule.

(i) Cash or cash equivalent (i.e., cashier's check);

- (ii) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 18 months;
 - (iii) A bond in a form acceptable to the Commission, irrevocable for a period of at least 18 months; or
 - (iv) A guaranty in a form acceptable to the Commission issued by a principal of the applicant or a corporation holding controlling interest in the applicant, which is irrevocable for at least 18 months. To the extent the applicant relies on a guaranty, the applicant must provide financial evidence sufficient to demonstrate that the lender or guarantor possesses the cash or cash equivalent needed to fund the guaranty.
 - (h) A showing of technical competence in energy procurement and delivery, information systems, billing & collection, and if subject to the requirements of section 16 of this rule, safety & engineering;
 - (i) A showing that its financial and technical competence is consistent with the services and products it intends to offer, and the targeted customer class(es) and geographical areas; and
 - (j) A statement as to whether the ESS is applying for certification as a scheduling or nonscheduling ESS and information documenting an ability to comply to the requirements of OAR 860-038-0410; and
 - (k) The authorized representative of the applicant must state that all information provided is true and correct and sign the application.
- (6) At a minimum, an applicant must attest that it will:
- (a) Furnish to consumers a toll-free number or local number that is staffed during normal business hours to enable a consumer to resolve complaints or billing disputes and a statement of the ESS's terms and conditions that detail the customer's rights and responsibilities;
 - (b) Comply with all applicable laws, rules, Commission orders, and electric company tariffs;
 - (c) Maintain insurance coverage, security bond, or other financial assurance commensurate with the types and numbers of consumers and loads being served, meet any other credit requirements contained in the electric company's tariffs, and cover creditors for a minimum of 90 days from the date of cancellation; and
 - (d) Adequately respond to Commission information requests within 10 business days.
- (7) As conditions for certification, an ESS must agree to:
- (a) Enter into an agreement or agreements with each respective electric company to assign to the electric companies any federal system benefits available from the Bonneville Power Administration to the residential and small-farm customers who receive distribution from an electric company and are served by the ESS; and
 - (b) Not enter into a Residential Sale and Purchase Agreement with the Bonneville Power Administration pursuant to Section 5(c) of the Pacific Northwest Power Act concerning federal system benefits available to residential and small farm customers receiving distribution from an electric company.
- (8) Staff will notify interested persons of the application, allow 14 days from the date of notification for the filing of protests to the application (through submission of an email or letter to the staff), review the application, and make a recommendation to the Commission whether the application should be approved or denied.

(9) An applicant or a protesting party may request a hearing within ~~seven~~**60** calendar days of the date of the staff recommendation. Upon determining the appropriateness of the request, the Commission will conduct a hearing as provided for in division 001 of the Commission's rules.

(10) The Commission may issue an Order granting the applicant's request for certification upon a finding that:

(a) The applicant paid the initial certification PUC fee, as required by OAR 860-038-0400(3);

(b) The applicant filed an application containing accurate, complete and satisfactory information that demonstrates it meets the requirements to be certified as an ESS.

(11) If the Commission grants the application, the Commission may include any conditions it deems reasonable and necessary. Further, upon granting the application, the Commission will certify the ESS for a period of one year from the date of the order.

(12) An ESS must take all reasonable steps, including corrective actions, to ensure that persons or agents hired by the ESS adhere at all times to the terms of all laws, rules, Commission orders, and electric company tariffs applicable to the ESS.

(13) An ESS must notify the Commission that it will not be renewing its certification or it must renew its certification each year as follows:

(a) An ESS must **submit file** its application for renewal 30 days prior to the expiration date of its current certificate;

(b) In its application for renewal the ESS must include the renewal fee, update the information specified in subsections (5)(a), (b), (i), and (j) of this rule, and state whether it violated or is currently being investigated for violation of any attestation made under the current certificate. The ESS must state that it continues to attest that it will meet the requirements of sections (6) and (7) of this rule. The authorized representative of the ESS must state that all information provided is true and correct and sign the renewal application;

(c) If the Commission takes no action on the renewal application, the renewal is granted for a period of one year from the expiration date of the prior certificate;

(d) If a written complaint is filed, or if on the Commission's own motion, the Commission has reason to believe the renewal should not be granted, the Commission will conduct a revocation proceeding per section (14) of this rule. The renewal applicant will be considered temporarily certified during the pending revocation proceeding.

