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BEFORE THE PUBLIC UTILITY COMMISSION**

OF OREGON

AR 481

In the Matter of Amendments to Division 038)
Rules Relating to Direct Access Regulation) ORDER
for Electric Companies, Electricity Service)
Suppliers, and Aggregators.)

DISPOSITION: RULES ADOPTED

INTRODUCTION

On June 8, 2004, the Public Utility Commission of Oregon (Commission) opened this docket to consider revisions to Division 038 of the administrative rules first adopted in 2000, OAR 860-038-0001, *et seq.* Division 038 implemented Oregon Revised Statutes (ORS) 757.600 to 757.687, providing customers with a portfolio of electricity rate options (Portfolio Options) and allowing for the purchase of electricity and certain ancillary services directly from an entity other than the distribution utility (Direct Access).

On June 11, 2004, the Commission filed a Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact (Notice) with the Secretary of State and mailed the Notice to the appropriate state legislators as required by ORS 183.335(1)(d). The Notice was published in the *Oregon Bulletin* on July 1, 2004. The Commission also sent the Notice to a list of interested persons.

The Commission staff (Staff) proposed that four rules in Division 038 be revised. Amendments to OAR 860-038-0005 and 0220 changed the name of the Portfolio Advisory Committee to the Portfolio Options Committee (Committee). OAR 860-038-0220 was further revised to modify the service period for portfolio options. Staff proposed that OAR 860-038-0270 be amended to establish permanent rules for direct access declaration windows.¹ Staff also proposed that OAR 860-038-0480 be amended to facilitate better tracking of public purpose charges (PPC) for self-directing customers (SDC).

¹ OAR 860-038-0270 was a temporary rule that expired on March 29, 2004. The new, permanent rule, as discussed below, is designated OAR 860-038-0275.

A public hearing was held on July 21, 2004. Portland General Electric Company (PGE), PacifiCorp, Industrial Customers of Northwest Utilities (ICNU), Strategic Energy LLC (Strategic), Staff and the Oregon Department of Energy (ODOE) identified their concerns with the current rules and the proposed rules. Written comments were also filed on July 21, 2004, by PGE and ODOE.

The Commission considered this matter at its Public Meeting on August 17, 2004. The Commission adopts the proposed new and amended rules as modified and set forth in Appendix A to this order.

DISCUSSION

Certain of Staff's proposed amendments to OAR 860-038-0005 and 860-038-0220 change the name of the Portfolio Advisory Committee to the Portfolio Options Committee. The name change was proposed so that it is clear that this is not an advisory committee whose members are entitled to the privileges provided pursuant to ORS 756.036(1)(e).² There were no comments in opposition to the proposed name change. Staff's recommendation is adopted.

The proposed amendments to OAR 860-038-0220 also specify that customers may enroll in or exit renewable resource portfolio options at any time, subject to applicable switching fees, and that the minimum term for enrollment in a market-based portfolio option is 12 months. It also specifies that the Committee may recommend a service period for portfolio options up to 36 months. Proposed changes to portfolio option service periods are consistent with Commission Orders No. 01-337 and 03-208. There were no comments in opposition to the proposed changes regarding portfolio options. Staff's recommendation is adopted.

The permanent rule proposed by Staff which replaces temporary rule OAR 860-038-0270 (Direct Access) differs from the temporary rule in three major respects:

1. The utility is required to announce new, annual cost-of-service prices twice a year (overlapping 12-month periods, January-December and July-June).
2. The utility is required to provide two annual five-business day declaration windows during which time direct access customers may choose a price option or direct access.
3. The utility is required to offer direct access eligible customers a multi-year cost-of-service opt-out with a fixed transition adjustment.

² "(e) Appoint advisory committees. A member of an advisory committee so appointed shall receive no compensation for services as a member. Subject to any applicable law regulating travel and other expenses of state officers and employees, the member shall receive actual and necessary travel and other expenses incurred in the performance of official duties."

