

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 535

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON

Revisions to the Administrative Rules  
regarding Practice and Procedure.

ORDER

DISPOSITION: RULES ADOPTED

**I. INTRODUCTION**

In this order we adopt new rules that extensively amend the provisions governing practice and procedure before the Public Utility Commission of Oregon (Commission). These changes affect all rules previously contained in Division 011 – General; Division 012 – Practice before the Commission; Division 013 – Pleadings and Tariff Filings; and Division 014 – Hearings and Proceedings.

We initiated this rulemaking with three primary goals. First, we sought to improve the organization and clarity of our procedural rules. Second, we sought to add rules to govern agency activities that are not reflected in the current rules, such as rulemaking and declaratory ruling proceedings. Third, we sought to update and clarify numerous other provisions, including rules governing discovery, electronic filing, and pleading requirements.

Given the significance of this undertaking, we held informal workshops with stakeholders to address the numerous changes proposed. A total of three workshops were held in Portland, Oregon—on April 24, 2009, August 7, 2009, and December 7, 2009. All workshops were well attended with representatives appearing from Portland General Electric Company (PGE), PacifiCorp, dba Pacific Power (Pacific Power), Idaho Power Company (Idaho Power), Northwest Natural Gas Company (NW Natural), Qwest Communications, Verizon, the Industrial Customers of Northwest Utilities (ICNU), and the Commission Staff (Staff). The Citizens' Utility Board of Oregon (CUB) submitted written comments.

During the workshops, the participants were able to reach broad consensus on most of the numerous proposed changes. Based on the agreements reached, we developed a set of proposed rules that comprehensively reorganized and amended our procedural rules.

On February 12, 2010, we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. On February 22, 2010, we 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 a rulemaking hearing was published in the March 2010 *Oregon Bulletin*.

The rulemaking hearing was held on April 6, 2010. Representatives appeared in person from PGE, Pacific Power, Idaho Power, Northwest Natural, and ICNU. Representatives appeared *via* telephone from CUB, Qwest, and Verizon.

Persons were invited to file written comments by April 20, 2010. PGE, Pacific Power, Idaho Power, NW Natural, ICNU, CUB, and Staff all filed timely comments.<sup>1</sup>

## II. DISCUSSION

The rulemaking participants—all of whom significantly contributed to this rulemaking—generally support the extensive reorganization and amendment of the procedural rules. Consequently, we will not address most of the numerous changes, many of which were intended to clarify existing provisions or codify existing practices not reflected in rules. Instead, we provide a general overview of the new and revised rules, and address the specific issues raised by the rulemaking participants in their comments.

The new rules we adopt are attached as Appendix A. We also include an index, attached as Appendix B, to cross-reference the adopted rule provisions with their former locations in Divisions 011 through 014.

### A. Overview

The proposed rules completely reorganize the procedural rules by eliminating practice and procedure rules in Divisions 011 through 014 and replacing them

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<sup>1</sup> PGE and Pacific Power each filed motions to strike a portion of Staff's final comments on the ground that Staff proposed a rule change that had not previously been discussed. Staff and ICNU object to the motion and argue that, contrary to the utilities' assertion, Staff's proposed rule change was previously discussed at a workshop. The motions are denied. Regardless of whether the matter was previously discussed, a motion to strike is not permitted in a rulemaking proceeding. Agency rulemaking is a quasi-legislative act and need not be based on an evidentiary record. *See* ORS 183.335(13). Persons may file comments through the end of the established comment period, and an agency is not required to provide participants an opportunity to submit a reply to any comments filed.

with a comprehensive set of rules in newly created Division 001. The new rules are generally divided into three major groups: (1) General; (2) Rulemaking Proceedings; and (3) Contested Case and Declaratory Ruling Proceedings.

The “General” group provides basic information about contacting the Commission, participating in Commission proceedings, accessing public records, and intervenor funding. This group also identifies the scope of the Commission’s delegation of authority to Administrative Law Judges (ALJs) to conduct agency proceedings, as well as requirements for filing documents with the Commission.

The “Rulemaking Proceedings” group contains, as the name explains, procedures governing agency rulemaking. This group, which is entirely new and based on the Attorney General’s model rules, identifies the process used by the Commission for both permanent and temporary rulemaking, as well as the requirements for a petition seeking the Commission to promulgate, amend, or repeal a rule.

The “Contested Case and Declaratory Rulemaking” group provides information about these formal agency actions and constitutes the majority of the procedural rules. This group contains provisions governing practice before the Commission, service requirements, pleadings and motions, evidence, discovery, hearings, and compliance with and reconsideration of orders.

The rules also propose modifying and moving provisions governing general rate revisions currently found in OAR 860-013-0075 to OAR 860-022-0019.

We use these group headings to organize our discussion of the significant changes included in the proposed rules, as well as specific issues raised by rulemaking participants. We note that, after the rulemaking hearing, we slightly reorganized the order of the rules, which required a renumbering of various provisions. In this order, we will address the participant’s comments using the newly assigned number to avoid confusion.

**B. General - OAR 860-001-0000 through OAR 860-001-0180**

These rules are designed to provide basic information about the Commission and its proceedings. They are divided into five primary topics: (1) General; (2) Public Records and Confidential Information; (3) Administrative Law Judge; (4) Intervenor Funding; and (5) Filing Requirements

***1. General (OAR 860-001-0000 – OAR 860-001-0050)***

These rules contain many of the provisions previously set forth in Division 011. They govern the applicability of and definitions for the procedural rules,

provide Commission contact information, establish procedures for public records requests and the submission of confidential information, and establish late fees and penalties.

Although these rules have been extensively reorganized and edited, none of the changes are substantive. Most changes update the provisions to reflect current practice or involve editing to improve clarity and grammar. No rulemaking participant addressed these rules.

**2. *Public Records and Confidential Information (OAR 860-001-0060 – OAR 860-001-0080)***

These rules establish procedures for public records requests and the submission of confidential information. Staff recommends eliminating portions of OAR 860-001-0070 governing confidential information.<sup>2</sup> The relevant portion of that proposed rule provides:

(1) Confidential information submitted to 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 submitted under a claim of confidentiality under the Public Records Law, but does not apply to information designated as confidential under a protective order in a contested case proceeding.

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(3) Settlement discussions under OAR 860-001-0350 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 must protect this information from public disclosure.

Staff recommends we omit the second sentence in section (1) and all of section (3). At the outset, Staff explains that whether information is exempt from disclosure is determined by the Public Records Law. Thus, Staff believes the second sentence in section (1) is confusing because it suggests information designated as confidential under a protective order cannot be exempt under the Public Records Law. Similarly, Staff contends section (3) is not necessary, because whether settlement discussions are exempt turns on the Public Records Law, not Commission rules.

We originally promulgated this rule to establish procedures for the filing of confidential information where no protective order had been issued. For example, utilities routinely file information it believes to be confidential in annual reports or other

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<sup>2</sup> This rule was originally identified as OAR 860-001-0060 in the notice of rulemaking.

non-docketed matters. OAR 860-001-0070 provides assurance to the utilities that the Commission will protect the information to the extent provided under the Public Records Law and establishes procedures for the marking and filing of such information. We added the second sentence in section (1) to make clear that the provisions of the rule do not apply to information designated as confidential under a protective order, which will provide a separate set of procedures. We agree with Staff that the rule, as currently written, is ambiguous and should be revised.

We added section (3) at the request of participants to an earlier rulemaking to emphasize that settlement offers filed with Staff during negotiations will also be treated as confidential information. We now agree with Staff that the provision is not necessary, but for differing reasons. We address the confidentiality of settlement discussions in OAR 860-001-0350. Based on rule changes made there, we find no need to retain the questioned language in section (3).

Accordingly, we modify OAR 860-001-0070 to read as follows:

~~(1) Confidential information submitted to 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 submitted under a claim of confidentiality under the Public Records Law, but does not apply to information designated as confidential under a protective order in a contested case proceeding.~~

(2) At the time of submission, a person may designate a document or portion of a document as containing confidential information. ~~Any such~~ designation must be made in good faith and be limited to ~~only~~ information that qualifies for protection. The person asserting confidentiality must state the legal basis for the claim of confidentiality.

~~(3) Settlement discussions under OAR 860-001-0350 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 must protect this information from public disclosure.~~

~~(4) Unless otherwise provided by Commission order, any confidential information submitted under this rule must be printed on yellow paper, separately bound, and placed in a sealed container. To the extent practicable, the provider must place only those portions of the document containing the confidential information in the container. **The confidential information on each page must be clearly marked by inserting [Confidential] before and after the portion of information that is confidential.**~~

The container must be marked “CONFIDENTIAL.” Multiple sealed containers may be mailed in one package.

**(4) Confidential information submitted to the Commission is exempt from public disclosure to the extent provided under the Public Records Law, ORS 192.410 to 192.505.**

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

PGE and Staff also propose changes to OAR 860-001-0080 governing protective orders.<sup>3</sup> Both propose changes to subsection (3)(d), which addresses a party’s right to challenge a designation of information as confidential. PGE notes that the proposed rule allows a party to request that the ALJ conduct a conference to “facilitate discovery.” To clarify the purpose of the conference, PGE recommends the quoted language be reworded to state “facilitate the resolution of discovery disputes.” Pacific Power supports PGE’s request.

We find PGE’s proposed language to be more consistent with the intent of the rule and adopt it.

Staff notes that OAR 860-001-0080(3)(d), also allows a challenging party to file a “motion.” Although the rule provides that the designating party bears the burden of showing any challenged information is, in fact, confidential, Staff is concerned that the use of the word “motion” may also carry a burden to show that the designated information is not confidential. Staff suggests we reword the provision to state that a party challenging the designation of information as confidential may file an “objection.”

