

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 511

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

DISPOSITION: RULES ADOPTED AND AMENDED

In this proceeding, the Public Utility Commission of Oregon (Commission) adopts and amends rules contained in Division 011. The new rules, set forth in Appendix A, address three subjects: (1) treatment of confidential information; (2) public records requests; and (3) Commission publications, fees and penalties.

Procedural History

On October 13, 2006, the Commission filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. On that same date, the Commission provided notice to certain legislators specified in ORS 183.335(1)(d), and to all interested persons on the service lists maintained pursuant to OAR 860-011-0001. Notice of the rulemaking was published in the Oregon Bulletin on November 1, 2006.

On November 28, 2006, Michael Grant, Chief Administrative Law Judge (ALJ), held a hearing on the proposed rulemaking and received oral and written comments from Portland General Electric Company (PGE), PacifiCorp, dba Pacific Power & Light Company (PacifiCorp), Verizon Northwest, Inc. (Verizon), the Industrial Customers of Northwest Utilities (ICNU), and the Commission Staff (Staff).

Based on the comments received at hearing, the proposed rules were revised and renoticed to all interested persons on the Commission’s rulemaking service lists. On March 20, 2007, ALJ Grant held a second rulemaking hearing and received oral and written comments from PGE, PacifiCorp, and Staff.

DISCUSSION

This rulemaking proceeding is intended to codify and clarify Commission policies governing the treatment of confidential information, requests for public records, and Commission publications, fees, and penalties. We address each subject separately.

Confidential Information

Protective orders generally establish procedures governing the treatment of confidential information in contested case proceedings. *See* OAR 860-012-0035(k). Current Commission rules, however, fail to explain how the agency treats confidential filings where no protective order exists.

To codify Commission practice, we proposed new language in OAR 860-011-0080 to clarify that the agency will protect, in the absence of a protective order, any confidential information officially filed in compliance with the rule to the extent permitted by law. The rule applies to documents officially filed with the Commission or informally submitted to Staff, and requires a person seeking protection to clearly designate the documents and provide the legal basis upon which the information is claimed to be confidential.

All rulemaking participants support the proposed language. PacifiCorp requests that additional language be added to indicate that the Commission will treat, as confidential, settlement offers submitted during contested case negotiations. PacifiCorp explains that this Commission has recognized the strong public policy favoring informal settlement of disputes, and contends that the disclosure of settlement communications undermines this process. It adds that the Commission may provide confidential treatment for settlement communications consistent with the Public Records Law. ORS 192.502(4) exempts:

Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, *the public body has obliged itself in good faith not to disclose the information*, and when the public interest would suffer by the disclosure.

PacifiCorp’s proposal is focused on the italicized language above. While noting that the Commission has already adopted rules that make settlement offers inadmissible as evidence (OAR 860-014-0045) and that provide confidentiality of mediation communications (OAR 860-016-0015), PacifiCorp requests the Commission provide a clear statement that it will not disclose settlement offers, unless required by law, by adding the following language:

Settlement offers and settlement negotiations in Commission settlement conferences convened under OAR 860-014-0085 are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505. If a party to a Commission settlement conference submits settlement material

on the condition of confidentiality, the Commission will protect this information from public disclosure to the extent provided in ORS 192.502(4).

We find PacifiCorp's proposal to be reasonable, and adopt it. First, we note that no rulemaking participant objected to PacifiCorp's proposal. Second, and more importantly, we agree that settlement offers should be kept confidential to the extent allowed by law. We believe that the public interest suffers by the public disclosure of such communications, because disclosure might impede or discourage parties from engaging in frank and open discussions to explore the informal resolution of disputes. Accordingly, we adopt PacifiCorp's proposal, but modify the language for consistency and ease of understanding.

Public Records Requests

Current Commission rules do not provide any process for the filing and review of requests made under Oregon's Public Records law, ORS Chapter 192. To address this deficiency, we propose OAR 860-011-0090 to establish the requirements for making such requests, as well as the charges the agency will impose to recover its costs in responding. The rule, based in part on internal agency procedures, also clarifies how the Commission will process public records requests seeking information that has been designated as confidential.

