

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

10-13

Public Utility Commission	860
Agency and Division	Administrative Rules Chapter Number
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	(503) 378-4372

RULE CAPTION

In the Matter of a Rulemaking to Adopt and Amend Division 011 Rules

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

Hearing Date	Time	Location	Administrative Law Judge
November 28, 2006	9:30 a.m.	Public Utility Commission Main Hearing Room, 1st Floor 550 Capitol Street NE Salem, Oregon	Michael Grant

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (adopted or renumbered) with the Administrative Rules Unit prior to filing.

ADOPT: OAR 860-011-0090, 860-011-0100, 860-011-0110

AMEND: OAR 860-011-0080

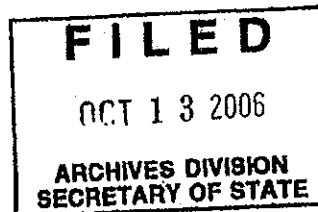
REPEAL:

RENUMBER:

AMEND and RENUMBER:

ORS Ch 183, 192, 756, 757 & 759

Stat. Auth:	Other Authority
ORS 192.420-192.505, 756.040, 756.060 & 756.500 through 756.575	
Stats. Implemented:	



RULE SUMMARY

Commission rules do not provide any process for the filing and processing of requests made under Oregon's Public Records Law. These proposed rules establish the requirements for making such requests, as well as the charges the Commission will impose to recover the costs incurred in responding to a request. The rules also clarify how the Commission will process public records requests seeking information that has been designated as confidential and exempt from disclosure.

The proposed rules also clarify the fees the Commission will charge to recover costs for annual subscriptions to agency orders, notices, rules and other publications, as well as fees and penalties for returned checks, untimely payment of fees required by statute, and late-filed statements and reports.

The agency 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.

November 28, 2006, 5:00 p.m.
Last day for Public Comment
Last day to submit written comments to the Commission

Diane Davis
Signature

Diane Davis
Printed Name

10/13/06
Date

**Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 p.m. on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

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

Agency and Division	Administrative Rules Chapter Number
Public Utility Commission	860

In the Matter of a Rulemaking to Adopt and Amend Division 011 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 Adopt and Amend Division 011 Rules

Statutory Authority: ORS Ch 183, 192, 756, 757 & 759

Other Authority:

Stats. Implemented: ORS 192.420-192.505, 756.040, 756.060 & 756.500 through 756.575

Need for the Rule(s):

Commission rules do not provide any process for the filing and processing of requests made under Oregon's Public Records Law. These proposed rules establish the requirements for making such requests, as well as the charges the Commission will impose to recover the costs incurred in responding to a request. The rules also clarify how the Commission will process public records requests seeking information that has been designated as confidential and exempt from disclosure.

The proposed rules also clarify the fees the Commission will charge to recover costs for annual subscriptions to agency orders, notices, rules and other publications, as well as fees and penalties for returned checks, untimely payment of fees required by statute, and late-filed statements and reports.

Documents relied upon, and where they are available:

Attorney General's Public Records and Meeting Manual--Dept of Justice, 1162 Court St, Salem OR 97310-4096; Administrative rules adopted and made available via the internet by other state agencies governing public records requests.

Fiscal and Economic Impact, including Statement of Cost of Compliance.

These rules clarify fees and charges the agency will impose on persons seeking copies of public documents or subscriptions to publications of Commission prepared documents. These fees and charges are designed to allow the Commission to recover its costs in providing these services. These new rules will fiscally impact these persons to the extent the Commission is not currently recovering its full costs associated with these activities. It is difficult to estimate the extent of this fiscal impact, as amounts charged will vary by the nature of the request for records or documents.

The rules will potentially have a positive fiscal impact on the Commission itself as they will help ensure the agency recovers the costs of providing copies of public documents or subscriptions to publications of Commission prepared documents.

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

No.

Administrative Rule Advisory Committee consulted?

No formal Advisory Committee was used in the development of these proposed rules, as they were developed based on the internal costs and procedures within the agency. They will, however, be vetted with stakeholder participants during the course of rulemaking proceedings and may be amended to address any concerns.

Information on Need and Fiscal Impact provided by: Michael Grant

Diane Davis Diane Davis 10/13/06
Authorized Signer Printed Name Date

860-011-0080

Public Records and Request for Documents

(1)(a) With prior notice, the Commission will make public records, not otherwise exempt from disclosure by law, available for inspection during regular business hours. The Commission may condition the time and manner of inspection of public records as necessary under the circumstances to protect the records and to prevent interference with the regular discharge of the duties of the Commission and its employees.

(b) The request must be sufficiently specific to allow the Commission to readily identify the document or other material that contains the requested information. The Commission may require that any request for public records be made in writing.

(c) The request must indicate the format in which any copies are desired and the date, if any, by which the records are needed. The Commission reserves the right to provide the information in a different format than requested, or to provide the information after the desired date, if the burden of meeting the requested format or date is impractical.