We find Staff’s proposed language to be more consistent with the intent of the rule and adopt it.

In addition to these rule changes, we make additional revisions to OAR 860-001-0080 governing protective orders. We add language to help ensure that a party is seeking access to the confidential information for purposes of the applicable proceeding, rather than for some other unauthorized use. This idea was proposed and discussed at the informal workshops and supported by all stakeholder participants for inclusion in our general protective order.

First, with regard to the Commission’s general protective order, we add language to make explicit that, by signing the “consent to be bound” section, a party certifies that it has an interest in the proceeding that is not adequately represented by other parties to the proceedings. This provision is designed to ensure that confidential

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<sup>3</sup> This rule was identified as OAR 860-001-0100 in the notice of rulemaking.

information is provided only for the purpose of representing identified interests in Commission proceedings.<sup>4</sup>

Second, with regard to protective orders that provide additional protection under ORCP 36(C), we add language that a party may be required to certify that it intends to fully participate in the case proceedings to receive access to information subject to heightened protection. The rule explains that a party fully participates in the proceedings by filing testimony, participating in settlement negotiations, workshops, conferences, and hearings. This provision is designed to ensure that only active parties are eligible to receive confidential information that has been given additional protection.

**3. *Administrative Law Judge (OAR 860-001-0090 – OAR 860-001-0110)***

These rules govern the delegated authority of ALJs to preside over Commission proceedings. OAR 860-001-0090 lists the delegated duties; OAR 860-001-0100 codifies ethical standards used by the Administrative Hearings Division to ensure ALJ impartiality; and OAR 860-001-0110 governs appeals from ALJ rulings.

Although no rulemaking participant filed comments on these proposed rules, we modify OAR 860-001-0100 governing ALJ impartiality. We revise the rule to make it more consistent with the provisions of JR 2-106 of the Oregon Code of Judicial Conduct. As modified, OAR 860-001-0100 allows a party to seek an ALJ's disqualification for the same reasons and under the same circumstances as specified in JR 2-106. The rule also establishes the requirements for filing a motion to disqualify, and the validity of ALJ rulings issues prior to the filing of the motion for disqualification.

As revised, OAR 860-001-0100 reads as follows:

(1) An ALJ may be disqualified from presiding over specific proceedings for the same reasons and under the same circumstances as specified in JR 2-106 of the Oregon Code of Judicial Conduct.

(2) A party may move for disqualification of an ALJ if the ALJ's impartiality may reasonably be questioned. The motion must be filed within 15 days after the party learns of the facts supporting the disqualification and contain grounds for supporting the motion. Written responses to the motion for disqualification must be filed within 7 days of receipt of the motion. An ALJ other than the presiding ALJ will rule on the motion.

(3) The parties may waive any ground for disqualification after it is fully disclosed on the record, either expressly in writing or

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<sup>4</sup> We also make numerous modifications to the language contained in our general protective order to reflect all the new and clarified requirements set forth in OAR 860-001-0080.

orally on the record, or by failing to move for disqualification within the time limits in section (2) of this rule.

(4) An ALJ's disqualification does not automatically affect the validity of rulings or orders issued prior to the filing of the motion for disqualification.

**4. Funding (OAR 860-001-0120 – OAR 860-001-0130)**

These rules codify the requirements and procedures set forth in the intervenor funding agreements approved by the Commission under ORS 757.072. The proposed rules are essentially unchanged from those previously codified in OAR 860-012-0100.

No rulemaking participant filed comments to the proposed rules.

**5. General Filing Requirements (OAR 860-001-0140 – OAR 860-001-0180)**

These rules provide filing requirements for documents submitted to the Commission. The rules provide general requirements based in part on provisions previously set forth in OAR 860-011-0011, as well as specific filing requirements for rulemaking proceedings and filing and service requirements for contested case and declaratory ruling proceedings.

*a. Filing Dates (OAR 860-001-0150)*<sup>5</sup>

Pacific Power recommends a modification to section (5) of this rule, which allows one business day for the correction of deficient filings submitted to the Commission. Pacific Power contends that one day may not be sufficient time to correct a critical filing and proposes the time period be extended to three business days.

We decline Pacific Power's recommendation. Deficient filings should be corrected as expeditiously as possible to ensure the timely processing of a case. In the event that one day is not sufficient time to correct a deficient filing, a party may request a waiver of the rule under OAR 860-001-0000(2).

PGE recommends a modification to section (6) of the rule, which allows a party to meet a filing deadline with a telephonic facsimile of the document if the original signed document is mailed on the date the facsimile is sent. PGE states that extreme weather may prevent the placing of a document in the mail. PGE therefore suggests the rule be amended to permit a party who has filed a facsimile to mail paper copies when weather conditions permit. CUB opposes PGE's recommendation.

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<sup>5</sup> This rule was originally identified as OAR 860-001-0370 in the notice of rulemaking.

We decline PGE's recommendation. Like CUB, we are not convinced of the necessity of the change, particularly given the fact that the rule permits mailing by first class mail.

*b. Service in Contested Case and Declaratory Ruling Proceedings (OAR 860-001-0180)*<sup>6</sup>

Staff, ICNU, CUB, and PGE each filed comments on this proposed rule governing service of documents to other parties. Most notably, the rule establishes electronic service as the primary method of service. Physical service is required only in three circumstances: (1) if the document contains information that has been designated as confidential; (2) the document is more than 100 pages in length; or (3) when a party has received permission from the ALJ to receive physical service.

CUB, Staff, ICNU, and PGE all support the change to designate electronic service as the primary means of service. CUB, however, recommends a more significant change to require electronic service of *all* documents, including those containing confidential information. CUB suggests that parties be required to serve all documents electronically unless granted permission to do otherwise for good cause.

Staff, ICNU, and PGE support the use of physical service for certain filings, but propose rule modifications to eliminate unnecessarily duplicative physical service filings. First, with regard to the service of confidential documents, Staff recommends that the rule be clarified to require parties to serve paper copies of only the confidential portions of the documents, rather than the entire document if it contains confidential information. Staff is concerned that, as the rule is written, a great number of documents will fall within the exceptions to electronic service and undermine the purpose of the rule change.

Second, Staff, ICNU, and PGE recommend that the rule be revised to clarify the number of persons per party that need to be served when physical service is required. As written, the rule specifies that any party that receives permission to receive physical service of all documents is limited to two entries on the service list. The rule, however, has no such limit when physical service is required for voluminous or confidential filings. PGE suggests that, if an exception to electronic service applies, parties are entitled to receive physical service on no more than two representatives on a service list. Staff and ICNU suggest expanding the number of service list entries to three.

At the outset, we share CUB's desire to reduce the use of paper filings. The current mindset that paper documents are more secure than electronic documents is antiquated and fails to recognize the availability of electronic security technology that provides greater protection of sensitive information throughout a document's lifecycle. Once paper documents are mailed, all control is lost. The paper document can be copied

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<sup>6</sup> This rule was originally identified as OAR 860-001-0380 in the notice of rulemaking.

and—whether intentionally or unintentionally—distributed to and viewed by unauthorized recipients. Much greater control can be gained by managing documents within a structured electronic system. An author can use encryption and dynamic document controls to limit access and to specify whether an authorized recipient is allowed to print or forward the electronic document. The author also retains the ability to revoke access to the document, so that recipients will not be able to access it once an expiration date has passed or authorization has been terminated.

We chose not to mandate the electronic filing of confidential documents at this time, however. Instead, we will continue to work with stakeholders and our Staff to promote the increased use of electronic or web-based filings in our proceedings.

To address the concerns of Staff, ICNU, and PGE, we make several revisions to the rule regarding service lists. To balance the need to cap the growing number of persons per party seeking to receive electronic service and the need for parties and their outside consultants to receive timely service of paper copies, we revise the rule to require a party to identify at least one person—but no more than three—to receive service. This means that every party will need to provide electronic or physical service to no more than three persons per party. We realize that the need for three copies of every required paper filing runs counter to our continuing effort to transition to electronic filings. However, this solution works within the restrictions of our eDockets system to identify those persons that need to be serviced with all docketed filings, and appropriately balances the competing interests addressed above.

We also revise the rule to include Staff’s recommendation that parties be required to serve paper copies of only the confidential portions of the documents, rather than the entire document if it contains some confidential information.

We revise OAR 860-001-0180 to read as follows:

(1) The Commission maintains an official service list for each contested case and declaratory ruling proceeding. The service list is posted on the Commission’s website or may be obtained by contacting the Commission.

(a) Each party must identify at least one party representative to receive service, and may identify no more than three party representatives to receive service.

(b) Parties may designate party representatives in an initiating pleading, petition to intervene, or separate document. Parties must notify the Commission and all other parties in writing of any change in contact information.

(2) A party must serve by electronic mail copies of all documents filed in contested case or declaratory ruling proceedings on every party representative included on the official service list. A

party must also serve physical copies of a document in person, by first-class mail, or by any other reasonable means of delivery if:

(a) The document contains information that has been designated as confidential under a general protective order. Parties must use electronic service to serve a redacted copy of the document and provide physical copies of the confidential portions of the document. Service must conform with the requirements in the applicable general protective order;

(b) The filing is more than 100 pages, unless the party agrees to receive electronic service of voluminous filings; or

(c) A party has requested and received permission from the ALJ to receive physical service of all documents.