PacifiCorp, Strategic, ICNU and PGE commented on this proposed rule change at the hearing. PGE also addressed the change in its written comments.

PacifiCorp opposed the addition of the second window, stating that having two windows per year was too burdensome.

Strategic supports PacifiCorp's "kick-start" program and believes that "shopping windows" will not work. However, if declaration windows are the only option, rather than continuous open enrollment, then more windows are better.

ICNU gave moderate support for the spring window, but stated that benefits are limited because the opportunities for savings are limited by the ongoing valuation process; a second window does not remedy that problem. There are complex logistics to having declaration windows two times per year. ICNU would prefer to lock in adjustments, but not get out of the current amount after six months. ICNU supports the multi-year option with a one-time valuation and encourages the Commission to offer a permanent option. Problems with the imbalance mechanism will keep customer interest low.

At the hearing, PGE stated that two annual Resource Valuation Mechanism (RVM) rate-setting processes can be done, but PGE prefers flexibility and thinks that the costs borne by the customers would be as great as two general rate cases per year. The main problem is the "annual valuation"; everything else is "nipping around the edges." In its written comments, PGE also noted that in Advice No. 04-7, approved by the Commission on May 4, 2004, PGE has offered two annual five-day declaration windows and a multi-year opt-out, with customers who left cost-of-service rate for a six-month term being subject to an adjustment reflecting the difference between energy charges under cost-of-service and market prices for the remainder of the year; this adjustment minimizes the potential of shifting costs to non-participating consumers.³ However, "[t]he proposal made under OAR 860-038-0270 to require utilities to announce new, annual cost-of-service prices twice a year, is especially problematic. It would be complicated, confusing and likely to lead to customer frustration.... The rules also appear to require...at least two different transition adjustments in addition to those already in effect.... These coupled with PGE's current Part B (short-term resource opt-out) will create a billing quagmire.... If the Commission determines that a mid-year option is needed, we recommend that it be a balance of year approach similar to our mid-2004 option. It is much simpler to administer and understand."⁴

House Bill 3376 was signed by the Governor on June 24, 2003, and became effective immediately. It provided that the Commission put rules in place which would provide for the announcement by electric utility companies of their prices for the upcoming calendar year and for the ability of retail electricity consumers to have a window of opportunity to select direct access or power purchases from the utility. Except for Staff--the authors of the proposed revision--no hearing participant voiced unqualified support for the addition of the

³ PGE Comments, pp. 1-2.

⁴ *Id.*, p. 2.

second declaration window. Even though customers would be the most likely beneficiaries of the additional window, Strategic and ICNU discounted its value and highlighted the logistical problems, the low level of likely participation and the failure of the rule to solve significant concerns.

The Commission has long held the view that competition and customer choice in the purchase of services is in the long-term public interest. The transition to customer choice from traditional supplier regulation is always accompanied by operational and logistical challenges to the utility. We also recognize that the twice-yearly window creates a significant burden as well as a potential cost-saving opportunity. In this instance, we believe that greater experience with the existing process by the utilities, its customers and the Commission is advisable before undertaking further changes to the process we originally adopted. Staff's recommendation with respect to the addition of a second direct access announcement and election period is not adopted. The new permanent rule, OAR 860-038-0275, reflects these more modest changes.

A proposed amendment to OAR 860-038-0480 modifies the roles and responsibilities of the ODOE, the SDC and the utility by having the utility bill the SDC for the PPC net of any credits. At the hearing, ODOE expressed its support for the change, saying that it better met the Legislature's intent, and would facilitate better tracking of PPCs for self-directing companies. In its written comments, ODOE stated that administrative costs could be allocated back to the SDCs to avoid ratepayers from shouldering the financial burden.