(14) Upon review of a written complaint or on its own motion the Commission may, after reasonable notice and opportunity for hearing, revoke the certification of an ESS for reasons including, but not limited to, the following:

(a) Material misrepresentations in its application for certification or in any report of material changes in the facts upon which the certification was based;

(b) Material misrepresentations in customer solicitations, agreements, or in the administration of customer contracts;

(c) Dishonesty, fraud, or deceit that benefits the ESS or disadvantages customers;

(d) Demonstrated lack of financial, or operational capability; or

(e) Violation of agreements stated in sections (6) and (7) of this rule.

(15) An ESS must promptly report to the Commission any circumstances or events that materially alter information provided to the Commission in the certification or renewal

process or otherwise materially impacts their ability to reasonably serve electricity consumers in Oregon.

(16) Each ESS that owns, operates, or controls electrical supply lines and facilities subject to ORS 757.035 must have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service. Each such ESS must inspect its lines and facilities in such a manner and with such frequency as may be needed to ensure a reasonably complete knowledge about their condition and adequacy at all times. Such record must be kept of the conditions found as the ESS considers necessary to properly maintain its system, unless in special cases the Commission specifies a more complete record. The ESS must have written plans describing its inspection, operation, and maintenance programs necessary to ensure the safety and reliability of the facilities. The written plans and records required herein must be made available to the Commission upon request. The ESS must report serious injuries to persons or property in accordance with **ORSOAR** 860-024-0050.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 23-2001, f. & cert. ef. 10-11-01; PUC 7-2005, f. & cert. ef. 11-30-05

860-038-0420

Electricity Service Supplier Consumer Protection

(1) All advertising and marketing activities by electricity service suppliers must be truthful, not misleading, and in compliance with Oregon's Unfair Trade Practices Act (ORS 646.605 through 646.656).

(2) No person or entity may offer to sell electricity services available pursuant to direct access unless it has been certified by the Commission as an ESS.

(3) Sections (3) through (6) of this rule do not apply when a consumer is changing suppliers. Sections (3) through (6) apply when an ESS is discontinuing service to a consumer. An ESS must give its customers at least 10 business days written notice, as prescribed in section (5) of this rule, before the ESS may discontinue service.

(4) The written notice of intent to discontinue service to the ESS customer must be printed in boldface type and must state in easy to understand language:

(a) The name and contact information of the ESS and the service location intended to be discontinued;

(b) The reasons for the proposed discontinuance;

(c) The earliest date for discontinuance; and

(d) The amount necessary to be paid to avoid discontinuance of services, if applicable.

(5) The ESS must serve the notice of discontinuance in person or send it by first class mail to the last known address of the ESS customer. Service is complete on the date of personal delivery or, if service is by U. S. mail, on the day after the U. S. Postal Service postmark or the day after the date of postage metering.

(6) Not less than 10 business days prior to discontinuance of service to an ESS customer, the ESS must notify the serving electric company, by mutually acceptable means, that the

ESS will no longer be supplying energy to that ESS customer. If an ESS and a consumer waive the 10-day notice, pursuant to section (8) of this rule, the ESS must still notify the electric company of its intent to discontinue a consumer's service as soon as it notifies the consumer that service is to be discontinued. The written notice must contain the following:

(a) Name and contact information of the ESS that is discontinuing service, the consumer's name, account number, service location and, if applicable, the electric company's unique location identifier;

(b) Earliest date for discontinuance; and

(c) Necessary information applicable to the transfer of the consumer's service.

(7) This section of this rule applies to any alleged violation of the rules in Division 038 applicable to electricity service suppliers.