(3) Service is considered timely if the electronic mail is sent on the day the document is filed. Service by electronic mail is complete when the electronic mail message leaves the sender's electronic mail server. Parties providing service by electronic mail are encouraged to request electronic return receipts and must take all reasonable steps to ensure successful delivery.

(4) Service of physical copies of a document is considered timely if the copy is delivered in person on the date the document is filed with the Commission, or the copy is mailed by first-class mail, postage pre-paid, on the date the document is filed with the Commission.

(5) A certificate of service must be filed with every pleading or other document filed in contested case or declaratory ruling proceedings. The certificate of service must:

(a) Include a signed certification that the document was served on all party representatives included in the official service list for the proceedings;

(b) List the names of the party representatives served;

(c) State the means of service to each party representative and the electronic or physical address served; and

(d) State the date of service.

### **C. Rulemaking Proceedings (OAR 860-001-0200 through OAR 860-001-0260)**

These rules codify existing procedures used by the Commission for rulemaking proceedings. The language is based on the Attorney General Model Rules, but modified to reflect Commission specific activities and processes.

The rules provide basic information about permanent and temporary rulemaking proceedings and address requirements for notices of rulemaking, conduct of rulemaking hearings, and the Commission's promulgation of new rules. They also set

out information on how the public can become involved in rulemaking proceedings, or seek the adoption, amendment, or repeal of a rule.

No rulemaking participant filed comments on these proposed rules.

**D. Contested Case and Declaratory Ruling Proceedings (OAR 860-001-0300 through OAR 860-001-0720)**

These rules comprise the majority of the procedural rules. They are divided into seven topics: (1) Practice before the Commission; (2) Pleadings and Motions; (3) Evidence; (4) Discovery; (5) Hearings, Meetings, and Conferences; (6) Legal Argument and Major Proceedings; and (7) Compliance with and Reconsideration of Orders. We address each topic separately.

**1. *Practice before the Commission (OAR 860-001-0300 – OAR 860-001-0350)***

These rules provide general guidelines for appearing before the Commission in contested case and declaratory ruling proceedings. The rules establish requirements for intervention, representation and ethical conduct, and filings required for out-of-state attorneys seeking to appear. The rules also impose restrictions on ex parte communications and the participation of former employees of the Commission or a party to a proceeding. Finally, the rules govern voluntary settlements and requirements for the filing of stipulations.

The rulemaking participants filed comments that address the confidentiality of settlement discussions and the need for additional proceedings regarding a Commission-proposed modification to a stipulation. We address each issue separately.

*Settlements (OAR 860-001-0350)*

Idaho Power, NW Natural, Pacific Power, PGE, and CUB all agree that settlement discussions should be treated as confidential information. They propose that section (3) of proposed OAR 860-001-0350 be revised to clarify that statements made during settlement discussions are not only inadmissible, but are also privileged, confidential, and cannot be disclosed for any other purposes. Idaho Power, NW Natural, and PGE also recommend that section (4) of the rule be revised to clarify that only parties may attend settlement conferences.

We agree that to encourage open and frank negotiations settlement discussions should be treated as confidential information. As Idaho Power explains,

“[p]arties might not be as inclined to participate in settlement discussions if they needed to worry about whether their settlement positions would appear in local newspapers.”<sup>7</sup>

There are limits, however, as to our authority to restrict the use of statements made during settlement discussions. While we can hold that any settlement discussions are not admissible in our proceedings, we have no authority to do so in proceedings conducted by other agencies or the courts. Moreover, as Staff correctly notes, whether information is “privileged” is determined by statute—not our rules—and there is no statutory privilege for settlement communication in Oregon. Finally, any settlement documents created by or submitted to Staff are public records and subject to public disclosure, unless expressly exempt under the Public Records Law.

Given these restraints, we revise the rule as follows. First, we add a new section (4) to permit the parties to agree in writing that statements made during settlement discussions are confidential and may not be disclosed to any other person. Confidentiality agreements are commonly used by litigants to limit the disclosure of settlement offers and are currently permitted in our rules governing the confidentiality of mediation discussions under the Telecommunications Act of 1996.<sup>8</sup> Requiring parties to sign a confidentiality agreement will ensure that all participating parties have a common understanding as to the proper use of information obtained during settlement discussions and help prevent the disclosure of any statement, admission, or offer of settlement in forums outside the Commission.

Second, we modify what becomes section (5) to clarify that, as a general matter, only parties to the proceeding may attend settlement conferences. Non-parties should be allowed to attend only with the consent of all party participants.

Third, we add language, previously found in OAR 860-011-0080, to make clear that the Commission will treat any documents submitted to Staff during settlement discussions as confidential. We add this language with the intent that confidential documents filed with Staff should be exempt from disclosure under ORS 192.502(4). Although this exemption does not apply to settlement documents prepared by Staff, we hope it will provide assurance to other parties that their settlement documents will be protected.

PGE further recommends that section (7) of OAR 860-001-0350 be supplemented to clarify that any party may request the opportunity to present evidence and argument regarding any Commission-proposed modifications to a stipulation. ICNU opposes PGE’s recommendation and favors the proposed language that does not require an additional hearing if one has already occurred that fully addressed the issues. CUB also supports the proposed language.

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<sup>7</sup> Idaho Power Company’s Final Comments at 2 (Apr 20, 2010).

<sup>8</sup> See OAR 860-016-0015(7)-(8).

We decline to adopt PGE's recommendation. Whether additional proceedings are necessary to address a Commission-proposed modification to a stipulation must be determined on a case-by-case basis from a due process perspective. When parties file a stipulation early in a proceeding and waive the right to file testimony and cross-examine witnesses, additional proceedings may be necessary to address a Commission-proposed modification to ensure parties have had a sufficient opportunity to address all relevant matters and that the Commission's ultimate decision is supported by evidence in the record. On the other hand, when a stipulation is filed after numerous rounds of testimony and a hearing, additional proceedings may not be necessary.

In reaching this decision, we assure parties that we will conduct all proceedings as necessary to protect the procedural rights of parties following a Commission-proposed modification to a stipulation. We do not believe, however, that additional proceedings should automatically be required upon request if extensive proceedings have already been conducted and the affected parties have had a prior opportunity to address all relevant issues.

Finally, we make one additional revision to address an issue not raised by any participant. Our rules governing settlements have traditionally required the filing of the stipulation as evidence in the proceeding, along with an explanatory brief or written testimony in support. We add language to clarify that, when filing a stipulation, the parties must also file a motion to offer the stipulation and any testimony as evidence in the proceeding, together with witness affidavits in support of the testimony.

Accordingly, we revise OAR 860-001-0350 to read as follows:

- (1) In all Commission contested case proceedings, some or all of the parties may enter into a settlement of any or all issues at any time during the proceedings.
- (2) A settlement discussion is any communication between two or more parties for the purpose of resolving issues pending in contested case proceedings. Examples of communications not constituting settlement discussions for purposes of this rule include communications primarily for the purpose of discovery and communications occurring before initiation of docketed proceedings.
- (3) Without the written consent of all parties, any statement, admission, or offer of settlement made during settlement discussions is not admissible in any Commission proceedings, unless independently discoverable or offered for other purposes allowed under ORS 40.190.
- (4) Parties may agree in writing that the information exchanged exclusively within the context of any settlement discussion is confidential.

(5) Subject to the signing of an applicable confidentiality agreement, all parties may attend a meeting in which Staff participates to discuss settlement. Staff must provide to all parties to the proceedings reasonable prior notice of any settlement meeting in which Staff intends to participate. The notice must include the time and place of the settlement meeting, the party or parties involved, and the issues to be discussed. Once Staff has given notice of a settlement meeting involving a particular issue, additional notice of continuing settlement meetings involving the same issue need only be provided to parties attending the initial meeting or parties who request continuing notice. Persons who are not associated with a party may not attend a settlement meeting without the consent of all participating parties.

(6) For purposes of ORS 192.502(4), the Commission obligates itself to protect from disclosure any document submitted in confidence during settlement discussions.

(7) Settlements must be memorialized in a written stipulation signed by the settling parties, served on the parties on the service list for the docket, and filed for review by the Commission. With the stipulation, the parties must file:

(a) An explanatory brief or written testimony in support of the stipulation, unless waived by the Commission or ALJ; and

(b) A motion to offer the stipulation and any testimony as evidence in the proceeding, together with witness affidavits in support of the testimony.

(8) Within 15 days of the filing of a stipulation, a party may file written objections to the stipulation or request a hearing. Upon request or its own motion, the Commission or ALJ may set another time period for objections and request for hearing. Objections may be on the merits or based upon failure of Staff or a party to comply with this rule. The Commission or ALJ may hold a hearing to receive testimony and evidence regarding the stipulation. The Commission or ALJ may require evidence of any facts stipulated. The parties must be afforded notice and an opportunity to submit proof if such evidence is requested.

(9) A stipulation is not binding on the Commission. The Commission may adopt or reject a stipulation, or propose that a stipulation be modified prior to approval. If the Commission proposes to modify a stipulation, the Commission must explain its decision and, if necessary, provide the parties sufficient opportunity on the record to present evidence and argument to support the stipulation. No further hearing need be held when a review hearing has already been held under section (8) of this rule

and the Commission or ALJ determines that the issues were fully addressed in the prior hearing.

**2. *Pleadings and Motions (OAR 860-001-0400 through OAR 860-001-0430)***

These proposed rules clarify the types of initiating and responsive pleadings, establish requirements regarding the filings of motions, responses, and replies, address a party's failure to answer a complaint, identify the right to appeal an ALJ ruling, and codify Commission procedures for the processing of declaratory rulings. The rulemaking participants recommend revisions to rules regarding responsive pleadings, motions, and declaratory rulings.