PGE opposed the change, saying that the current system was adequate and that, with only 16 SDCs, a billing procedure change was not warranted for such a small scale of participation. Additional administrative costs would likely be shifted to the ratepayers, when the practical problem relating to one or two customers was easily resolved with minimal effort.⁵

Currently, a direct service industrial customer sends a separate check to the utility for the public purpose charge. There have been a number of instances where the checks have been tardy or, in a few instances, not sent at all. By giving the direct service customer a billing credit, the customer will have an incentive toward more rapid compliance. While a small additional administrative burden will be placed on the utilities by this change, they will be adequately compensated for it.

⁵ *Id.*, p. 3.

ORDER

IT IS ORDERED that:

1. The proposed revisions to OAR 860-038-0005, Definitions for Direct Access Regulation; OAR 860-038-0220, Portfolio Options; and OAR 860-038-0480, Public Purpose, and new rule OAR 860-038-0275, Direct Access Annual Announcement and Election Period, are adopted as set forth in Appendix A attached to this order.
2. The new and revised rules will be effective upon filing with the Oregon Secretary of State.

Made, entered, and effective _____.

Lee Beyer
Chairman

Ray Baum
Commissioner

John Savage
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.

860-038-0005

Definitions for Direct Access Regulation

As used in this Division:

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.

(2) "~~Portfolio Options Advisory~~ **Portfolio Options Advisory** eCommittee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Oregon Department of Energy, and the following:

- (a) Local governments;
- (b) Electric companies;
- (c) Residential consumers;
- (d) Public or regional interest groups; and
- (e) Small nonresidential consumers.

(3) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.

(4) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services. "Aggregator" means an entity that aggregates.

(5) "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regulation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.

(6) "Commission" means the Public Utility Commission of Oregon.

(7) "Common costs" means costs that cannot be directly assigned to a particular function.

(8) "Competitive operation" means any activities related to the provision of electricity services conducted by the electric company's nonregulated operation or the electric company's affiliate.

(9) "Consumer-owned utility" means a municipal electric utility, a people's utility district or an electric cooperative.

(10) "Cost-of-service consumer" means a retail electricity consumer who is eligible for a cost-of-service rate under ORS 757.603.

(11) "Default supplier" means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.

(12) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.

(13) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(14) “Distribution” means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(15) “Distribution utility” means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(16) “Divestiture” means the sale of all or a portion of an electric company’s ownership share of a generation asset to a third party.

(17) “Economic utility investment” means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. “Economic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(18) “Electric company” means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(19) “Electric company operational information” means information relating to the interconnection of customers to an electric company’s transmission or distribution systems, trade secrets, competitive information relating to internal processes, market analysis reports, market forecasts, and information about an electric company’s transmission or distribution system, operations, or plans or strategies for expansion.

(20) “Electric cooperative” means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(21) “Electric utility” means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(22) “Electricity” means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(23) “Electricity services” means electricity distribution, transmission, generation, or generation-related services.

(24) “Electricity service supplier” or “ESS” means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. “Electricity service supplier” does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(25) “Emergency default service” means a service option provided by an electric company to a nonresidential consumer that requires less than five business days’ notice by the consumer or its electricity service supplier.

(26) “Fully distributed cost” means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.

(27) “Functional separation” means separating the costs of the electric company’s business functions and recording the results within its accounting records, including allocation of common costs.

(28) “Joint marketing” means the offering (including marketing, promotion, and/or advertising) of retail electric services by an electric company in conjunction with its competitive operation to consumers either through contact initiated by the electric company, its affiliate, or through contact initiated by the consumer.

(29) “Large nonresidential consumer” means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.

(30) “Load” means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(31) “Local energy conservation” means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.

(32) “Low-income weatherization” means repairs, weatherization and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(33) “Market transformation” means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(34) “Multi-state electric company” means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.

(35) “Municipal electric utility” means an electric distribution utility owned and operated by or on behalf of a city.

(36) “Net system power mix” means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by Oregon Department of Energy.

(37) “New” as it refers to energy conservation, market transformation and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company.

