

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 940 and UM 1012

In the Matters of

PUBLIC UTILITY COMMISSION OF
OREGON

Imposition of Annual Regulatory Fees
Upon Telecommunications Utilities and
Competitive Telecommunications
Providers Operating Within the State of
Oregon. (UM 940)

and

Imposition of Annual Regulatory Fees
upon Public Utilities Operating within the
State of Oregon. (UM 1012)

ORDER

**DISPOSITION: FEE LEVELS FOR PUBLIC UTILITIES AND
TELECOMMUNICATIONS PROVIDERS RESET**

Public utilities and telecommunications providers are required to pay fees to the Public Utility Commission of Oregon (Commission) each year by April 1. The fee, which is used to defray the Commission's cost of performing regulatory duties, is based on a percentage of the public utility's or telecommunication provider's gross operating revenues derived within Oregon for the previous calendar year.

In Order No. 08-483, issued in docket UM 940 on September 25, 2008, the Commission set the percentage for telecommunications providers at .25 percent for payments due April 1, 2010. Subsequently, at its February 23, 2010, Public Meeting, the Commission, in docket UM 1012, similarly set the percentage for public utilities at .25 percent for payments due April 1, 2010.

At its March 2, 2010, Public Meeting, the Commission considered options for reducing fee levels in order to reduce the agency's cash balance. The Commission's cash balance at the end of February 2010 was about \$11.6 million. The Commission directed Staff to recommend action to reduce the cash balance to \$4.6 to \$6.9 million, which is enough to cover 4 to 6 months of agency operations. The Commission emphasized that any reduction in fees paid by public utilities and telecommunications providers should benefit ratepayers to the extent possible.

In response to the Commission's directive, Staff recommended two actions. First, Staff recommended that the fee level previously set in Order No. 09-397 at .25 percent for telecommunications providers be reduced for the period June through December 2010 to .08 percent. Staff believes that customers of telecommunications providers are more likely to benefit from a reduction in fee levels if it is applied going forward in 2010, instead of retroactively to 2009. The fees subject to this recommendation are due on or before April 1, 2011.

Second, Staff recommended that the annual fee level assessment for public utilities (electric, natural gas, water, and wastewater utilities) for 2009, and payable in 2010, should be reset at .15 percent instead of the previously approved rate of .25 percent. To help ensure that this retroactive reduction in fees benefits ratepayers, Staff also recommended that the electric and natural gas utilities defer the difference between the fees payable in 2010 calculated at .25 percent and at .15 percent of gross operating revenues in 2009. Staff adds that each electric and natural gas utility must file, by July 1, 2010, a proposal and request to amortize all or a portion of the deferral.

At its Public Meeting on March 9, 2010, the Commission adopted Staff's recommendations, including Staff's recommendation to modify the proposed Commission motion in its written memo to clarify that the electric utilities should file their amortization proposals by July 1, 2010. The details of Staff's recommendation are described in Staff's Report, attached as Appendix A, and incorporated by reference.

ORDER

IT IS ORDERED that:

1. Order No. 09-397 is amended so that the fee level for telecommunications providers for June through December of 2010, is set at .08 percent of gross retail intrastate revenues.
2. Each telecommunications utility and competitive telecommunications provider must pay the fee on or before April 1, 2011. In no case shall such fee be less than \$100.
3. The Commission's decision at its February 23, 2010, public meeting is amended to set the annual fee level assessment for electric, natural gas,

water, and wastewater utilities for 2009 at .15 percent of gross operating revenues in Oregon.

4. Each public utility must pay the fee on or before April 1, 2010. In no case shall such fee be less than \$10.00.
5. Pursuant to ORS 757.259(2), each electric and natural gas public utility must defer the difference between the fees payable under ORS 756.310 in 2010 calculated at .25 percent and at .15 percent. By July 1, 2010, each electric and natural gas utility must submit a proposal and request to amortize all or a portion of the deferral.

Made, entered, and effective MAR 11 2010.


Ray Baum
 Chairman


John Savage
 Commissioner




Susan K. Ackerman
 Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

ITEM NO. 4

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 9, 2010**

REGULAR X CONSENT EFFECTIVE DATE N/A

DATE: March 4, 2010

TO: Public Utility Commission

FROM: Lee Sparling *li*

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: Requests that orders be issued to reduce the annual regulatory fee levels for public utilities for 2009 (Docket No. UM 1012) and for telecommunications providers for June through December of 2010 (Docket No. UM 940) and that electric and natural gas utilities be directed to defer the difference in total regulatory fees for 2009 for later ratemaking treatment.