*a. Pleading Requirements (OAR 860-001-0400)*

This rule governs traditional initiating and responsive pleadings. Initiating pleadings include applications, petitions, and complaints. Responsive pleadings include answers and protests. The rule establishes requirements for each type of pleading, and identifies specific due dates for different types of responsive pleadings.

ICNU recommends the rule be modified to clarify when replies to a responsive pleading may be filed. ICNU explains that OAR 860-001-0420, which governs motions, clearly states that the moving party may file a reply to a response to a substantive motion. ICNU notes, however, that OAR 860-001-0400 does not address whether a party can file a "reply" to a "response" to traditional initiating pleadings. ICNU asks that we resolve this potential ambiguity and make clear that replies are permitted.

Under OAR 860-013-0050, we do not allow replies to responsive pleadings. We permit replies to a response to a substantive motion to allow the moving party, who bears the burden of persuasion, an opportunity to address issues raised in a response before the ALJ rules on the motion. It is not necessary to revise our rules to allow replies to responses to initiating proceedings. Replies to responses to initiating pleadings are not intended to be ruled upon without further proceedings. Rather, initiating and responsive pleadings serve primarily to establish the scope of the proceeding.<sup>9</sup> Once the initiating and responsive pleadings are filed, the Commission will usually set a procedural schedule that allows the initiating and responding party to further address the issues raised in the pleadings. We agree with ICNU, however, that the rule could be clarified and therefore revise OAR 860-001-0400 to make explicit that replies to responsive pleadings are not permitted.

*b. Motions, Responses, and Replies (OAR 860-001-0420)*

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<sup>9</sup> To be clear, if a responsive pleading contains a counterclaim, the initiating party against whom the claim is directed may file a response.

As discussed above, OAR 860-001-0420 allows a moving party to file a “reply” to a “response” to a substantive motion. PGE and Pacific Power request that the time for filing replies be increased from seven calendar days to ten.

We decline PGE’s and Pacific Power’s request. To help facilitate the speedy resolution of disputes raised in substantive motions, we adhere to the proposed rule’s timeline of seven calendar days to file a reply.

We make one further clarification. We add language to impose certain requirements on a motion seeking expedited consideration and to clarify that a request for an extension or other related motion does not automatically stay a pending due date for a response or reply without permission from the ALJ.

*c. Petitions for Declaratory Rulings (OAR 860-001-0430)*

Idaho Power, NW Natural, Pacific Power, and CUB recommend the proposed rule governing declaratory rulings be supplemented. They ask that language be added to require the Commission, when deciding not to issue a declaratory ruling, to issue an order stating the reasons for declining the request. NW Natural explains that, without such information, the petitioner may be left without an understanding as to how to proceed in a matter on which it had sought Commission guidance.

As written, the rule provides that, within 60 days of filing, the Commission will determine at a public meeting whether it will substantively consider a petition for declaratory ruling. At the public meeting, our Staff will present a recommendation for our consideration, and we will allow other persons to comment on whether we should issue a declaratory ruling. In the event we decline the request, we will issue an order, presumably adopting Staff’s recommendation. Because this process will provide sufficient explanation as to why a request is denied, we find it unnecessary to adopt the revision proposed by Idaho Power, NW Natural, Pacific Power, and CUB. We will, however, add language to clarify that the Commission will notify the petitioner in writing of its decision whether or not it will issue a declaratory ruling.

**3. Evidence (OAR 860-001-0450 through OAR 860-001-0490)**

These proposed rules define the type of evidence admissible in Commission proceedings, identify the matters of which the Commission or ALJ may take official notice, and address the admissibility of resolutions of various organizations and records in other proceedings. These rules also provide extensive requirements for the marking, filing, and submission of testimony and exhibits.

OAR 860-001-0480(5) requires parties, at the time of filing testimony and exhibits, to simultaneously provide a copy of all work papers to any party that has asked

to receive such copies. In comments and at the rulemaking hearing, PGE, Pacific Power, CUB, and ICNU jointly propose that the rule be modified to require the filing of work papers to Staff and the applicable utility, as well as any other party that requests a copy.

We adopt the recommendation and modify OAR 860-001-0480(5) to read as follows:

(5) At the time of filing testimony and exhibits, the filing party must simultaneously ~~provide~~serve a copy of all work papers to **Staff, the utility named in the initiating pleading, and all any other parties** that has~~ve~~ve asked to receive such ~~copies~~a copy. As used in this rule, work papers consist of documents that show the source, calculations, and details supporting the testimony and other exhibits submitted. Parties must provide electronic copies of work papers if available.

**4. *Discovery (OAR 860-001-0500 through OAR 860-001-0540)***

These proposed rules supplement existing provisions to provide more thorough guidelines for discovery in Commission proceedings. They provide general limits to discovery, processes to resolve discovery disputes, and specific provisions for subpoenas, depositions, admissions, and data requests.

*a. Discovery in Contested Case Proceedings (OAR 860-001-0500)*

Section (5) of this rule requires parties to communicate problems with discovery requests and responses “to the other side immediately.” PGE, Idaho Power, and NW Natural state that the word “immediately” imposes an impractical standard and that the obligation should be to engage in discussions once an issue is identified. We agree and revise the section to read:

(5) Parties must make every effort to engage in cooperative informal discovery and to resolve disputes themselves. ~~Parties must communicate problems with discovery requests and responses to the other side.~~ **If a party receives a data request that is likely to lead to a discovery dispute, that party must inform the requesting party of the dispute as soon as practicable and attempt to resolve it informally.**

Section (6) permits a party to a discovery dispute to request the ALJ to “conduct a conference to facilitate discovery.” Pacific Power recommends the phrase “facilitate discovery” be replaced with “facilitate the resolution of discovery disputes.” Pacific Power notes that this language change is consistent with the amendment to

OAR 860-001-0080(3)(d) proposed by PGE. We adopt Pacific Power's recommendation and modify the rule accordingly.

Section (8) allows any party to seek sanctions against a party that fails to comply with an oral or written order resolving a discovery dispute. Staff recommends this provision be modified to allow a party to seek sanctions for a party's failure to comply with the rules of discovery.

We decline Staff's recommendation, which, if adopted, would permit a party to seek sanctions without first asking the ALJ to resolve any discovery dispute. Parties should first be required to have rules governing discovery be enforced by the ALJ. If violations continue, parties may then seek sanctions for failure to comply with an ALJ determination. To assist in this process, the proposed rule includes a new provision that allows any party to request the ALJ to conduct a conference to facilitate the resolution of a discovery dispute. This provision will hopefully encourage parties to bring discovery disputes to the attention of the ALJ for quick resolution.

*b. Data Requests (OAR 860-001-0540)*

The proposed rule clarifies requirements for data requests and responses, and establishes new procedures to allow parties to meet service requirements for such documents by electronically posting them on the Commission's website.

Although all rulemaking participants favored the electronic posting of data requests and responses, we are unable to adopt the proposed rules at this time. Further work, including modifications to the Commission's information technology system, is needed to address issues of document security, formatting requirements, and programming. We support electronic posting for the same reasons as the parties, and encourage stakeholders and Staff to pursue this transition as expeditiously as practicable.

We therefore temporarily return to the use of paper service for data requests and responses, but allow a party the ability to file a blanket request for copies of all data responses. We modify OAR 860-001-0540 to read as follows:

(1) ~~Any~~ party may submit data requests to any **other** party, subject to the discovery rules of the ORCP. Data requests are written interrogatories or requests for production of documents. Data requests must be answered within 14 days from the date of service. Each data request must be answered fully and separately in writing or by production of documents, ~~unless or~~ objected to **in writing**, ~~in which event the objection must be written in lieu of an answer.~~

(2) A party submitting a data request must **serve the request on all parties to the proceedings**, ~~notify all other parties of the~~

~~request. A submitting party may provide such notice by electronically posting the data request on the Commission's website. If the request contains confidential information, **then** the submitting party must post a redacted version of the request, and serve an unredacted paper copy on all **a complete copy to all** parties eligible to receive confidential information under the terms of a protective order **and a redacted version to all other parties.**~~

(3) The party answering the data request must provide a response to the submitting party and all other parties **that filed a written request for a copy of the response.** A responding party may provide its response by electronically posting the response on the Commission's website.

(a) ~~If the response contains confidential information, the answering party must post a redacted version of the response, and serve an unredacted paper copy on the submitting party.~~

(b) ~~A party, other than the party that submitted the data request for which the response contained confidential information, must provide the responding party with a written request for an unredacted copy of the response. A party may not file a blanket request to receive copies of responses to all data requests that contain confidential information. A party must agree to be bound by the applicable protective order to be eligible to receive any response containing confidential information.~~

(4) ~~Any party may offer into evidence data requests and the answers to the data requests. Any objection to substance or form of any data requests or answers must be attached to the submitted data requests **or answer** with specific reference and grounds. Every remedy available to a party using deposition procedures **must be** available to a party using data requests.~~

(5) Except when requested by the Commission or ALJ, or when seeking resolution of a discovery dispute under these rules, data requests are not filed with the Commission's Filing Center or **provided to the ALJ.**

## 5. *Hearings, Meetings, and Conferences (OAR 860-001-0550 through OAR 860-001-0610)*

These rules govern the various events held by the Commission or ALJ in the course of addressing matters brought under the Commission's jurisdiction. These rules primarily reflect a consolidation of rules previously found in Divisions 012 and 014.