(2) The Commission will charge the following fees reasonably calculated to recover the costs of providing access to and copying of public records.

(a) Employee time: The Commission will charge for employee time in excess of 15 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents.

Employee time will be charged in 15 minute increments at the following rates:

(A) Assistant Attorney General: \$111 per hour, excluding time spent in determining the application of the provisions of ORS 192.410 to 192.505;

(B) Administrative Law Judge: \$52 per hour;

(C) Manager: \$32 per hour

(D) Utility Analyst: \$25 per hour

(E) Information Services; \$43 per hour;

(F) Law Clerk; \$22 per hour;

(G) General Clerical; \$15 per hour;

(b) Photocopies: If the request seeks copies of any documents identified in response to a request, the Commission will charge \$0.15 per page to recover the costs of photocopying. "Page" refers to the number of copies produced. A double-sided copy consists of two pages. The Commission may waive fees for photocopies provided in response to routine requests for a single copy of a Commission order or other public document.

(c) If the request seeks certification of true copies of public documents, the Commission will charge \$10 per document certification.

(d) Facsimile: When faxing records, the Commission will charge \$0.75 per page. The Commission limits the number of pages it will fax to 30 pages.

(e) Electronic Media: If the request seeks electronic reproduction of public records, the Commission will provide reproduction media at the following rates:

(A) Diskette, CD, or DVD: \$1.50 each

(B) Video Cassettes, 2 hours: \$2.00 each

(C) Audio Cassettes: \$2.50 each.

(f) Mailing: When mailing voluminous records, the Commission also will charge the actual postage costs for mailing of the public records.

(3) Upon request, the Commission will provide notice of the estimated costs of making records available for inspection or providing copies of records. If the estimated costs exceed \$25, the Commission will provide written notice and not act further to respond to the request unless and until it receives written authorization to proceed with making the public records available. The Commission may require that all estimated fees and charges be paid before public records will be made available for inspection or copies provided.

Schedule of Fees and Charges

Unless otherwise provided, the Commission will impose the following fees and charges:

(1) Photocopies:

(a) No charge for 20 pages or less, in excess of 20 pages, per page: 25 cents (for example, if 21 pages requested, charge would be \$5 minimum plus 25 cents, for a total of \$5.25).

(b) Other government agencies, per page from first page: 05 cents.

- (2) Certification of true copies of public documents (per document certification): \$10.
- (3) Maps of specific area boundaries: \$15.
- (4) Hearing transcripts: At cost. A copy of a public hearing transcript shall be supplied to a party without cost upon the filing with the Commission of a satisfactory affidavit of indigency, pursuant to ORS 756.521. Such a request shall be filed on a form supplied by the Commission and contain information for the Commission to use to determine the eligibility of the requesting party.
- (5) Statistical reports (second and subsequent copies): \$15.
- (6) Facsimile transmission (FAX) charges: No charge for first 15 pages transmitted; additional pages, per page: \$1.
- (7) Audio recordings: \$5 per package.
- (8) Staff research time: At cost.
- (9) Annual subscription to all Commission orders or notices of specific hearings will be provided under the following schedule. Subscribers will be notified of renewal requirements on a yearly basis.
Orders: \$100; Hearing Notices: \$50.
Administrative Rules update service: \$75.
- (10) Computer services: At cost.
- (11) Billing: The Commission may require cash payment before honoring any request. Billings for unpaid balances may accompany mailed copies.
- (12) Waiver of fees: No fee shall be charged or collected for copies of published documents furnished to or provided for routine requests for one copy of a Commission order, administrative rules, and general publications. Requests for additional copies will be subject to applicable charges.
- (13) Late Fees and Penalties:
 - (a) Check Returned for Non Sufficient Funds: \$25.
 - (b) Costs Incurred by the Commission to Collect Past Due Amounts: At Cost.
- (14) Late Payments:
 - (a) Interest on Annual Fees: None.
 - (b) Interest on Residential Service Protection Fund (RSPF): 9 percent per Annum.
 - (c) Penalty on Annual Fees: 2 Percent per Month.
 - (d) Penalty on RSPF: 9 percent of Unpaid Fee, up to \$500 maximum per reporting period.
- (15) Late Statements and Reports:
 - (a) Electric Company Annual Fee Statement: \$100.
 - (b) Gas Utility Annual Fee Statement: \$100.
 - (c) Telecommunications Providers Annual Fee Statement: \$100.
 - (d) Water Utility Annual Fee Statement: \$40.
 - (e) RSPF Report: \$100.