STAFF RECOMMENDATION:

Staff recommends that the Commission:

1. Amend its order at the February 23, 2010, public meeting in UM 1012. The annual fee level assessment for electric, natural gas, water, and wastewater utilities for 2009 should be set at 1.5 mills per dollar (.15 percent) instead of 2.5 mills per dollar (.25 percent).
2. Amend Order 09-397 in UM 940 to set the fee level for telecommunications providers for June through December of 2010 at .8 mills per dollar (.08 percent).
3. Direct each electric and natural gas public utility to defer the difference between the fees payable in 2010 calculated at .25 percent and at .15 percent of gross operating revenues in 2009. Each utility should submit a proposal and request to amortize all or a portion of the deferral by July 1, 2010.

DISCUSSION:

Public utilities (which include electric, natural gas, water, and wastewater utilities that are public utilities under ORS 757.005) and telecommunications providers (which include telecommunications utilities and competitive telecommunications providers as defined in ORS 759.005) are required to pay fees to the Commission each year by April 1.

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The fee payable by a public utility is a percentage of the utility's gross operating revenues derived within Oregon for the previous calendar year. At a public meeting on February 23, 2010, the Commission set the percentage for public utilities at .25 percent (or 2.5 mills) for payments due April 1, 2010 (meaning that the percentage would be applied to 2009 gross operating revenues). No written order has been issued in the docket for annual fees (UM 1012), but the decision at the public meeting is considered a Commission order.

The fee payable by a telecommunications provider is a percentage of the provider's gross retail intrastate revenues for the previous calendar year. In Order 08-483 in UM 940, issued September 25, 2008, the Commission set the percentage for telecommunications providers at .25 percent for payments due April 1, 2010 (meaning that the percentage would be applied to gross retail intrastate revenues in 2009).

At its March 2, 2010, public meeting, the Commission considered options for reducing fee levels in order to reduce the agency's cash balance. With companies making their annual payments in March to meet the April 1 deadline, the cash balance tends to be at its lowest point for the year at the end of each February. Rick Willis, the Executive Director, recommends that the agency have a minimum cash balance of \$4.6 to \$6.9 million, enough to cover 4 to 6 months of operation. However, the cash balance at the end of February 2010 was about \$11.6 million (after accounting for the \$2 million "swept" by the Legislature in the 2010 session).

The chart attached to this memo shows the impacts of three fee reduction options reviewed by the Commission at the March 2 public meeting: a two-year reduction to .21 percent (applicable to payments due in 2010 and 2011), a one-year reduction to .175 percent (applicable to 2010 payments), and a one-year reduction to .15 percent (also applicable to 2010 payments). In all three cases, the fee level would return to .25 percent after the temporary cut. The chart shows the effect on the projected cash balance at the end of each February, e.g., a reduction in payments due April 1, 2010, shows up in a lower cash balance in 2011.

For the purpose of reducing the agency's cash balance, the Commission favored the largest reduction in the fee level – to .15 percent for one year – but declined to act at the March 2 public meeting without further information on whether customers would benefit from the change.

Staff has investigated how public utilities and telecommunications providers would treat any reduction in fee levels and whether the Commission has the authority to ensure that customers would appropriately benefit. I address different types of public utilities and

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the telecommunications providers in turn. For purposes of this discussion, I focus on a one-year reduction in the fee level to .15 percent. Also, the minimum annual fees specified in ORS 756.310 (\$10 for public utilities and \$100 for telecommunications providers) will continue to apply regardless of the fee level (percentage) set by the Commission.

Electric and natural gas utilities Current retail rates include an amount to recover the fees expected at the time the rates were set. A one-time change in the fee level now, applicable to 2009 for payments due in 2010, would not ordinarily be reflected in rates going forward. Under ORS 757.259(2)(e), however, the Commission can order the electric and natural gas utilities to defer the difference between payments calculated at the .25 percent and the .15 percent fee levels, with the means of providing the benefit of the fee reduction to customers to be determined in a later amortization proceeding. The amount due to customers could, for example, be returned to them through a temporary credit or be used to offset amounts owed by customers.

PacifiCorp has stated that its 2009 retail rates may have reflected a fee level less than .25 percent because those rates were set before the switch from volumetric fees to gross revenue fees for electric utilities in 2007. The company believes that in that case customers should not receive the entire difference in payments calculated at .25 percent versus .15 percent. PacifiCorp can raise this issue in the amortization proceeding.