Idaho Power and NW Natural seek revisions to OAR 860-001-0590 governing conferences. The list of purposes for an ALJ conference includes "[d]iscussing settlement of other resolution or partial resolution of the case." To ensure

the confidentiality of settlement conferences and the need to maintain the impartiality of the ALJ, Idaho Power and NW Natural ask the rule be clarified to forbid an ALJ from participating in a settlement conference. Idaho Power proposes that the rule be revised to replace the word “Discussing” with “Reporting.”

We agree that ALJs should not participate in settlement discussions and continue to preside over the docket. There are occasions, however, when an ALJ can play a valuable role in helping the parties reach settlement. This is particularly common in consumer complaint cases, in which our Staff generally does not participate.

For this reason, we decline the recommendation of Idaho Power and NW Natural to revise OAR 860-001-0590. Instead, we believe the utilities’ concerns are addressed by the adoption of OAR 860-001-0100 governing ALJ impartiality. There, a party may seek to disqualify an ALJ for the same reasons as allowed in JR 2-106 of the Oregon Code of Judicial Conduct. Those reasons include the ALJ having personal knowledge of the disputed evidentiary facts concerning the proceeding, which an ALJ could obtain while mediating a dispute.

**6. *Legal Argument and Major Proceedings (OAR 860-001-0650 through OAR 860-001-0660)***

These rules were previously set forth in Division 014. None of the changes to these rules are substantive. Most changes update the provisions to reflect current practice or involve editing to improve clarity and grammar. No rulemaking participant addressed these rules.

**7. *Compliance with and Reconsideration of Orders (OAR 860-001-0700 through OAR 860-001-0720)***

These rules govern the compliance with and reconsideration of Commission orders. ICNU seeks revisions to OAR 860-001-0720<sup>10</sup> relating to requests for rehearing or reconsideration. ICNU notes the rules allow any party to file an application for rehearing or reconsideration, and that any party may file a reply to the application within 15 days. ICNU first suggests that the word “reply” be changed to “response,” as the rules now define the first responsive pleading as a response. ICNU next recommends the rule make clear whether the party seeking rehearing or reconsideration may file a reply to any response.

We agree that the rule should be revised for consistency and use the word “response” to identify the first responsive pleading. We also agree that the rule should be revised to clarify that a reply to a response is not permitted unless requested by the ALJ, due to the limited time allowed for the Commission to act on an application for rehearing or reconsideration.

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<sup>10</sup> This rule was identified as OAR 860-001-0730 in the notice of rulemaking.

**E. OAR 860-022-0019 – General Rate Revisions**

As noted, this rulemaking proposed modifying and moving provisions governing general rate revisions currently found in OAR 860-013-0075 to OAR 860-022-0019. Among those changes is the new requirement that, with the initial rate filing, a utility include “[a]ll information required by the most recent version of the Utility Staff General Rate Case Data Request Form A, available at [website address].” The intent of this change is to help expedite discovery by requiring the utility to include in its initial filing responses to the data requests that our Staff routinely sends out upon receipt of a new general rate case.

We have not yet had the opportunity to develop a General Rate Case Data Request Form A. For this reason, Pacific Power recommends this provision be removed, explaining that parties would not be able to comply with this requirement until a Form A is available. We acknowledge Pacific Power’s concern, and clarify that utilities will only be required to submit information to comply with this requirement once a Form A is developed and made available on our website. We direct our Staff to conduct workshops with the utilities and interested persons to develop a Form A to help facilitate discovery in these lengthy and complex proceedings.

**III. ORDER**

IT IS ORDERED that:

1. Oregon Administrative Rules 860-001-0000 through 860-001-0720 are adopted, as shown in Appendix A.
2. Oregon Administrative Rule 860-013-0075 is amended and renumbered to 860-022-0019, as shown in Appendix A.
3. Oregon Administrative Rules 860-011-0000 through 860-011-0035; 860-011-0080 through 860-011-0110; 860-012-0001 through 860-012-0190; 860-013-0005 through 860-013-0071; and 860-014-0005 through 860-014-0095 are repealed.
4. The rules become effective upon filing with the Secretary of State.

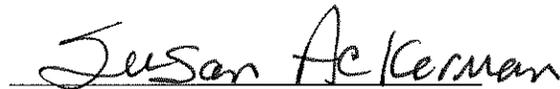
Made, entered, and effective OCT 14 2010.



**Ray Baum**  
Chairman



**John Savage**  
Commissioner



**Susan K. Ackerman** JH  
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.

GENERAL860-001-0000Applicability and Waiver

(1) These rules govern practice and procedure before the Public Utility Commission of Oregon (Commission). The Commission will liberally construe these rules to ensure just, speedy, and inexpensive resolution of the issues presented. The Oregon Rules of Civil Procedure (ORCP) also apply in contested case and declaratory ruling proceedings unless inconsistent with these rules, a Commission order, or an Administrative Law Judge (ALJ) ruling.

(2) For limited purposes in specific proceedings, the Commission or ALJ may modify or waive any of the rules in this division for good cause shown. A request for exemption must be made in writing, unless otherwise allowed by the Commission or ALJ.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: Formerly 860-011-0000, NEW

860-001-0010Definitions

As used in this division:

(1) “Applicant” means a person requesting or applying for a right, privilege, power, or other authority, or seeking permission to exercise a right or privilege under a statute requiring the filing of an application.

(2) “Authorized representative” means a member of a partnership; an authorized officer or regular employee of a corporation, association, or organized group; an officer or regular employee of an organization affiliated with the party if the officer or employee is authorized to represent the party; or an authorized officer or employee of a governmental authority.

(3) “Complainant” means a person, including the Commission, who files a complaint under a statute providing for the filing of complaints before the Commission.

(4) “Contested case” has the meaning provided in ORS 183.310(2) and does not include rulemaking proceedings.

(5) “Days” means calendar days unless otherwise noted.

(6) “Intervenor” means a person who has intervened in the proceedings under OAR 860-001-0300.

(7) “Party” means a person entitled as a matter of right to a hearing before the Commission, an intervenor, or Commission Staff.

(8) “Person” has the meaning provided in ORS 756.010(5) as supplemented to include governmental entities.

(9) “Petitioner” means a person applying for permission to exercise a right, privilege, power, or other authority, or requesting a declaratory ruling under ORS 756.450.

(10) “Rulemaking” means proceedings to adopt, amend, or repeal a rule as set forth in ORS 183.335.

**(11) “Staff” means an employee of the Commission except a Commissioner or an ALJ.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-011-0035, NEW**

**860-001-0020**

**Location, Contact Information, Hours of Operation**

**(1) The Commission’s location and contact information is:**

**(a) Physical Location:**

**Public Utility Commission of Oregon**

**550 Capitol St N.E. Suite 215**

**Salem OR 97301-2567**

**(b) Consumer Services Section / Consumer Complaints:**

**Salem: (503) 378-6600**

**Oregon outside Salem: (800) 522-2404**

**Fax: (503) 378-5743**

**Consumer Complaint Procedure on the website:**

**<http://www.puc.state.or.us/PUC/consumer/comppro.shtml>**

**(c) Telephone/Fax (for other than consumer issues):**

**Commission Reception: (503) 373-7394**

**Administrative Hearings Division: (503) 378-4372 or (503) 378-2849**

**Fax: (503) 378-6163**

**TTY (Oregon Relay Service): (800) 735-2900**

**TTY RSPF Programs (OTAP, TDAP, OTRS): (800) 648-3458**

**(d) Website homepage: <http://www.puc.state.or.us/>**

**(e) Filing Center:**

**Electronic mail: [PUC.FilingCenter@state.or.us](mailto:PUC.FilingCenter@state.or.us)**

**Phone: (503) 373-0886**

**Fax: (503) 378-5505**

**(f) Mailing Address:**

**Public Utility Commission of Oregon**

**Attn: Filing Center**

**PO Box 2148**

**Salem OR 97308-2148**

**(g) Delivery Address:**

**Public Utility Commission of Oregon**

**Attn: Filing Center**

**550 Capitol St NE Suite 215**

**Salem OR 97301-2567**

**(2) Office Hours: Commission offices are open to the public between 8:00 a.m. and 5:00 p.m., Monday through Friday, except on legal holidays as defined in ORS 187.010 or when the Commission’s office is closed by a Department of Administrative Services directive.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-011-0010, NEW**

**860-001-0030**

**Notice of Commission Proceedings**

**(1) A person may request to receive electronic notice of:**

**(a) Commission public meetings;**

**(b) Permanent rulemaking proceedings that involve electric, natural gas, telecommunications, water, wastewater, or procedural matters; and**

**(c) Contested case proceedings that concern particular regulated industries.**

**(2) A person without access to electronic mail may request that the Commission provide notice by first-class mail. The Commission may establish a fee for providing notice by mail.**

**(3) The Commission will not delete a name from a notice list without prior notification.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 183.335, 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-011-0001, NEW**

**860-001-0040**

**Commission Publications**

**The Commission will charge fees reasonably calculated to reimburse the agency for the costs of annual subscriptions, agency publications, and materials related to agency proceedings. These fees, which include mailing costs, are:**

**(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: At cost.**

**(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 if the party files with the Commission a satisfactory affidavit of indigency under ORS 756.521.**

**(8) Notice by mail of Commission proceedings under OAR 860-001-0030(2): \$25 annually.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 192.420-192.505, 756.040 & 756.325**

**Hist.: Formerly 860-011-0100, NEW**

**860-001-0050**

**Late Fees and Penalties**

**(1) The Commission will impose the following late fees and penalties when 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 of fee as penalty 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 Remittance Report: \$100.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.305 – 756.320**