Following minor revisions to address concerns raised at the November 28, 2006, hearing, no rulemaking participant objected to OAR 860-011-0090. Accordingly, the rule, as proposed, is adopted.

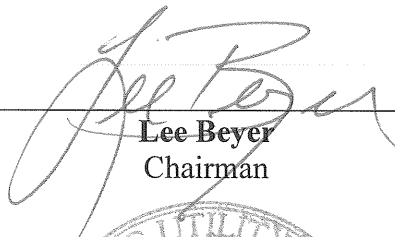
Publications; Fees and Penalties

We proposed new and revised language in OAR 860-011-0100 and OAR 860-011-0110 to clarify the fees or penalties the Commission will charge for annual subscriptions to agency orders, notices, rules and other publications, returned checks, untimely payment of fees required by statute, and late-filed statements and reports. No rulemaking participant objected to the proposed rules. Accordingly, they should be adopted.

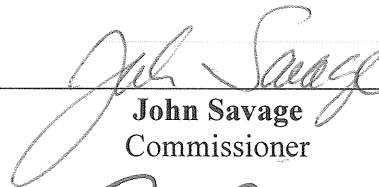
ORDER

IT IS ORDERED that the rules set forth in Appendix A, are adopted and become effective upon filing with the Secretary of State.

Made, entered, and effective APR 17 2007.



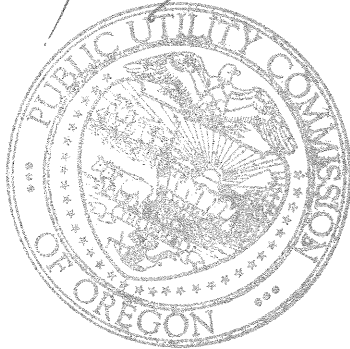
Lee Beyer
Chairman



John Savage
Commissioner



Roy Baum
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.

860-011-0080

Confidential Information

(1) Information filed or submitted in confidence with the Commission is exempt from public disclosure to the extent provided under the Public Records Law, ORS 192.410 to 192.505. This rule applies to any information filed or submitted under a claim of confidentiality, but does not apply to information designated and protected as confidential pursuant to a protective order in a contested case proceeding.

(2) At the time of filing or submission, 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 qualify for protection. The person asserting confidentiality must state the legal basis upon which the information is claimed to be confidential.

(3) Settlement offers submitted pursuant to a settlement conference convened under OAR 860-014-0085 are exempt from disclosure to the extent provided in ORS 192.502(4). If a party to a settlement conference submits settlement material on the condition of confidentiality, the Commission obligates itself to protect this information from public disclosure.

(4) Unless otherwise provided by Commission order, any confidential information filed or submitted pursuant to this rule must be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. To the extent practicable, the provider must place only those portions of the document containing the confidential information in the envelope/container. The envelope/container shall bear the legend: "CONFIDENTIAL."

(5) Any failure to comply with the requirements specified in this rule may result in the filing or submission not being treated as one including confidential information or its return to the provider for correction and resubmission.

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

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 sending voluminous records, the Commission will also charge the actual costs for sending 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.

(4)(a) If a public records request seeks the disclosure of information that has been designated as confidential pursuant to a protective order or OAR 860-011-0080, the Commission will provide, prior to the release of any such information, written notice to the person asserting confidentiality and allow an opportunity for the person to provide a written response to the request. The person asserting confidentiality bears the burden to show that part or all of a document is to be exempt from disclosure.

(b) In the event the Commission concludes that the information designated as confidential is not protected from disclosure, 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.

(c) If the person asserting confidentiality consents in writing to the release of the information, or does not commence proceedings to restrain disclosure by way of court order within ten days following notice of the decision, the Commission will remove the confidential designation from its files, and release the information to the requester.

(5) Any person denied the right to inspect or to receive a copy of any public record may appeal the Commission's decision to the Attorney General pursuant to ORS 192.450.

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

Stats. Implemented: ORS 192.420-192.505

Hist.: New

OAR 860-011-0100

Commission Publications

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:

(1) Subscriptions to Commission Orders: \$100 (annually);

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

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

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

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

(6) Statistical reports: \$15;

(7) Hearing transcripts: At cost. A copy of a public hearing transcript must 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 860-011-0110

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