Water and wastewater utilities As in the case of the electric and natural gas utilities, a one-time reduction in the fee level applicable to 2009 for water and wastewater utilities would not normally be included in future customer rates. The Commission could direct these companies to defer the reduction in payments for future ratemaking treatment, but the amounts would be small and, arguably, less than the administrative cost of processing the deferral in most, if not all cases. The largest company, Avion, would save about \$6,000 and the others about \$1,000 or less.

As a result, Staff does not recommend that water and wastewater utilities be required to defer the savings from lower fee levels for 2009. Without any assurance that customers will benefit from the lower payments, the Commission could choose not to reduce the fee levels for these utilities. The effect on the agency's cash balance would not be significant (a .10 percent difference in fee levels produces a \$14,000 annual difference in payments by all water and wastewater utilities). However, Staff recommends that the Commission not deviate from its longstanding practice of setting the same fee level for all public utilities.

Telecommunications providers Qwest uses a balancing account for amounts collected from customers and amounts paid to the Commission for the annual fees, so that a

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reduction in fee levels for 2009 (for the payment in 2010) would reduce charges to customers at some point in the future. Staff is uncertain how many other providers use balancing accounts in this manner.

However, the Commission does not have the authority to require Qwest or any other telecommunications provider to pass the savings from a reduced fee level on 2009 revenues through to customers. The deferred accounting statute applicable to these providers (ORS 759.200) does not apply to changes in payments of the annual fees.

Because the Commission cannot capture for customers the benefit of reducing fee levels applicable to past revenues, Staff examined the implications of changing the fee level on revenues going forward.

ORS 756.310(4)(a) requires the Commission to set the fee level for telecommunications providers in advance of the year to which the fee level applies. As noted above, Order 08-483, setting the fee level for 2009 at .25 percent, was issued in September 2008. In addition, Order 09-397, issued October 2, 2009, in UM 940, set the fee level for 2010 at .25 percent. ORS 756.310(4)(b) requires providers to collect the amount payable "by charging an apportioned amount" to each retail customer. Furthermore, "the amount of the charge shall be described on the retail customer's bill in a manner determined by the provider."

Telecommunications providers handle these requirements in two different ways. Some have a line item on the bill for Commission fees that figures into the computation of the monthly bill. A change in the fee level would change the line item amount and the bill amount. Other providers describe the amount of the charge for regulatory fees through a note on the bill that does not enter into the calculation of the monthly bill total. A change in the fee level would lead to a change in the note but not necessarily a change in the customer's bill.

The ten small telecommunications utilities that provided information on how they handle Commission fees split evenly between the "line item" approach (which would pass savings from a reduction in fees through to customers) and the "bill note" approach (which might not). Qwest is the only large telecommunications utility that uses a line item for regulatory fees (and with its balancing account, the line item would not need to change right away for customers to get the benefit of reduced fee levels and payments by the company).

Based on this information, Staff believes customers of telecommunications providers are more likely to benefit from a reduction in fee levels if it is applied going forward in 2010 instead of retroactively to 2009. The disadvantage of the "going forward"

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approach is that the reduction in payments by these providers would not occur until 2011 and not affect the February ending cash balance until 2012.

On balance, Staff recommends that any reduction in fee levels for telecommunications providers be applied going forward, to June through December of 2010. Providers would have almost 90 days to change customer rates (which is more than the 60 days allowed under ORS 756.310(4)(a)). In order to achieve an overall fee level for 2010 of .15 percent, Staff estimates that the fee level for June through December should be set at .08 percent to balance the .25 percent in effect for January through May.

The attached chart shows the effect on February ending cash balances of the reduction in payments by public utilities in 2010 and telecommunications providers in 2011 under Staff's recommendation.