(a) When a dispute occurs between an ESS ~~customer and an ESS and its consumer~~ about any ~~bill, charge, or service~~, the ~~electricity service supplier~~ ESS must acknowledge the dispute with a response to the ~~consumer~~ customer within ~~five~~ 5 calendar days. The ESS must thoroughly investigate the matter and report the results of its investigation to the ESS ~~consumer~~ customer within 15 calendar days. If the ESS is unable to resolve the matter ~~with its consumer~~ within 15 calendar days, the ESS must advise the ~~consumer~~ customer of the option to request internal supervisory review of unregulated disputes and to request the Commission's assistance in resolving a dispute within the Commission's jurisdiction;

(b) An ESS customer may request the Commission's assistance in resolving a dispute within the Commission's jurisdiction by contacting the Commission's Consumer Services Division. The Commission must notify the electricity service supplier upon receipt of such a request;

(c) The Commission's Consumer Services Division will assist the complainant and the electricity service supplier in an effort to reach an informal resolution of the dispute. The ESS must provide the Commission with the necessary information to assist in resolving the dispute. The ~~ESS~~ electricity service supplier must answer the registered ESS dispute within 15 calendar days of service of the complaint;

(d) If a registered ESS dispute cannot be resolved informally, the Commission's Consumer Services Division will advise the complainant of the right to file a formal written complaint ~~with the Commission~~.

(A) The formal written complaint must state the facts of the dispute and the relief requested and must be filed with the Filing Center in compliance with the rules regarding confidential information and filing set out in OAR 860-001-0070, 860-001-0140 through 860-001-0150, and 860-001-0170.

(B) The formal complaint must be filed with the Filing Center at PUC.FilingCenter@state.or.us. If complainant does not have access to electronic mail, the complaint may be mailed, faxed, or delivered to the Filing Center at the address set out in OAR 860-001-0140, and the formal complaint must include a request for waiver of the electronic filing and service requirements.

(C) The Commission will serve the complaint on the ESS. The Commission may electronically serve the ESS with the complaint if the electronic mail address is verified prior to service of the complaint and the delivery receipt is maintained in the official file.

(D) The ~~ESS~~ ~~electricity service supplier~~ must answer the complaint within 15 calendar days of service of the complaint **by the Commission.**

(E) The **Commission will set the matter will then be set** for expedited hearing. A hearing may be held on less than 10 calendar days' notice when good cause is shown. **Notice of the hearing will be provided to the complainant and the ESS at least 12 hours before the date and time of the hearing.**

(F) Filing dates for formal complaint proceedings are calculated and enforced per OAR 860-001-0150.

(8) Within the terms of a written contract, a ~~consumer~~ **customer** and an ESS may agree to arrangements other than those specified in sections (3), (4), (5), and (6) of this rule, if the following requirements are met:

(a) The contract must include an exact copy of the paragraphs in subsection (8)(b) of this rule. The paragraphs must be in bold type of at least 12-font size. Immediately following the paragraphs, there must be a line for the consumer's signature and the date.

(b) The agreement must contain the following notice:

IF YOU SIGN THIS AGREEMENT, YOU MAY GIVE UP CERTAIN RIGHTS YOU HAVE UNDER OAR 860-038-0420(3) through (6). These rules state: The ESS must insert the complete text of OAR 860-038-0420(3) through (6). THIS MAY AFFECT YOUR ABILITY TO ARRANGE FOR OTHER ENERGY SERVICE.