(38) “New renewable energy resource” means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation on or before July 23, 1999. “New renewable energy resource” does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

(39) “Nonresidential consumer” means a retail electricity consumer who is not a residential consumer.

(40) “Oregon Department of Energy” means the Oregon Department of Energy created under ORS 469.030.

(41) “Ongoing valuation” means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.

(42) “One-time administrative valuation” means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

(43) “One average megawatt” means 8,760,000 kilowatt-hours of electricity per year.

(44) “Oregon share” means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.

(45) “People’s utility district” has the meaning given that term in ORS 261.010.

(46) “Portfolio” means a set of product and pricing options for electricity.

(47) “Proprietary consumer information” means any information compiled by an electric company on a consumer in the normal course of providing electric service that makes possible the identification of any individual consumer by matching such information with the consumer’s name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the consumer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the consumer to whom the information relates does not constitute proprietary consumer information.

(48) “Qualifying expenditures” means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Oregon Department of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(49) “Registered dispute” means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investigation by the Commission’s Consumer Services Division but is not the subject of a formal complaint.

(50) “Regulated charges” means charges for services subject to the jurisdiction of the Commission.

(51) “Regulatory assets” means assets that result from rate actions of regulatory agencies.

(52) “Renewable energy resources” means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; and

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(53) “Residential consumer” means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. “Residential consumer” does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, “dwelling” includes but is not limited to single-family dwellings, separately

metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.

(54) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after March 1, 2002, at the site.

(55) "Self-directing consumer" means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Oregon Department of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.

(56) "Serious injury to person" has the meaning given in OAR 860-024-0050.

(57) "Serious injury to property" has the meaning given in OAR 860-024-0050.

(58) "Site" means:

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;

(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings and structures; and

(C) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.

(59) "Small nonresidential consumer" means a nonresidential consumer that is not a large nonresidential consumer.

(60) "Special contract" means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.

(61) "Structural separation" means separating the electric company's assets by transferring assets to an affiliated interest of the electric company.

(62) "Total transition amount" means the sum of an electric company's transition costs and transition benefits.

(63) "Traditional allocation methods" means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company's last Oregon rate proceeding completed prior to December 31, 2000.

(64) “Transition benefits” means the value of the below-market costs of an economic utility investment.

(65) “Transition charge” means a charge or fee that recovers all or a portion of an uneconomic utility investment.

(66) “Transition costs” means the value of the above-market costs of an uneconomic utility investment.

(67) “Transition credit” means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

(68) “Transmission grid” means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries.

(69) “Unbundling” means the process of assigning and allocating a utility’s costs into functional categories.

(70) “Uneconomic utility investment” means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. “Uneconomic utility investment” does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.

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

Stat. Implemented: ORS 756.040 & 757.600 to 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00 (Order No. 00-596); PUC 2-2001, f. & ef. 1-5-01 (Order No. 01-073); PUC 21-2001 (Temp), f. & cert. ef. 9-11-01 (Order No. 01-788); PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839); PUC 23-2001, f. & ef. 12-13-01 (Errata Order No. 01-1047); PUC 5-2002, f. & cert. ef. 2-8-02 (Order No. 02-053); PUC 11-2002, f. & ef. 3-8-02 (Order No. 02-135); PUC 18-2002, f. & cert. ef. 10-17-02 (Order No. 02-702); PUC 18-2002, f. & ef. 10-17-02 (Order No. 02-702)

860-038-0220

Portfolio Options

(1) ~~By March 1, 2002, a~~An electric company must provide each residential consumer who is connected to its distribution system with a portfolio of product and pricing options. **An eligible customer may enroll in or exit renewable resource options at any time, subject to any switching fees approved by the Commission under subsection (8)(e) of this rule. The minimum term for customers enrolling in a market-based option is 12 months.** Portfolio options will not be offered to large nonresidential consumers.