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

Stats. Implemented: ORS 192.420-192.505, ORS 756.040 & 756.500 through 756.575

Hist.: PUC 10-1994, f. & ef. 7-21-94 (Order No. 94-1127); PUC 1-1996, f. & ef. 2-21-96 (Order No. 96-043); PUC 3-1996, f. & ef. 7-19-96 (Order No. 96-181); PUC 15-1997, f. & ef. 11-20-97 (Order No. 97-443); PUC 16-1998, f. & ef. 10-12-98 (Order No. 98-410); PUC 18-2004, f. & ef. 12-30-04 (Order No. 04-753); PUC 7-2005, f. & ef. 11-30-05 (Order No. 05-1229); PUC 8-2005, f. & ef. 12-21-05 (Order No. 05-1255)

OAR 860-011-0090

Commission Publications

(1) The Commission will charge the fees reasonably calculated to reimburse the agency for costs of annual subscriptions, agency publications, and materials related to agency proceedings. These fees, which include actual mailing costs, are as follows:

(a) Subscription to Commission Orders: \$100 (annually);

(b) Subscription to Notices of Hearings: \$50 (annually);

(c) Administrative Rules update service: \$75 (annually);

(d) Bound Volume of Oregon Laws Relating to the Commission: \$15;

(e) Maps of specific area boundaries: \$20;

(f) Statistical reports: \$15;

(g) Hearing transcripts: At cost. A copy of a public hearing transcript will be supplied to a party

without cost upon the filing with the Commission of a satisfactory affidavit of indigency, pursuant to ORS 756.521.

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

Stats. Implemented: ORS 192.420-192.505, 756.040, 756.060 & 756.500 through 756.575

Hist.: New

OAR 860-011-0100

Confidential Information

(1) The Commission will provide special handling and limited access to confidential information submitted in compliance with this rule. This rule applies to any information submitted under a claim of confidentiality.

(2) For purposes of this rule, "confidential information" is information that is exempt from disclosure under the Public Records Law, ORS Chapter 192, or designated under the terms of a protective order in a contested case proceeding.

(3) At the time of filing, a person may designate a document as containing confidential information. Any such designation must be made in good faith and be limited to only those portions of the document that qualifies for protection. The person asserting confidentiality must state the basis upon which the information is claimed to be confidential.

(4) Unless otherwise provided by Commission order, any confidential information included in a filing must be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. To the extent practicable, the provider should place only those portions of the document containing the confidential information in the envelope/container. The envelope/container shall bear the legend: "CONFIDENTIAL" or other designation required by a protective order. Any failure to comply with these requirements may result in the submission not being accepted as one including confidential information and its return to the provider for correction and resubmission.

(5) The Commission will provide written notice of any public records request for information designated as confidential to the person asserting confidentiality and allow an opportunity for the person to establish that the information is exempt from disclosure. The person asserting confidentiality bears the burden to show that part or all of a document should be exempt from disclosure under the Public Records Law.

(6) In the event the Commission concludes that the information designated as confidential is not protected from disclosure under the Public Records Law, the Commission will provide notice of the decision and delay the release of the information to permit the person asserting confidentiality the ability to obtain a court order to protect the records from disclosure. If the person asserting confidentiality consents in writing to the release of the information, or does not restrain disclosure by way of court order within ten days following notice, the Commission will consider the information public, remove the confidential designation from its files, and release the information to the requester.

(7) The Commission will protect information designated as confidential for a period of six years from the date of filing. A party asserting confidentiality may seek an extension to this period by filing a written request with the Commission. A request must state the basis upon which the information remains exempt from disclosure under the Public Records Law. The Commission will notify the party asserting confidentiality at least ten days prior to removing the confidential designation of the information.

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

Stats. Implemented: ORS 192.420-192.505

Hist.: New

OAR 860-011-0110

Late Fees and Penalties

(1) The Commission will impose the following late fees and penalties, as applicable:

(a) Check Returned for Non-Sufficient Funds: \$25.

(b) Costs Incurred by the Commission to Collect Past-Due Amounts: At Cost.

(2) The Commission will impose the following interest and penalties for the untimely payment of fees

required by statute or rule:

(a) Annual Fees: No interest; 2 percent penalty of fee per month;

(b) Residential Service Protection Fund (RSPF) payments: 9 percent interest per Annum; 9 percent penalty of Unpaid Fee, up to \$500 maximum per reporting period.

(3) The Commission will impose the following fees for late filed statements and reports:

(a) Electric Company Annual Fee Statement: \$100.

(b) Gas Utility Annual Fee Statement: \$100.

(c) Telecommunications Providers Annual Fee Statement: \$100.

(d) Water Utility Annual Fee Statement: \$40.

(e) RSPF Report: \$100.

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

Stats. Implemented: ORS 756.040 & 756.500 through 756.575

Hist.: New

CERTIFICATE OF NOTIFICATION

AR 511

I certify that I have, this day, sent a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact (with proposed rule text attached) to the President of the Oregon Senate and the Speaker of the Oregon House of Representatives, providing notification of the rulemaking proceeding as required by ORS 183.335, by placing in the State Interagency Mail a copy of said documents, addressed as indicated below .

Dated at Salem, Oregon, this 13th day of October, 2006.



Diane Davis
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Public Utility Commission
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Salem, OR 97301
Telephone: (503) 378-4372

SENATOR PETER COURTNEY
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