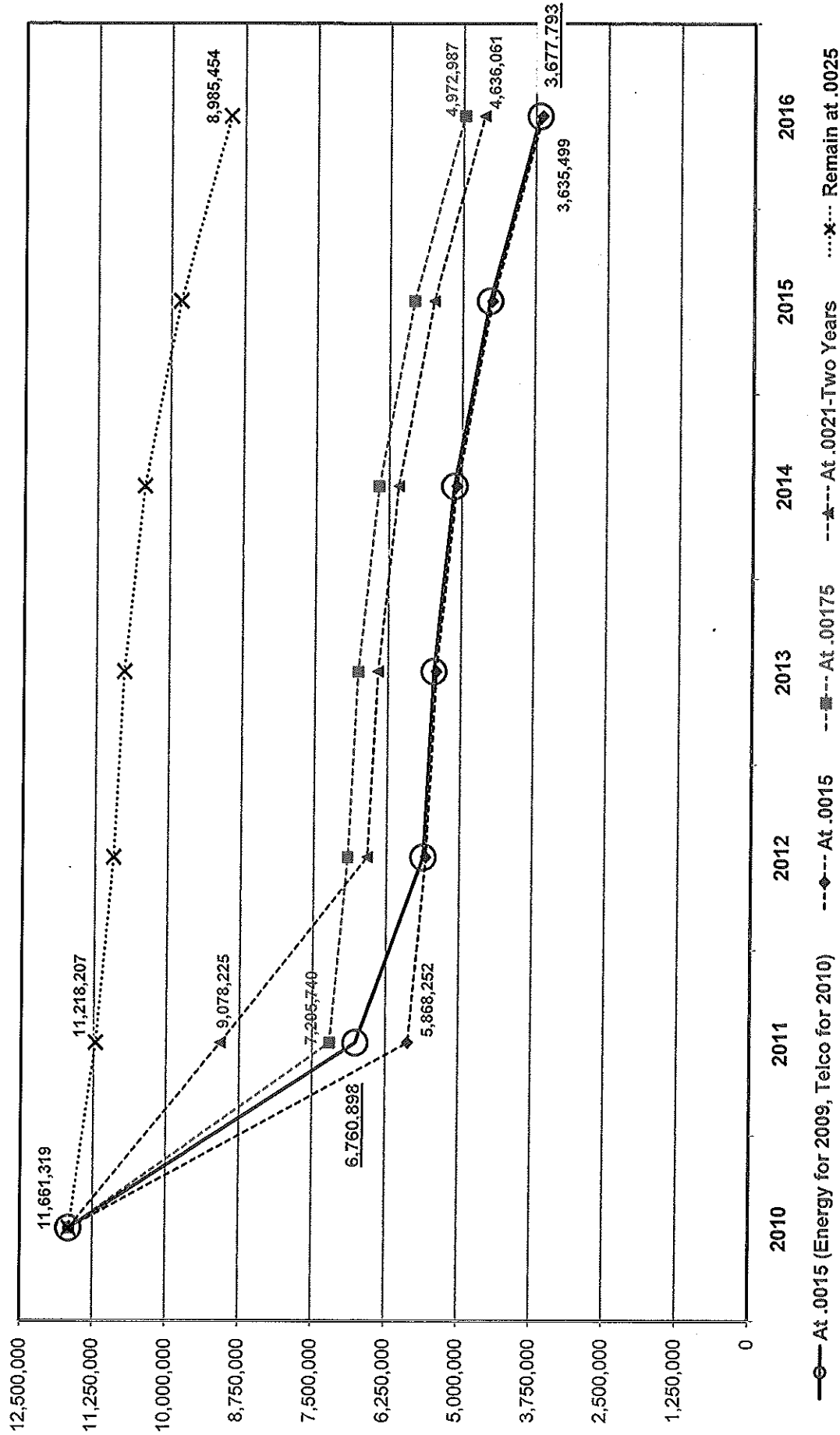
Procedural matters Changing the fee levels applicable to revenues in 2009 for public utilities and to revenues in June through December of 2010 for telecommunications providers requires modification of the Commission's order in UM 1012 at the February 23, 2010 public meeting and Order 09-397 in UM 940. ORS 756.568 allows the Commission to amend these orders after providing notice and an opportunity to be heard to the affected public utilities and telecommunications providers. Furthermore, ORS 757.259(2) requires the Commission to provide public notice and an opportunity for comment and a hearing, if requested, before authorizing a deferral on its own motion. AHD advises that the public meeting process (with publication of an agenda, posting of a staff memo, and opportunity to comment at the public meeting) meets the requirements to provide notice and an opportunity to be heard. If a party requests a hearing on Staff's deferred accounting proposal, the Commission will need to delay action on that recommendation.

PROPOSED COMMISSION MOTION:

1. The Commission's order in UM 1012 at the February 23, 2010, public meeting be amended to set the annual fee level assessment for electric, natural gas, water, and wastewater utilities for 2009 at 1.5 mills per dollar (.15 percent).
2. Order 09-397 in UM 940 be amended to set the fee level for telecommunications providers for June through December of 2010 at .8 mills per dollar (.08 percent).
3. Pursuant to ORS 757.259(2), each electric and natural gas public utility shall defer the difference between the fees payable under ORS 756.310 in 2010 calculated at .25 percent and at .15 percent. Each utility shall submit a proposal and request to amortize all or a portion of the deferral by July 1, 2010.

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Cash Balance 2010 thru 2016 - Low Cash Balance (estimate)



Attachment for March 9, 2010 Public Meeting
5Mar2010