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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 451

In the Matter of a Rulemaking Proceeding)
to Amend OAR 860-012-0035 to Delegate) ORDER
General Authority to the Administrative)
Law Judge to Issue Appropriate Protective)
Orders.)

DISPOSITION: RULE AMENDED

Introduction. OAR 860-012-0035 provides that the Commission delegates to the Administrative Law Judge (ALJ) the authority to issue a “standard protective order adopted by the Commission.” Due to the limitations set forth in the rule, whenever a party requires a protective order that deviates from the standard language, the Commission, rather than the ALJ has to issue the order, even if no party to the proceeding objects to the proposed language. As a result, proceedings are often delayed and additional, unnecessary paperwork is generated when compared to the issuance of a standard protective order by the ALJ.

On December 3, 2002, the Public Utility Commission of Oregon opened a rulemaking proceeding to amend OAR 860-012-0035 to delegate general authority to the ALJ to issue protective orders with language appropriate to the circumstances, without first obtaining Commission approval. Notice of the Proposed Rulemaking and a Statement of Need and Fiscal Impact were filed with the Secretary of State on December 9, 2002. Notice of the rulemaking was published in the Oregon Bulletin on January 1, 2003. Copies of the proposed rules, the Notice of Proposed Rulemaking Hearing, and the Statement of Need and Fiscal Impact were also sent to a list of interested persons.

No person requested that the Commission hold a hearing on this matter. Portland General Electric Company (PGE) on January 14, 2003, and the Industrial Customers of Northwest Utilities (ICNU) on January 21, 2003, filed comments in the form of single-page letters. PGE concurred in the proposal. ICNU said that it did not oppose the change, but argued that “[t]he Commission should require consistency in access to confidential information, regardless of which utility is involved.”

The Commission considered this matter at its Public Meeting on March 4, 2003 and adopted the rule as modified, as contained in Appendix A.

Discussion. Despite its statement that it does not oppose the rule change, ICNU appears to oppose the entire concept of flexibility contemplated by the rulemaking.¹

¹ See ICNU statement *supra*, and the following: “In addition, the lack of a uniform and workable standard protective order has led to increased disputes regarding access to confidential information. Therefore, ICNU urges the Commission to initiate a formal proceeding to re-evaluate the standard protective order and other issues related to access to confidential information.”

We disagree with the idea that the Commission should move instead to an immutable form of protective order. Rather, we believe that our rules should allow parties to set forth their reasons for adding or deleting specific language in order to respond to unique circumstances arising in a proceeding. Such flexibility furthers the Commission’s efforts to provide workable procedures for the conduct of business by the parties before it.

Intervening parties, such as ICNU, may well benefit from the added flexibility that the rule change will provide. Parties will still be able to negotiate with each other and the Commission staff to tailor a protective order to meet their needs and concerns rather than being stuck with the limitations and rigidity of a “one size fits all” order which might be overly inclusive. Furthermore, a party’s rights to Commission review of an ALJ’s protective order are in no way diminished by adoption of the proposed rule.

ORDER

IT IS ORDERED that

1. The modification to Oregon Administrative Rule 860-012-0035, as set forth in Appendix A, is adopted.
2. The amended rule shall be effective upon filing with the Secretary of State.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A person 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.

860-012-0035

Administrative Law Judges

- (1) The Commission delegates to the Administrative Law Judge (ALJ) authority to:
- (a) Regulate the course of hearings including scheduling, recessing, reconvening, and adjourning;
 - (b) Administer oaths and affirmations;
 - (c) Issue subpoenas;
 - (d) Make evidentiary rulings, with or without objection;
 - (e) Limit, supervise, and control discovery;
 - (f) Hold appropriate conferences before, during or after hearings;
 - (g) Decide procedural matters but not to grant motions to dismiss or other motions which involve final determination of the proceedings;
 - (h) Limit or extend filing periods and grant waivers;
 - (i) Certify a question to the Commission for consideration and disposition;
 - (j) Take any other action consistent with the duties of an ALJ;
 - (k) Upon request by a party, and for good cause shown, issue a ~~standard~~ protective order **adopted by the Commission**, which may include language agreed upon by all parties to a proceeding and the ALJ, to limit disclosure of confidential information. Decisions by the ALJ regarding the ~~standard~~ protective order may be appealed to the Commission pursuant to OAR 860-014-0091.
- (2) The ALJ shall conduct a fair and impartial hearing and maintain order. If a person engages in conduct which interferes with this duty, the ALJ may suspend the hearing or exclude the person from the hearing.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 756.055, & 756.500 through 756.575
Hist.: PUC 179, f. 3-18-77, ef. 4-1-77 (Order No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 11-1989, f. & cert. ef. 7-10-89 (Order No. 89-817); PUC 12-1999, f. & ef. 11-18-99 (Order No. 99-709)