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

Stats. Implemented: ORS 756.040 & ORS 757.600 - ORS 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 11-2003, f. & cert. ef. 7-3-03

860-082-0085

Complaints for Enforcement

(1) This rule specifies the procedure for a public utility, an interconnection customer, or an applicant to file a complaint for the enforcement of an interconnection agreement. **Filing dates for enforcement complaint proceedings are calculated and enforced per OAR 860-001-0150.**

(2) **At least 10 days prior to filing a complaint for enforcement, complainant must give written notice to defendant and the Commission that complainant intends to file a complaint for enforcement. The notice must identify the provisions in the agreement that complainant alleges were or are being violated and the specific acts or failure to act that caused or are causing the violation, and whether complainant anticipates requesting temporary or injunctive relief. On the same day the notice is filed with the Commission, complainant must serve a copy of the notice on defendant's authorized representative, attorney of record, or designated agent for service of process. Complainant must also serve the notice on all persons designated in the interconnection agreement to receive notices;**

(3) A complaint for enforcement must contain the following:

(a) **Contain a** statement of specific facts demonstrating that the complainant conferred with defendant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

(b) **Include a** copy of **the** written notice, **required by section (2), to the defendant** indicating that the complainant intends to file a complaint for enforcement, **as described in subsection (3)(a) below;**

(c) **Include a** copy of the interconnection agreement or the portion of the agreement that the complainant contends that defendant violated or is violating. If a copy of the entire agreement is provided, complainant must specify the provisions at issue;

(d) **Contain a** statement of the facts or **a statement of the** law demonstrating defendant's failure to comply with the interconnection agreement and complainant's entitlement to relief. The statement **of entitlement to relief** must indicate that the remedy sought is consistent with the dispute resolution provisions in the agreement, if any. Statements of facts must be supported by written testimony **or one or more with** affidavits made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits;

(e) **The names of up to two people d**esignated **up to three persons** to receive copies of pleadings and documents;

(f) **Include a separate document containing** an executive summary, **filed as a separate document not to exceed 8 of eight pages, or less** outlining the issues and relief requested; and

(g) **Include any m**Motions for affirmative relief, **filed as a separate document and clearly marked. must be filed with the complaint, but as a separate document. Motions for injunctive or temporary relief must be clearly marked.** Nothing in this subsection precludes complainant from filing a motion subsequent to the filing of the complaint if the

motion is based upon facts or circumstances unknown or unavailable to complainant at the time the complaint was filed,; ~~and~~

~~(3) The complaint for enforcement must be served as follows:~~

~~(a) At least 10 business days prior to filing a complaint for enforcement with the Commission, complainant must give written notice to defendant and the Commission that complainant intends to file a complaint for enforcement. The notice must identify the provisions in the interconnection agreement that complainant alleges were or are being violated, the specific acts or failures to act that caused or are causing the violation, and whether the complainant anticipates requesting temporary or injunctive relief. The notice must be served in the same manner as set forth in subsections (b) and (c) below, except that complainant must also serve the notice on all persons designated in the agreement to receive notices;~~

~~(4) On the same day the complaint is filed with the Commission,~~

~~(b) Complainant must serve a copy of the complaint for enforcement on defendant's authorized representative, attorney of record, or designated agent for service of process the same day the complaint is filed with the Commission. Service may be by telephonic facsimile, electronic mail, or overnight mail, but the complaint must arrive at defendant's location on the same day the complaint is filed with the Commission. Service by facsimile or electronic mail must be followed by a hard physical copy of the complaint the next day by overnight delivery deposited in the mail and addressed to the defendant on the same date that the facsimile or electronic copy is received; and~~

~~(c) Complainant must serve a copy of the complaint for enforcement on defendant's authorized representative, attorney of record, or designated agent for service of process.~~

~~(5) Within 10 business days after service of the complaint, defendant may file a an answer to the complaint with the Commission. Any allegations raised in the complaint and not addressed in the answer are deemed admitted. The answer must contain the following:~~

~~(a) Contain a A statement of specific facts demonstrating that the defendant conferred with complainant in good faith to resolve the dispute and that despite those efforts the parties failed to resolve the dispute;~~

~~(b) A r Response to each allegation in the complaint and set forth all affirmative defenses. Any allegations raised in the complaint and not addressed in the answer are deemed admitted;~~

~~(c) Contain a A statement of the facts or a statement of the law supporting defendant's position. Statements of facts must be supported by written testimony or one or more with affidavits made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, then the affidavits must contain the foundation for the exhibits; and~~