(2) Sections (3) through (8) of this rule apply to residential portfolio product and pricing options.

(3) ~~By July 1 of each year, t~~The **Portfolio Options Advisory Committee, as defined in OAR 860-038-0005,** will recommend portfolio options to the Commission

~~that will be effective January 1 of the following year. for the 10 month service period beginning March 1, 2002, and the 12 month service period beginning January 1, 2003, and each calendar year thereafter. Each recommended portfolio option shall specify a service period from 12 months to 36 months. The Advisory Committee will make its recommendations six months prior to the date of implementation of the portfolio product and pricing options each year.~~ The Commission is not bound by the recommendations of the Advisory Portfolio Options Committee.

(4) The portfolio must include at least one product and rate that reflects renewable energy resources and one market-based rate. The Advisory Portfolio Options Committee will recommend the resource content of each renewable energy resource product. At least one renewable energy resource product will contain "significant new" resources. The Advisory Portfolio Options Committee will recommend a definition of "significant" based on an evaluation of resource availability, resource cost, and other factors. The portfolio options may include options for the collection of funds for future renewable resource purchases or collection of funds for energy related environmental mitigation measures such as salmon recovery.

(5) Each electric company is responsible for administering the options, including but not limited to marketing and billing.

(6) Each electric company must acquire the renewable supply resources necessary to provide the renewable energy resources product through a Commission-approved bidding process or other Commission-approved means. Each electric company may acquire the resources necessary to provide the other product and pricing options at its discretion.

(7) Four months prior to the implementation of the portfolio product and pricing options ~~each year~~, an electric company must file tariffs for its portfolio options.

(8) This section applies to residential and small nonresidential product and pricing options. An electric company must develop portfolio rates as follows:

(a) The portfolio rates must be based on the unbundled costs identified through the application of OAR 860-038-0200;

(b) The portfolio rates for any class of customer must be based on the unbundled costs to serve that class;

(c) The portfolio rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the portfolio rate option;

(d) The portfolio rates must exclude electric company costs that are avoided when a consumer chooses to be served under the portfolio rate option;

(e) An electric company may impose nonrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

(9) This section applies to small nonresidential portfolio product and pricing options. The Advisory Portfolio Options Committee will recommend portfolio product and pricing options, if any, to the Commission for approval. The electric company must implement small nonresidential portfolio product and pricing options adopted by the Commission.

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

860-038-0275

Direct Access Annual Announcement and Election Period

(1) On November 15 of each year (or the next business day if November 15 falls on a Saturday, Sunday, or legal holiday as defined by ORS 187.010), each electric company must announce the prices to be charged for electricity services in the next calendar year. The date on which the electric companies are required to announce such prices is "the Announcement Date."

(2) Electric companies must allow retail electricity customers that are eligible for direct access at least five business days after the Announcement Date to choose service under a cost-of-service rate option or to purchase electricity from either an electricity service supplier through direct access or an electric company through a standard rate offer.

(3) At least five business days before the Announcement Date, electric companies and electricity service suppliers must announce, and post on their websites, estimates of prices for electricity services in the subsequent calendar year or subsequent contract period if different than a calendar year:

(a) All electric companies and electricity service suppliers must continuously post the estimated prices announced under this rule on their websites until the Announcement Date.

(b) Electric companies' estimated prices will be the companies' estimates of the electricity service prices that will be in effect for the calendar year subsequent to the Announcement Date.

(c) Electricity service suppliers will determine estimated prices that will allow electricity consumers to compare the estimated prices of the electric company and electricity service supplier for the subsequent calendar year, or contract period if different than a calendar year.

(d) Announcing estimated prices as required by this rule creates no obligation on the part of the electric companies and/or electricity service suppliers to provide electricity service to any consumer at the estimated prices.

(e) If an electricity service supplier does not intend to sell electricity services in the subsequent calendar year or contract period, the electricity service supplier must announce, and post on a web site, that it does not intend to sell electricity services in the subsequent calendar year or contract period.