**Hist.: Formerly 860-011-0110, NEW**

**Public Records and Confidential Information**

**860-001-0060**

**Public Records Requests**

**(1) This rule governs requests for access to the Commission's public records under the Public Records Law, ORS 192.410 through 192.505.**

**(2) A person may request access to the Commission's public records. After receiving a request, the Commission will make public records available for inspection during regular business hours unless the records are exempt from disclosure by law.**

**(a) The Commission may condition the time and manner of inspection of public records as necessary 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 a request for public records be made in writing.**

**(c) The request must specify the format requested for copies and the date, if any, by which the records are needed. The Commission may provide the information in a format different than requested or provide the information after the requested date if it is impractical to comply with the requests.**

**(3) The Commission will charge the following fees reasonably calculated to recover the costs of providing access to and copying public records:**

**(a) Employee time: The Commission will charge for employee time over 15 minutes spent preparing documents for inspection or supervising the inspection. Employee time will be charged in 15-minute increments at the following rates:**

**(A) Assistant Attorney General: \$137 per hour, excluding time spent determining the application of ORS 192.410 through 192.505.**

**(B) Administrative Law Judge: \$53 per hour.**

**(C) Manager: \$43 per hour.**

**(D) Utility Analyst: \$41 per hour.**

**(E) Information Services: \$43 per hour.**

**(F) Law Clerk: \$15 per hour.**

**(G) General Clerical: \$24 per hour.**

**(b) Photocopies: The Commission will charge \$0.15 per page to recover the costs of photocopying requested documents. Page refers to one side of a piece of paper. A double-sided copy is 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) Certification of true copies of public documents must be specifically requested, and the Commission charges \$10 per document certification.**

**(d) Facsimile: The Commission charges \$0.75 per page for faxing records. The Commission will not fax more than 30 pages.**

**(e) Electronic Media: If the request seeks electronic reproduction of public records, then the Commission will provide reproduction media at the following rates:**

**(A) CD or DVD: \$1.50 each.**

**(B) Audio Cassettes: \$2.50 each.**

**(f) Mailing: When sending voluminous records, the Commission will charge the actual costs of sending the public records.**

**(4) 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, then the Commission will provide written notice and not act further to respond to the request until it receives written authorization to proceed. The Commission may require that all estimated fees and charges be paid before public records are made available for inspection or copies provided.**

**(5) If a public records request seeks the disclosure of information that has been designated as confidential under a protective order or under the Public Records Law, then prior to the release of the information the Commission will provide written notice to the person asserting confidentiality and allow an opportunity for the person to provide a written response to the request.**

**(a) The person asserting confidentiality must demonstrate that the information is exempt from disclosure.**

**(b) If the Commission concludes that the information designated as confidential is not protected from disclosure, then the Commission will provide notice of the decision and delay the release of the information to permit the person asserting confidentiality to seek 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 court proceedings to limit disclosure within 10 days following notice of the decision, then the Commission will remove the confidential**

designation from the requested information and release the information to the requester.

(6) A person denied the right to inspect or to receive a copy of a public record may appeal the Commission's decision to the Attorney General under ORS 192.450.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 192.420-192.505

Hist.: Formerly 860-011-0090, NEW

860-001-0070

Confidential Information

(1) This rule applies to information submitted under a claim of confidentiality under the Public Records Law, but does not apply to information designated as confidential under a protective order in a contested case proceeding.

(2) At the time of submission, a person may designate a document or portion of a document as containing confidential information. A designation must be made in good faith and be limited to information that qualifies for protection. The person asserting confidentiality must state the legal basis for the claim of confidentiality.

(3) Unless otherwise provided by Commission order, confidential information submitted under this rule must be printed on yellow paper, separately bound, and placed in a sealed container. To the extent practicable, the provider must place only the portions of the document that contain confidential information in the container. The confidential information on each page must be clearly marked by inserting [Confidential] before and after the portion of information that is confidential. The container must be marked "CONFIDENTIAL." Multiple sealed containers may be mailed in one package.

(4) Confidential information submitted to the Commission is exempt from public disclosure to the extent provided under the Public Records Law, ORS 192.410 through 192.505.

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

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 192.420-192.505, & 756.040

Hist.: Formerly 860-011-0080, NEW

860-001-0080

Protective Orders

(1) Upon request by a party and for good cause shown, an ALJ may issue protective orders to limit disclosure of confidential information in specific Commission proceedings. Decisions by the ALJ regarding protective orders may be appealed to the Commission under OAR 860-001-0720.

(2) The Commission's general protective order adopts a process for parties to resolve discovery disputes that include confidential information. The order allows the

**broadest possible discovery consistent with the need to protect confidential information; it does not determine whether a particular document is exempt from disclosure.**

**(3) Under the terms of a general protective order, a party may designate information that it reasonably believes falls within the scope of ORCP 36(C)(7) or is exempt from public disclosure under the Public Records Law. Information designated as confidential may be disclosed only to a “qualified person” as defined in the general protective order.**

**(a) A confidential designation must be made in good faith and be limited to the portions of the document that qualify as a protected trade secret or other confidential research, development, or commercial information.**

**(b) Except for Commission Staff, a party must sign the “consent to be bound” section of the protective order to receive confidential information. By signing the “consent to be bound,” the party certifies that it has an interest in the proceedings that is not adequately represented by other parties to the proceedings, that the party will not use or disclose the information for any purpose other than to participate in the proceedings unless the designating party gives written consent, and that the party will take all reasonable precautions to keep the confidential information secure.**

**(c) A party may challenge the designation of information as confidential by notifying the designating party. Once notified, the designating party must show that the challenged information is covered by ORCP 36(C)(7) or exempt from disclosure under the Public Records Law.**

**(d) If the parties are unable to resolve a dispute about a confidential designation informally, then any party may request that the ALJ conduct a conference to facilitate the resolution of discovery disputes. A challenging party may also file an objection to the confidential designation. The objection must identify the information in dispute and include a certification that the parties have made reasonable efforts to achieve a resolution, but have been unable to resolve the controversy without the ALJ’s assistance. Within 7 days of the objection, the designating party must either remove the confidential designation or file a written response identifying the legal basis for the claim of confidentiality. The challenging party may file a written reply to the response within 7 days.**

**(4) A party may request that the ALJ issue a protective order that provides additional protection under ORCP 36(C).**

**(a) A motion for additional protection must include:**

**(A) The parties involved;**

**(B) The exact nature of the information involved;**

**(C) The legal basis for the claim that the information is protected under the ORCP 36(C)(7) or the Public Records Law;**

**(D) The exact nature of the relief requested;**

**(E) The specific reasons the requested relief is necessary; and**

**(F) A detailed description of the intermediate measures, including selected redaction, explored by the parties and why these measures are insufficient.**

**(b) To receive access to confidential information that has been given additional protection, a party may be required to certify that they intend to fully participate in the proceedings by filing testimony; participating in settlement negotiations, workshops, conferences, and hearings; and filing other pleadings as required.**

**(5) The Commission may expel from the subject proceedings any person who fails to comply with the terms of the protective order, prohibit the person from appearing in future proceedings, and impose penalties under ORS 756.990(2)(c). If an attorney violates a protective order, the Commission will report the violation to the bar associations in all states where the attorney is admitted to practice law.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORCP(36), ORS 756.040, 756.055 & 756.990**

**Hist.: NEW**

### **Administrative Law Judge**

#### **860-001-0090**

##### **Delegation of Authority to Administrative Law Judge**

- (1) The Commission delegates to the ALJ authority to:**
- (a) Regulate the course of rulemaking, contested case, and declaratory ruling proceedings, including scheduling, recessing, reconvening, and adjourning hearings;**
  - (b) Administer oaths;**
  - (c) Issue subpoenas;**
  - (d) Make evidentiary rulings;**
  - (e) Supervise and control discovery;**
  - (f) Hold appropriate conferences before, during, or after hearings;**
  - (g) Decide procedural matters, but not to grant contested motions to dismiss or other contested motions that involve final determination of the proceedings;**
  - (h) Change filing deadlines;**
  - (i) Grant waivers of rules;**
  - (j) Certify a question to the Commission for consideration and disposition;**
  - (k) Determine the order in which evidence will be presented;**
  - (l) Issue a protective order to limit disclosure of confidential information; and**
  - (m) Take any other action consistent with the duties of an ALJ.**
- (2) The ALJ must conduct proceedings in a fair and impartial manner and maintain order. If a person engages in conduct that interferes with this duty, then the ALJ may suspend the proceeding or exclude the person from the proceeding.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040, 756.055 & 756.500 – 756.575**

**Hist.: Formerly 860-012-0035, NEW**

#### **860-001-0100**

##### **Impartiality**

- (1) An ALJ may be disqualified from presiding over specific proceedings for the same reasons and under the same circumstances as specified in JR 2-106 of the Oregon Code of Judicial Conduct.**
- (2) A party may move for disqualification of an ALJ if the ALJ's impartiality may reasonably be questioned. The motion must be filed within 15 days after the party learns of the facts supporting the disqualification and contain grounds for supporting**

**the motion. Written responses to the motion for disqualification must be filed within 7 days of receipt of the motion. An ALJ other than the presiding ALJ will rule on the motion.**

**(3) The parties may waive any ground for disqualification after it is fully disclosed on the record, either expressly in writing or orally on the record, or by failing to move for disqualification within the time limits in section (2) of this rule.**

**(4) An ALJ's disqualification does not automatically affect the validity of rulings or orders issued prior to the filing of the motion for disqualification.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040, 756.055 & 756.500 – 756.575**

