

ORDER NO. 02-702

ENTERED OCT 15 2002

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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

AR 417/AR 441

In the Matter of the Rulemaking )  
Proceeding to Permanently Amend Rules )  
Pertaining to Resource Plans, Resource ) ORDER  
Valuation, and Service Options in OAR )  
860, Division 038. )

DISPOSITION: AMENDED RULES ADOPTED

On April 17, 2001, the Public Utility Commission of Oregon (Commission) opened Docket AR 417 to consider amending various electric restructuring rules. On May 15, 2001, the Commission filed a notice of rulemaking and a statement of need and fiscal impact with the Oregon Secretary of State. The notice set forth proposed amendments to eight administrative rules: OAR 860-038-0005, 860-038-0080, 860-038-0140, 860-038-0160, 860-038-0240, 860-038-0250, 860-038-0260, and 860-038-0280.

Notice of the rulemaking was published in the Oregon Bulletin on June 1, 2001. Interested persons were given until June 22, 2001, to file written comments. This comment time was later extended to September 11, 2001, to allow additional comments in light of the passage of HB 3633.<sup>1</sup> No request was made for a public hearing.

Three rounds of written comments were filed. Opening comments were filed by Commission Staff (Staff), the Citizens' Utility Board (CUB), PG&E National Energy Group (NEG), PacifiCorp, the Industrial Customers of Northwest Utilities (ICNU), and Portland General Electric (PGE). Staff, NEG, PacifiCorp, ICNU and PGE filed reply comments. Staff and PGE filed comments jointly (Joint Comments) relating to the impact of HB 3633.

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<sup>1</sup> Or Laws 2001, ch 819, § 2. HB 3633 changed the implementation date of electric restructuring from October 1, 2001 to March 1, 2002.

The Commission addressed one issue in this rulemaking proceeding at its October 22, 2001 public meeting by adopting a minor change to the first sentence of OAR 860-038-0080(1)(a). *See*, Order No. 01-882. This issue was addressed separately because a temporary rule was due to expire.

On June 7, 2002, the Commission opened Docket AR 441 to consider amending the electric restructuring rules to add language regarding an "opt-out" provision proposed by ICNU, along with language to address issues involving electric service suppliers (ESSs). On June 14, 2002, the Commission filed a notice of rulemaking and a statement of need and fiscal impact with the Oregon Secretary of State. The notice outlined proposed amendments to nine administrative rules: OAR 860-038-0005, 860-038-0080, 860-038-0160, 860-038-0240, 860-038-0250, 860-038-0340, 860-038-0410, 860-038-0420, and 860-038-0590.

Notice of the rulemaking was published in the Oregon Bulletin on July 1, 2002. Interested persons were given until September 17, 2002 to file written comments. Also on July 1, 2002, Dockets AR 417 and AR 441 were consolidated.

Due to the consolidation, participants were allowed to submit comments addressing both dockets.<sup>2</sup> Two rounds of comments were submitted in July 2002. The participants filing comments were Building Owners and Managers Association (BOMA), Associated Oregon Industries (AOI), Calpine Corporation (Calpine), ESS and Marketers Group, Fred Meyer Stores, ICNU, PacifiCorp, PGE, Strategic Energy, LLC and AES NewEnergy,<sup>3</sup> and Staff.

The participants met in workshops to discuss the treatment of new resources, the ICNU "opt-out" proposal, and ESS issues. After these workshops, the participants asked to submit another round of comments. On August 23, 2002, Staff, ICNU and Yam Services filed comments. ICNU, PacifiCorp, PGE and Calpine filed final comments on September 6, 2002.

A proposed order was circulated on October 1, 2002. The Commission considered the proposed amendments at a special public meeting held October 4, 2002.

### **Discussion and Resolution**

These dockets encompass many proposed changes to the electric restructuring rules, most of which occasioned little or no controversy. Some proposed changes merely modified dates, while other changes addressed policy matters. Each rule is addressed in numerical order. The proposed rule changes are contained in Appendix A, which is attached to this order.

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<sup>2</sup> Statutory notice was sent to extend the time period for comment in AR 417.

<sup>3</sup> These two participants filed joint comments.

One rule, however, generated much discussion and little agreement. This rule, OAR 860-038-0080(1)(b), concerns the treatment of new generating resources. We have determined that a review of the issues surrounding this rule should occur in an investigation docket, rather than a rule docket. Such a docket will be opening shortly.

This order also does not address the opt-out provision proposed by ICNU, or the proposed ESS language changes. These issues will be coming before the Commission at a later time.

