

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Public Utility Commission

860

Agency and Division

Administrative Rules Chapter Number

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RULE CAPTION

In the Matter of a Rulemaking to Update Division 029 Rules.

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

Hearing Date (m/d/yyyy)	Time	Location	Hearings Officer
1 5/29/2008	9:30 a.m.	550 Capitol St. NE, 1st Floor, Main Hearing Room, Salem, OR	Michael Grant
2			
3			
4			

Auxiliary aids for persons with disabilities are available upon advance request

RULEMAKING ACTION

ADOPT:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.
860-029-0100

AMEND:

860-029-0001

REPEAL:

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

Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority: ORS

Ch. 183, 756, 757 & 758

Other Authority:

Statutes Implemented: ORS

756.040, 757.612 & 758.505 through 758.555

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Secretary of State

Continuation of ... NOTICE OF PROPOSED RULEMAKING HEARING*

RULE SUMMARY

This is the first phase of rulemaking to update the Division 029 rules. The proposed amendment to 860-029-0001 is resultant from 2007 legislative changes, specifically Senate Bill 838, Section 27(4). The proposed rule 860-029-0100 is resultant from Commission Order No. 07-360 in docket UM 1129. In that order, the Commission clarified its intent regarding the scope of a proceeding where a complaint is filed regarding the negotiation of a Qualifying Facility power purchase agreement. The dispute resolution procedures are intended to reduce the time and costs in resolving disputes for customers, utilities and the Commission. Further updates to the Division 029 rules, as a result of Commission Orders in docket UM 1129 and changes in federal and state law, will be addressed in a second phase of this rulemaking.

ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

5/29/2008	Close of Hearing	Diane Davis	diane.davis@state.or.us	04/15/2008
Last Day (m/d/yyyy) and Time for Public Comment		Printed Name	Email Address	Date Filed

Please enter date as m/d/yyyy or mm/dd/yyyy

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 920-2003

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Public Utility Commission

860

Agency and Division

Administrative Rules Chapter Number

In the Matter of a Rulemaking to Update Division 029 Rules.

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

In the Matter of:

a Rulemaking to Update Division 029 Rules.

Statutory Authority: ORS

Ch. 183, 756, 757 & 758

Other Authority:

Stats. Implemented: ORS

756.040, 757.612 & 758.505 through 758.555

Need for the Rule(s):

The proposed amendment to 860-029-0001 is necessary to comply with Senate Bill 838, Section 27(4), signed into law on June 6, 2007. The proposed new rule is necessary to clarify the Commission's intentions regarding the scope of complaint proceedings regarding the negotiation of Qualifying Facility power purchase agreements. The proposed rule delineates the dispute resolution process and responsibilities for those involved in the complaint. The proposed rule follows the guidelines set forth by the Commission in its Order No. 07-360 in docket UM 1129.

Documents Relied Upon, and where they are available:

Commission Order No. 07-360 available online at <http://apps.puc.state.or.us/orders/2007ords/07-360.pdf>

Oregon Revised Statutes available online at <http://www.leg.state.or.us/ors/756.html>, <http://www.leg.state.or.us/ors/757.html> and <http://www.leg.state.or.us/ors/758.html>

Oregon Administrative Rule 860-016-0030 available online at http://arcweb.sos.state.or.us/rules/OARS_800/OAR_860/860_016.html

Continued on next page

Secretary of State

Continuation of ... STATEMENT OF NEED AND FISCAL IMPACT

Fiscal and Economic Impact:

Any fiscal or economic impact is the result of legislative action or prior Commission action. Businesses already are subject to Oregon's Public Utility Regulatory Policies Act (PURPA), ORS 758.505 through 758.555, and federal PURPA law (16 U.S.C. § 824a-3). The laws require electric utilities to purchase the output from certain types of renewable resources and cogeneration facilities (Qualifying Facilities) at the utility's avoided cost rates. Qualifying Facilities that do not qualify for standard rates and terms determined by the Commission must negotiate power purchase agreements with the utility consistent with Commission requirements. The proposed dispute resolution rules are intended to reduce the time and cost involved in negotiating PURPA power purchase agreements with the regulated utilities.

Statement of Cost of Compliance:

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

The rules will impact the Public Utility Commission and those members of the public and the local governments wishing to install Qualifying Facilities in the affected utility service areas. The intent of the rules is to expedite the dispute resolution process for the negotiated power purchase agreements and therefore to reduce the time and costs involved for the the parties to the agreement and the Commission.

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

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

There are approximately 195,000 business customers for the three electric public utilities. Only those small businesses wishing to install Qualifying Facilities in the affected service areas and the regulated electric companies are subject to the rules.

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

The potential magnitude of costs for administrative activities or other professional services cannot be quantified at this time. It is anticipated that there will be cost savings because of the standardization and expedition of the dispute resolution process.

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

The proposed rules do not require increased equipment, supplies, labor or administration for compliance.

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

The proposed rule changes are resultant from legislative actions and from policy decisions of the Commission in its docket UM 1129. Small businesses were afforded opportunity to participate in legislative activities and in the Commission's UM 1129 docket which included public hearings and opportunities for written comments from parties representing a large, diverse group of stakeholders.

Administrative Rule Advisory Committee consulted?: Yes No

If not, why?:

Rules are resultant from legislative action and from Commission docket UM 1129 which included public hearings and rounds of testimony and comment from parties representing a large, diverse group of stakeholders.

5/29/2008	Close of Hearing	Diane Davis	diane.davis@state.or.us	04/15/2008
Last Day (m/d/yyyy) and Time for Public Comment		Printed Name	Email Address	Date Filed

Please enter date as m/d/yyyy or mm/dd/yyyy

860-029-0001**Purpose**

The purpose of this Division is to implement ORS 758.505 through 758.555 and to implement regulations relating to electric utilities and qualifying cogeneration and small power production facilities as provided under Section 210 of the federal Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95-617 (16 USC 824a-3).

~~The rules contained in this Division do not apply to public utilities that satisfy their public purpose obligations under ORS 757.612.~~

[Publications: ~~The p~~Publication(s) ~~referred to or incorporated by~~ referenced d in this rule are available for review from ~~the office of~~ the Public Utility Commission.]

Stat. Auth.: ORS Ch. 183, 756, 757 & 758

Stats. Implemented: ORS 756.040, 757.612 & 758.505 through 758.555

Hist.: PUC 9-1981, f. & ef. 10-29-81 (Order No. 81-755); PUC 21-1984, f. & ef. 9-25-84 (Order No. 84-742); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016); PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073)

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. These provisions supplement the generally applicable hearing procedures contained in OAR chapter 860, divisions 011 through 014.

(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 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:

(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) 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 decide whether an oral hearing or other procedures (for example, rounds of comments) would be helpful. To accommodate the need for flexibility, the ALJ may use procedures that vary from those set out in this rule as long as the procedures are fair, treat the parties equitably, and substantially comply with the procedures in this rule.

(10) Only the two negotiating parties 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 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 Ch. 183 & 756

Stats. Implemented: ORS 756.040 & 756.500 through 756.575

Hist.: NEW