**Hist.: Formerly 860-012-0035, NEW**

### **860-001-0110**

#### **Appeal to the Commission from Ruling of Administrative Law Judge**

**(1) A party may request that the ALJ certify an ALJ's written or oral ruling for the Commission's consideration. A party must request certification of a ruling within 15 days of the date of service of the ruling or date of the oral ruling.**

**(2) The ALJ must certify the ruling to the Commission under OAR 860-001-0090 if the ALJ finds that:**

**(a) The ruling may result in substantial detriment to the public interest or undue prejudice to a party;**

**(b) The ruling denies or terminates a person's participation; or**

**(c) Good cause exists for certification.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0091, NEW**

### **Intervenor Funding**

### **860-001-0120**

#### **Grant Eligibility (Precertification and Case Certification)**

**(1) Under ORS 757.072, a utility providing electricity or natural gas may enter into a written agreement to provide financial assistance to an organization that represents broad customer interests in Commission proceedings.**

**(2) Upon Commission approval of an agreement, the Commission will apply the qualifications in this rule to determine whether an organization is eligible for a grant of financial assistance. Only parties that are precertified or parties that become case certified for particular proceedings are eligible to receive grants under an agreement. The terms of an agreement are binding on all organizations seeking a grant under that agreement and will be followed by the Commission in administering the agreement. Once precertified, an organization remains precertified unless the Commission decertifies the organization under OAR 860-001-0130.**

**(3) An agreement may allow organizations to seek precertification as eligible to receive grants. The Commission will precertify only organizations meeting the following criteria:**

**(a) The Citizens' Utility Board of Oregon (CUB), as a representative of residential customers; or**

**(b) Nonprofit organizations that meet the following criteria:**

**(A) A primary purpose of the organization is to represent utility customers' interests on an ongoing basis;**

**(B) The organization represents the interests of a broad class of customers and those interests are primarily directed at public utility rates or terms and conditions of service affecting those customers, and not narrow interests or issues that are ancillary to the representation of those customers as consumers of utility services;**

**(C) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;**

**(D) The organization's members are customers of one or more of the utilities that are parties to the applicable agreement and contribute a significant portion of the overall support and funding of the organization's activities in the state; and**

**(E) The organization has demonstrated in past Commission proceedings the ability to substantively contribute to the record on behalf of customer interests.**

**(4) An agreement may allow organizations to seek certification on a case-by-case basis as eligible to receive a grant. The Commission will case certify only those organizations meeting the following criteria:**

**(a) The organization is a nonprofit organization, demonstrates that it is in the process of becoming a nonprofit organization, or is comprised of multiple customers of one or more of the utilities that are parties to the agreement and demonstrates that a primary purpose of the organization is to represent broad utility customer interests;**

**(b) The organization represents the interests of a broad class of customers and its participation in the proceedings will be primarily directed at public utility rates or terms and conditions of service affecting those customers, and not narrow interests or issues that are ancillary to the effect of the rates and terms and conditions of service on those customers;**

**(c) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;**

**(d) Those members of the organization who are customers of one or more of the utilities that are affected by the proceedings and are parties to the agreement contribute a significant percentage of the overall support and funding of the organization;**

**(e) The organization demonstrates or has demonstrated in past Commission proceedings the ability to substantively contribute to the record on behalf of customer interests related to rates and the terms and conditions of service, including in proceedings in which the organization was case certified and received a grant;**

**(f) The organization demonstrates that:**

**(A) No precertified intervenor participating in the proceedings adequately represents the specific interests of the class of customers represented by the organization; or**

**(B) The specific interests of a class of customers will benefit from the organization's participation; and**

**(g) The organization demonstrates that its request for case certification will not unduly delay the proceedings.**

**Stat. Auth.: ORS 756.040, 756.060, & 757.072**

**Stat. Implemented: ORS 756.040, 756.055 & 757.072**

**Hist.: Formerly 860-012-0100**

**860-001-0130**

**Termination of Eligibility; Decertification**

**(1) Upon the filing of a complaint under ORS 756.500 or upon a Commission investigation or motion under ORS 756.515, the Commission may terminate the precertification or case certification of an organization if it finds that:**

**(a) The organization has committed fraud, misrepresentation, or misappropriation related to a grant made available under the terms of a Commission-approved agreement;**

**(b) The organization received a grant in Commission proceedings, but during those proceedings failed to represent the interests of the broad class of customers that the organization purported to represent in its application for precertification or case certification;**

**(c) The organization has failed to comply with Commission orders or rules in a material way;**

**(d) The organization violated the terms and conditions of a protective order governing the use and disclosure of confidential information;**

**(e) For CUB, there has been a substantial change in or repeal of ORS 774.010 through 774.990; or**

**(f) A precertified organization other than CUB no longer meets the criteria of OAR 860-001-0120(3).**

**(2) An intervenor that is decertified under paragraph (1)(d) is ineligible for future precertification or case certification under the agreement.**

**(3) Termination of the precertification or case certification of an organization is prospective only.**

**Stat. Auth.: ORS 756.040, 756.060, & 757.072**

**Stat. Implemented: ORS 756.040, 756.055 & 757.072**

**Hist.: Formerly 860-012-0190; NEW**

**Filing Requirements**

**860-001-0140**

**General**

**(1) Documents submitted to the Commission must include the name of the person submitting the document, the person's physical and electronic mail addresses, and the person's telephone number. If applicable, the name of the business or organization that person represents must also be included.**

**(2) If possible, documents should fit on an 8-1/2-by-11-inch page and have at least 1-inch margins when printed.**

**(3) Documents should be printed on both sides if possible. The Commission encourages the use of recycled paper.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 - 756.575**

**Hist.: Formerly 860-011-0011; NEW**

**860-001-0150**

**Filing Dates**

**(1) Except as modified by statute or by these rules, a document is filed on the date received by the Commission at Salem, Oregon, between the hours of 8 a.m. and 5 p.m., Pacific Time.**

**(2) The period of time for doing an act governed by these rules is determined by excluding the first day and including the last day. For example, if a motion is served on September 18, then any response (due 15 days after service of the motion) must be filed by October 3. If the due date falls on a Saturday, Sunday, legal holiday as defined in ORS 187.010, or when the Commission office is closed by a Department of Administrative Services directive, then the filing is due on the next business day.**

**(3) Filings that are incomplete or not in substantial compliance with these rules, Commission orders, ALJ rulings, or statutes may be declined or conditionally accepted. The Commission must provide the reason for declining or conditionally accepting a filing to the filer.**

**(4) Documents required to be filed within a specified time but that fail to substantially comply with these rules may be accepted as conditionally received to meet the filing deadline.**

**(5) Conditionally received filings are not considered officially filed until brought into substantial compliance with these rules, the Commission's orders, ALJ rulings, and statutes. Conditionally received filings may be rejected unless brought into compliance within one business day of notice of the deficiency.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-013-0037, NEW**

**860-001-0160**

**Filing Requirements in Rulemaking Proceedings**

**(1) Written comments on proposed rules and other documents submitted in rulemaking proceedings must be filed with the Commission's Filing Center at the address listed in OAR 860-001-0020.**

**(a) Documents may be filed by mail, personal delivery, electronic mail, or any other means of delivery.**

**(b) To be considered by the Commission, a document must be received by the deadline for the submission of written comments specified in the notice of proposed rulemaking.**

**(c) Documents must include the docket number assigned by the Commission to the rulemaking proceedings.**

**(2) Written comments on a proposed rule must comply with OAR 860-001-0210(3).**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 - 756.575**

**Hist.: NEW**

**860-001-0170**

**Filing Requirements in Contested Case and Declaratory Ruling Proceedings**

**(1) Every pleading or other document submitted to the Commission in contested case or declaratory ruling proceedings must be filed electronically with the Commission's Filing Center on or before the date due. The filing must include an electronic copy of the signed certificate of service described in OAR 860-001-0180(5). All filings must be labeled with the applicable docket number, a description of the filing, and the date filed. Electronic copies of non-confidential documents must not be password protected.**

**(a) Documents may be electronically filed by sending the filing as an attachment to an electronic mail message addressed to the Commission's Filing Center, by personally delivering or mailing a compact disk (CD) or DVD to the Filing Center, or by uploading the filing on the Commission's website. If a CD or DVD is delivered or mailed to the Filing Center, it must be received on or before the date due to be considered timely filed.**

**(b) Electric copies of documents must be in text-searchable format and provided in either Microsoft Word, Microsoft Excel, or .pdf (Adobe Acrobat) format, unless otherwise permitted by the ALJ. A party must provide a Microsoft Word version of any document, if possible, upon the ALJ's request.**

**(c) A filing submitted as an attachment to an electronic mail message must be less than 20 megabytes in size and include the docket number, party name, and title of the filing in the subject line of the electronic mail message.**

**(d) Filings larger than 20 megabytes may be divided into multiple electronic mail messages. Each message must be numbered sequentially, and the subject line of the message must include "E-mail x of y," where x equals the message number and y equals the total number of messages. Filings larger than 20 megabytes must also be provided to the Filing Center on CD or DVD. The CD or DVD must be sent to the Filing Center with the original filing as described in section (2).**

**(e) If a document relates to multiple dockets that are officially consolidated, then the document should be filed in the lead docket only. If a document relates to multiple dockets that are not officially consolidated, then the document must be filed electronically in each docket, even if all dockets are following the same procedural schedule.**

**(f) If a document contains confidential information, then a redacted version will be accepted for electronic filing, but only if the original confidential document is personally delivered or sent by first-class mail, postage prepaid, to the Filing Center on the date the redacted document was electronically filed.**

**(g) If an entire filing is confidential, then a cover letter will be accepted for electronic filing, but only if the original confidential document is personally delivered or**

sent by first-class mail, postage prepaid, to the Filing Center on the date the cover letter was electronically filed.