**1. Definitions for Direct Access Regulation – OAR 860-038-0005**

**Section (10).** PacifiCorp suggested a new definition, "cost-of-service consumer," to replace the term "residential and small nonresidential consumers" in the rules. This term is defined as "a retail electricity consumer who is eligible for a cost-of-service rate under ORS 757.603." This change is consistent with current legislation and is not challenged by the participants.

Fred Meyer Stores suggested a slightly different variation of the term; that of a "cost-of-service *eligible* consumer." Its rationale for the change is to clearly identify the consumers who are eligible for cost-of-service rates. PacifiCorp's proposed definition, however, sufficiently describes a cost-of-service consumer. We adopt this new definition.

**Sections (17) and (70).** The definitions of "economic utility investment" and "uneconomic utility investment" were amended during the 2001 legislative session. The proposed rule changes align the rules with the revised statutory language.<sup>4</sup> No participant challenged these changes. We adopt these amendments.

**Section (41).** Staff proposed these changes in the definition of "ongoing valuation" as a means of clarifying the intent of the rule. The proposed rule change removes the words "forecast" and "one-year," and replaces them with the words "projected" and "defined." No participant challenged this change. We adopt the amendments to the definition.

**Section (54).** The term "electric company" was changed to "electric utility," which more accurately describes the appropriate entity. No participant objected to this change. We adopt this amendment.

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<sup>4</sup> ORS 757.600(10) and (36).

**2. Resource Policies and Plans – OAR 860-038-0080**

**OAR 860-038-0080(1)(a).** The changes in this rule utilize the new definition of cost-of-service consumer, along with changing the term "large nonresidential consumer." No participant objected to this change. We adopt the amendments.

**OAR 860-038-0080(2).** The purpose of this rule is to establish a time period during which a ratio can be established for determining a class's share of the total Oregon share of a generating resource. Initially, the time period was the 12-month period ending September 30, 2001. Because the Commission changed the date for determining resource plans, a new period must be established. Staff recommended using the calendar year prior to the filing of the resource plan. Further, Staff recommended that the loads be adjusted to remove any effects of demand exchange programs. As no participants objected, we adopt these amendments.

**OAR 860-038-0080(3), (3)(a)(A), (3)(a)(E), (3)(a)(G)(i), (3)(b)(A), (3)(c)(A), (3)(c)(B)(ii), (3)(c)(B)(iii), and (4).** These amendments are changes in dates for filing and review of a resource plan or other timing matters related to the filing, along with changing language to conform with new legislation. The amendments were not opposed. Minor changes were made for the sake of clarity. We adopt these amendments.

**OAR 860-038-0080(4)(c).** This amendment deletes language from this section and moves it, with minor clarification, to OAR 860-038-0080(6). We adopt this amendment.

**OAR 860-038-0080(5).** This rule section refers to the process for changing the definition of large nonresidential consumer. This process was completed in AR 394, Order No. 02-053. The language is no longer needed and should be deleted. We adopt these amendments.

**Former OAR 860-038-0080(6), renumbered (5).** This amendment clarifies that Resource Plans may contain various options related to different assumptions made by an electric company regarding eligibility for cost-of-service rates. This change occurred due to the passage of HB 3633. The other amendment clarifies the wording moved from OAR 860-038-0080(4) above and deletes redundant language. We adopt these amendments.

**OAR 860-038-0080(7), (7)(b), and (7)(c), renumbered (6), (6)(b) and (6)(c).** These rules relate to PacifiCorp's status as a multi-jurisdictional electric utility. They are designed to protect PacifiCorp from the risk of inconsistent rate treatment among its jurisdictional states regarding the effects of wholesale sales made possible as a result of direct access. The amendments replace a fixed time frame within which multi-jurisdictional utilities would be held harmless.

Currently PacifiCorp is engaged in Docket UM 1050, in which the participants are attempting to resolve some of PacifiCorp's allocation issues. The facilitator's report is due in December 2002. Due to the ongoing nature of that docket, the time frame for holding PacifiCorp harmless should be extended from December 2002 to December 2003. None of the participants objected to this amendment. We adopt this amendment.

### **3. Ongoing Valuation**

**860-038-0140(1).** As previously discussed, the term "residential and small nonresidential consumers" is changed to "cost-of-service consumer" throughout the rules. Additionally, the rule language was changed to state that an electric utility "will use" an ongoing valuation method to determine transition charges or credits for cost-of-service consumers. This language change was made to clarify existing language. These changes are consistent with current legislation, and are not challenged by any of the participants. We adopt these amendments to the rule.