~~(d) The names of up to two persons d Designated up to three persons to receive copies of other pleadings and documents,; and~~

~~(6) On the same day as the answer is filed, the defendant must also file its response to any motion filed by complainant and its motions for affirmative relief. Each response and each motion must be filed as a separate filing. A response to any motion filed by~~

~~complainant must be filed with the answer, but as a separate document. The defendant must also file any motions for affirmative relief with the complaint, but as a separate document.~~ Nothing in this subsection precludes defendant from filing a motion subsequent to the filing of the answer if the motion is based upon facts or circumstances unknown or unavailable to defendant at the time the answer was filed.

(75) On the same day the answer is filed with the Commission, the defendant must serve a copy of the answer to the complainant's authorized representative, attorney of record, or designated agent for service of process. The answer must be served as follows:

~~(a) Defendant must file a copy of the answer with the Commission within 10 business days after service of the complaint for enforcement;~~

~~(b) Defendant must deliver a copy of the answer to complainant the same day the answer is filed with the Commission, in the manner set forth in subsections (3)(b) and (3)(c) above;~~

~~(c) Defendant must serve a copy of the answer on the complainant's attorney, as listed in the complaint, or the person who signed the complaint, if complainant has no attorney.~~

~~(86) Complainant must file a reply to an answer that contains affirmative defenses within five business days after the answer is filed. On the same day the reply is filed with the Commission, complainant must serve a copy of the reply to defendant's authorized representative, attorney of record, or designated agent for service of process. The reply must be served in the manner set forth in subsections (3)(b) and (3)(c) above. If the reply contains new facts or legal issues not raised in the complaint, then the reply must also comply with subsection (2)(d) above.~~

~~(97) A cross-complaint or counterclaim must be answered within the 10-business day time frame allowed for answers to complaints.~~

~~(108) The Commission must will conduct a conference regarding each complaint for enforcement of an interconnection agreement.~~

~~(a) The administrative law judge (ALJ) schedules a conference within five business days after the answer is filed, to be held as soon ~~thereafter~~ as is practicable. At the discretion of the ALJ, the conference may be conducted by telephone.~~

~~(b) Based on the complaint and the answer, all supporting documents filed by the parties, and the parties' oral statements at the conference, the ALJ determines whether the issues raised in the complaint can be determined on the pleadings and submissions without further proceedings or whether further proceedings are necessary. If further proceedings are necessary, the ALJ establishes a procedural schedule. Nothing in this subsection is intended to prohibit the bifurcation of issues where appropriate.~~

~~(c) In determining whether further proceedings are necessary, the ALJ must consider, at a minimum, the positions of the parties, the need to clarify evidence through the examination of witnesses, the complexity of the issues, the need for prompt resolution, and the completeness of the information presented.~~

~~(d) The ALJ may make oral rulings on the record during the conference on all matters relevant to the conduct of the proceeding.~~

(119) A party may file with the complaint or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue.

(120) When warranted by the facts, the complainant or defendant may file a motion requesting that an expedited procedure be used. The moving party must file a proposed expedited procedural schedule along with its motion. The ALJ must schedule a conference to be held as soon ~~after the motion is filed~~ as is practicable to determine whether an expedited schedule is warranted.

(a) The ALJ **mustwill** consider whether the issues raised in the complaint or answer involve a risk of imminent, irrevocable harm to a party or to the public interest.

(b) If a determination is made that an expedited procedure is warranted, the ALJ **mustwill** establish a procedure that ensures a prompt resolution of the merits of the dispute, consistent with due process and other relevant considerations. The ALJ **mustwill** consider, but is not bound by, the moving party's proposed expedited procedural schedule.

(c) In general, the ALJ will not entertain a motion for expedited procedure where the dispute solely involves the payment of money.

Stat. Auth.: ORS 756

Stats. Implemented: ORS 756.040 & 756.500

Hist.: PUC 10-2009, f. & cert. ef. 8-26-09