(4) Thirty days prior to the Announcement Date, electric companies and electricity service suppliers shall provide to the Commission a URL address for a website where the individual electric company or electricity service supplier will post prices and announcements as prescribed by this rule. The Commission will post the URL addresses on its website.

(5) At least once each year, electric companies must offer customers a multi-year direct access program with an associated fixed transition adjustment.

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

Stats. Implemented: ORS 756.040 & ORS 757.600 - ORS 757.667

Hist.: New

860-038-0480

Public Purposes

(1) Each electric company that offers direct access to its retail electricity consumers and each electricity service supplier that provides electricity services to direct access consumers in the electric company's service territory will collect a public purpose charge from its retail electricity consumers for 10 years beginning on the date direct access is first offered.

(2) Except as provided in sections (6) ~~and (9)~~ of this rule, electric companies and electricity service suppliers will bill and collect from each of their retail electricity consumers a public purpose charge equal to 3 percent of the total revenues billed to those consumers for electricity services, distribution, ancillary services, metering and billing, transition charges, and other types of costs that were included in electric rates on July 23, 1999.

(3) The electricity service suppliers will remit monthly to each electric company the public purpose charges they collect from the customers of each electric company.

(4) The electricity service suppliers will remit monthly the public purpose charges collected from direct service industrial consumers they serve to the electric company in whose service territory the direct service industrial site is located.

(5) The electric company whose territory abuts the greatest percentage of the site of an aluminum plant that averages more than 100 average megawatts of electricity use per year will collect monthly from the aluminum company a public purpose charge. The aluminum company will remit to the appropriate electric company a public purpose charge equal to 1 percent of the total revenue from the sale of electricity services to the aluminum plant from any source. Annually, the aluminum company will submit to the electric company an affidavit from a certified public accountant verifying that the costs for electricity services at the site of the aluminum plant and the remittance of the public purpose charges are accurate for the previous calendar year.

(6) A retail electricity consumer, including an aluminum plant as described in section (5) of this rule, may receive credits against its public purpose charges for qualifying expenditures incurred for new energy conservation and the above-market costs of new renewable energy resources at any site if the following qualifications for becoming a self-directing consumer ~~is~~ are met:

(a) The consumer has used more than one average megawatt of electricity at any such site in the prior calendar year;

(b) The consumer has received final certification from the Oregon Department of Energy for expenditures for new energy conservation and/or new renewable energy resources; and

~~(c) The consumer has notified its electric company or, in the case of a direct service industrial consumer or aluminum company, the electric company in whose service territory the consumer site is located that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.~~

(7) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to January 1, 2000. For energy conservation measures that were started on or after January 1, 2000, but prior to the implementation of direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions is met:

(a) The energy conservation measure did not receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999; or

(b) The energy conservation measure did receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999, but the self-directing consumer repaid the amount of such funding (cost of audit and incentives plus interest) no later than 90 days following the implementation of direct access; provided that, a self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures.

(c) For purposes of this subsection, "started" means that a contract has been executed to install or implement an energy conservation measure.

(8) The Oregon Department of Energy will establish specific rules and procedures that are consistent with these rules for qualifying a self-directing consumer's expenditures ~~consumer and for determining how the credit process is implemented.~~

~~(9) The electric companies and electricity service suppliers will not bill a self-directing consumer for public purpose charges.~~

(9) The electric company will apply the self-direction credit, determined by the Oregon Department of Energy, toward the consumer's public purpose obligation.

~~(10) Annually, a self-directing consumer will submit to the Oregon Department of Energy an affidavit from a certified public accountant verifying that the costs for electricity services at the site and the remittance of the public purpose charges are accurate for the previous calendar year.~~

~~(11)~~ Each electric company will establish five separate accounts for the public purpose charges to be funded from its collections of public purpose charges as follows:

- (a) Energy conservation in schools;
- (b) New cost-effective local energy conservation and new market transformation;
- (c) Above-market costs of new renewable energy resources;
- (d) New low-income weatherization; and
- (e) Construction and rehabilitation of low-income housing.