**860-038-0140(2).** This amendment removes an unnecessary reference in this rule to OAR 860-038-0240(5). We adopt this amendment.

**860-038-0140(3).** The proposed amendment allows companies to propose expedited procedures for determining costs and value of an electric utility's generating resources in their tariffs. No participant objected. We adopt this amendment.

### **4. Transition Costs and Credits**

**OAR 860-038-0160(1).** This proposed amendment makes clear that transition charges or benefits may not change based on the supplier of the electricity services, although the charges or benefits may be different based on the term of the option chosen. No participant objected. We adopt this amendment.

**OAR 860-038-0160(2), (2)(a), and (2)(b).** Again, these modifications involve revising the terms "residential and small nonresidential consumers" and "large nonresidential consumers," consistent with current legislation. Other minor language changes are grammatical. We adopt these amendments.

**5. Cost-of-Service Rate**

**OAD 860-038-0240(1).** This amendment requires that an electric company must provide a cost-of-service rate option "after" March 1, 2002. No participant objected. We also corrected our error of referring to "customers" rather than the statutory term of "consumer." We adopt these amendments.

**OAD 860-038-0240(6).** This amendment moves language from two other rules (OAD 860-038-0250(4) and OAD 860-038-0260(3)) into this rule. The new language added to this section allows the electric company to limit switching between direct access or standard offer and the cost-of-service rate. No participant objected. We adopt this amendment.

**6. Nonresidential Standard Offer**

**OAD 860-038-0250(2)(a).** The amendment adds the word "priced" to clarify the rule. Additionally, the words "if any" are added to clarify that transition credit or charges may not exist. We adopt these amendments.

**OAD 860-038-0250(2)(g).** Staff recommended the following new language:

An electric company may offer a cost-of-service rate to large nonresidential consumers in lieu of a one-year standard offer rate option.

Although no participant objected, BOMA suggested adding the phrase "or in addition to" after the words "in lieu." In light of the context of the sentence, BOMA's suggested change is not necessary. We adopt Staff's proposed amendment.

**OAD 860-038-0250(3).** The proposed modifications for this rule changed over the course of this proceeding. Part of this occurred due to the passage of HB 3633. Staff and PGE now propose the following:

Nonresidential retail electricity consumers who do not choose direct access or a specific standard offer service will automatically receive the cost-of-service rate option beginning March 1, 2002. After March 1, 2002, new nonresidential consumers will be served under the cost-of-service rate, if available, if they choose another service option.

Consumers who, through a Commission decision under ORS 757.603(1)(b), are not eligible for a cost-of-service rate will be served under the standard offer rate of the longest duration, though not longer than an annual standard offer, which is by tariff open to those consumers if they do not elect direct access or a specific standard offer service.

The purpose of the proposed language is to clarify the treatment of nonresidential cost-of-service consumers who do not choose a service option. No participant objected.

We propose a slight modification to the language proposed by Staff and PGE. It is not our intent to change the meaning of this rule, but simply to make it more readable. The Commission adopts the following language:

Nonresidential cost-of-service consumers who do not choose direct access or a specific standard offer service will be served under the cost-of-service rate until they choose another option. Large nonresidential consumers who are not cost-of-service consumers will be served under the non-emergency default supply option unless they elect direct access or a different standard offer service.

**OAR 860-038-0250(4).** This section is being moved to OAR 860-038-0240(6). We adopt this amendment.

In the new subsection (4), the participants agreed to add the term "any applicable" to transition charges or credits. The rationale for this amendment is that the company cannot identify transition charges or credits that fail to exist. We adopt this amendment.

## **7. Direct Access**

**OAR 860-038-0260(3).** This section, along with OAR 860-038-0250(4), was moved to OAR 860-038-0240(6), as discussed above. We adopt this amendment.

## **8. Default Supply**

**OAR 860-038-0280(4).** This amendment changes the notice requirement for nonresidential consumers intending to purchase or terminate purchase of standard offer service from five days to the time period required by tariff. No participant objected. We adopt this amendment.

**ORDER**

1. The amendments to OAR 860-038-0005, 860-038-0080, 860-038-0140, 860-038-0160, 860-038-0240, 860-038-0250, 860-038-0260, and 860-038-0280, attached as Appendix A and made part of this order, are adopted.
2. The amended rules will be effective upon filing with the Secretary of State.

Made, entered and effective \_\_\_\_\_.

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**Roy Hemmingway**  
Chairman

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**Lee Beyer**  
Commissioner

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**Joan H. Smith**  
Commissioner

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