~~(12)~~ Each electric company will allocate the public purpose funds it collects (billed less uncollectible amounts) from electricity service suppliers and consumers to the five public purpose accounts as follows:

- (a) Energy conservation in schools -- 10.0 percent;
- (b) Local and market transformation conservation -- 56.7 percent;
- (c) Renewable energy resources -- 17.1 percent;
- (d) Low-income weatherization -- 11.7 percent; and
- (e) Low-income housing -- 4.5 percent.

~~(1312)~~ Each electric company will adjust the accounts for the credits returned to self-directing customers for conservation or renewable resource expenditures certified by the Oregon Department of Energy.

~~(1413)~~ Each electric company will distribute funds from the public purpose accounts at least monthly as follows:

(a) The funds for conservation in schools to the education service districts located in its service territory;

(b) The funds for local and market transformation conservation as directed by the Commission;

(c) The funds for renewable energy resources as directed by the Commission;

(d) The funds for low-income weatherization to the Housing and Community Services Department; and

(e) The funds for low-income housing to the Housing and Community Services Department Revolving Account.

~~(1514)~~ Each electric company will determine by January 1 of each year the allocation of public purpose funds for schools to the Education Service Districts according to the following methodology:

(a) From the Department of Education, collect current total weighted average daily membership (ADMw) as defined in ORS 327.013 and average daily membership (ADM) for each Education Service District that contains schools served by the electric company;

(b) For each of the Education Service Districts, compute the ratio of ADM in schools served by the electric company to total ADM;

(c) For each Education Service District, multiply its total ADMw by the ratio of ADM in schools served by the electric company to total ADM. The result is an estimate of ADMw in schools served by the electric company;

(d) Add the estimates of ADMw for each Education Service District; and

(e) Compute the percentage of the total ADMw represented by each Education Service District. These are the percentages that will be used to allocate the public purpose funds for schools to Education Service Districts for the 12-month period with the exception of 2002 where the funds will be allocated for a 10-month period beginning March 1, 2002. After 2002, the 12-month period will begin on January 1 of each year.

~~(1615)~~ The electric company may be reimbursed for the reasonable administrative costs it incurs to collect and distribute the public purpose funds. Those administrative costs will be deducted from the total amount of public purpose funds collected by the electric company before the funds are allocated to the five public purpose accounts. The electric company will also pay from the total public purpose funds collected or from a specific fund any other administrative costs the Commission directs to be paid for implementation of the public purpose requirements. The entities responsible for administering the public purpose funds will pay for their costs of implementing the public purpose requirements from the public purpose funds they receive from the electric company.

~~(1716)~~ The electric companies and the administrators of the public purpose funds will collect sufficient information so that biennial reports can be made to the Legislature on what has been accomplished with the public purpose funds and how those funds have

benefited the consumers of each electric company. Specifically, information must be collected so that the reporting requirements of ORS 757.617 can be fulfilled.

(a) Each electric company must report the total funds collected by source (that is, electric company customers, electricity service suppliers and self-directing consumers) for public purposes, the amounts distributed to the administrators of each public purpose fund, and its administrative costs;

(b) Each administrator of public purpose funds must report, at a minimum:

(A) The amount of funds received;

(B) The amount of funds spent;

(C) Its administrative costs; and

(D) Its results, for example, measures installed, projects funded, energy saved, homes weatherized, and low-income homes built/rehabilitated.

Stat. Authority: ORS 183, ORS 756 & ORS 757

Stats. Implemented: ORS 756.040 & ORS 757.600 – ORS 757.667

Hist.: PUC 1-2001, f. & cert. ef. 1-5-01; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 11-2002, f. & cert. ef. 3-8-02