(2) The signed original of any pleading or other document filed in contested case or declaratory ruling proceedings must be sent by first-class mail, postage prepaid, or personal delivery to the Commission's Filing Center at the address listed in OAR 860-001-0020.

(a) The original document must be personally delivered or mailed on the date the electronic copy of the document is filed.

(b) The original document must be signed and dated and include the original, signed certificate of service as described in OAR 860-001-0180(5).

(c) The original document and the copies required in section (3) must be sent in the same envelope or container if possible. Simultaneous filings in multiple dockets must be sent in separate envelopes or containers for each docket. Multiple envelopes or containers submitted in the same docket may be enclosed in one mailing or delivery package.

(3) For the following documents, the specified number of copies must be sent with the original document:

(a) Initiating and Responsive Pleadings, including Comments: 5 copies.

(b) General rate revisions filed under OAR 860-022-0019:

(A) Utility initial filing: 30 copies; and

(B) Work papers: 3 paper copies if reasonably capable of being reproduced in written format; if not, 3 copies on CD or DVD.

(c) Motions and Replies: 2 copies.

(d) Testimony filed under OAR 860-001-0480: 5 copies.

(e) Briefs filed under OAR 860-001-0650: 5 copies.

(f) Applications for Allocation of Territory filed under OAR 860-025-0000 through 860-025-0050, OAR 860-034-0440 through 860-034-0495, or OAR 860-036-0900 through 860-036-0925: 3 copies.

(g) Financing applications filed under OAR 860-027-0020 through 860-027-0035, OAR 860-036-0715 through 860-036-0725, or OAR 860-037-0515 through 860-037-0525: 3 copies.

(h) Affiliated interest applications filed under OAR 860-027-0040 through 860-027-0044, OAR 860-036-0730 through 860-036-0738, or OAR 860-037-0530 through 860-037-0545: 3 copies.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: Formerly 860-013-0036, 860-013-0060, & 860-013-0065; NEW

### 860-001-0180

#### Service in Contested Case and Declaratory Ruling Proceedings

(1) The Commission maintains an official service list for each contested case and declaratory ruling proceeding. The service list is posted on the Commission's website or may be obtained by contacting the Commission.

(a) Each party must identify at least one party representative to receive service, and may identify no more than three party representatives to receive service.

**(b) Parties may designate party representatives in an initiating pleading, petition to intervene, or separate document. Parties must notify the Commission and all other parties in writing of any change in contact information.**

**(2) A party must serve by electronic mail copies of all documents filed in contested case or declaratory ruling proceedings on every party representative included on the official service list. A party must also serve physical copies of a document in person, by first-class mail, or by any other reasonable means of delivery if:**

**(a) The document contains information that has been designated as confidential under a general protective order. Parties must use electronic service to serve a redacted copy of the document and provide physical copies of the confidential portions of the document. Service must conform with the requirements in the applicable general protective order;**

**(b) The filing is more than 100 pages, unless the party agrees to receive electronic service of voluminous filings; or**

**(c) A party has requested and received permission from the ALJ to receive physical service of all documents.**

**(3) Service is considered timely if the electronic mail is sent on the day the document is filed. Service by electronic mail is complete when the electronic mail message leaves the sender's electronic mail server. Parties providing service by electronic mail are encouraged to request electronic return receipts and must take all reasonable steps to ensure successful delivery.**

**(4) Service of physical copies of a document is considered timely if the copy is delivered in person on the date the document is filed with the Commission, or the copy is mailed by first-class mail, postage pre-paid, on the date the document is filed with the Commission.**

**(5) A certificate of service must be filed with every pleading or other document filed in contested case or declaratory ruling proceedings. The certificate of service must:**

**(a) Include a signed certification that the document was served on all party representatives included in the official service list for the proceedings;**

**(b) List the names of the party representatives served;**

**(c) State the means of service to each party representative and the electronic or physical address served; and**

**(d) State the date of service.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-013-0070, NEW**

## **RULEMAKING PROCEEDINGS**

**860-001-0200**

**Public Participation**

**The Commission may informally seek public input before giving notice of intent to adopt, amend, or repeal a rule. A person may request to be notified of informal opportunities for public input by requesting to be placed on a notification list described in OAR 860-001-0030(1)(b).**

**Stat. Auth.: ORS 183.341, 756.040, 756.060**

**Stat. Implemented: ORS 183.335 – 183.355 & 756.040**

**Hist.: NEW**

**860-001-0210**

**Permanent Rulemaking Notice**

**(1) The Commission will give notice of a proposed permanent rulemaking by:**

**(a) Publishing notice of the rulemaking in the Secretary of State's Oregon Bulletin;**  
**and**

**(b) Mailing, electronically mailing, or personally delivering a copy of the proposed rule and a copy of the Secretary of State notice to persons on the Commission's applicable rulemaking notification lists and legislators specified in ORS 183.335(15). Instead of providing a copy of the proposed rule, the Commission may provide a summary of the rule and explain how to obtain a copy by mail, electronic mail, or from a specified website.**

**(2) The notice of proposed permanent rulemaking must include:**

**(a) A statement summarizing the subject matter, purpose, and need for the proposed rule;**

**(b) The last date for comment on the proposed rule;**

**(c) The date of or ability to request a hearing; and**

**(d) A statement of fiscal impact quantifying the economic effect of the proposed rule.**

**(3) Any person may file written comments on the proposed rule by the date identified in the rulemaking notice.**

**(a) Written comments must be filed as set forth in OAR 860-001-0160.**

**(b) Written comments must identify:**

**(A) The name and address of the person;**

**(B) The name of any business or organization the person represents;**

**(C) The docket number assigned to the rulemaking; and**

**(D) The portion of the proposed rule to which the comments are directed. If applicable, the person should also provide alternative language for the proposed rule to address any concern.**

**(4) An objection to a fiscal impact statement must be filed in writing and must:**

**(a) Identify the portion of the fiscal impact statement to which objection is made;**

**(b) Identify the persons likely to be affected by the proposed rule on whose behalf the objection is filed or, if filed by an association, identify the number of members of the association who are likely to be affected by the proposed rule;**

**(c) Explain how the persons identified are likely to be affected by the proposed rule;**

**(d) Explain the objection to the fiscal impact statement; and**

**(e) Be filed as set forth in OAR 860-001-0160.**

**(5) If the Commission determines that the original fiscal impact statement does not adequately reflect the proposed rule's fiscal impact, then the Commission must file an amended fiscal impact statement, extend the comment period as required by ORS 183.333(5), and give notice of the extended comment period to persons identified in subsection (1)(b).**

**Stat. Auth.: ORS 183.341, 756.040, 756.060**

**Stat. Implemented: ORS 183.335 – 183.355 & 756.040**

**Hist.: NEW**

**860-001-0220**

**Conduct of Rulemaking Hearing**

**(1) All persons wanting to comment during a rulemaking hearing must provide their name, address, and affiliation. The ALJ may also require that additional information be provided. Additional persons may be heard at the discretion of the ALJ.**

**(2) The ALJ may question any person commenting at the hearing. The ALJ may also permit other persons to question the person commenting.**

**(3) A person may present comments once during the hearing unless otherwise requested or permitted by the ALJ.**

**(4) The hearing may be continued with recesses as determined by the ALJ until all persons have had an opportunity to offer comments.**

**(5) The ALJ must, when practicable, receive all physical and documentary information presented by persons offering comments.**

**(6) The ALJ may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial comments.**

**(7) The ALJ must make a record of the proceeding by audio or video tape recording, stenographic reporting, or minutes.**

**Stat. Auth.: ORS 183.341, 756.040, 756.060**

**Stat. Implemented: ORS 183.335 – 183.355 & 756.040**

**Hist.: NEW**

**860-001-0230**

**Rulemaking Record**

**(1) The Commission must maintain a record of comments it receives in response to a notice of intent to adopt, amend, or repeal a rule filed under OAR 860-001-0210.**

**(2) The rulemaking record is maintained by the rules coordinator. The Commission must make the rulemaking record available to members of the public upon request.**

**(3) The rulemaking record must include:**

**(a) Any written and oral comments received in response to the notice of proposed rulemaking;**

**(b) The required rulemaking documents filed with the Secretary of State; and**

**(c) A copy of the proposed rule.**

**Stat. Auth.: ORS 183.341, 756.040, 756.060**

**Stat. Implemented: ORS 183.335 – 183.355 & 756.040**

**Hist.: NEW**

**860-001-0240**

**Rulemaking Action**

**(1) At the conclusion of the hearing or after the last date for submitting comments, the Commission may adopt, amend, or repeal rules covered by the notice of proposed rulemaking. The Commission must fully consider all written and oral comments.**

**(2) The Commission must file a certified copy of each adopted or amended rule and each order repealing a rule with the Secretary of State.**

**(3) The rule is effective upon filing with the Secretary of State unless a different effective date is specified in the rule.**

**(4) Within 10 days of filing with Secretary of State, the Commission must submit a copy of each adopted or amended rule or order appealing a rule to the Legislative Counsel as set forth in ORS 183.715.**

**Stat. Auth.: ORS 183.341, 756.040, 756.060**

**Stat. Implemented: ORS 183.335 – 183.355 & 756.040**

**Hist.: NEW**

**860-001-0250**

**Petition to Promulgate, Amend, or Repeal Rule**

**A person may petition the Commission to promulgate, amend, or repeal a rule. A petition to promulgate, amend, or repeal a rule must comply with OAR 137-001-0070.**

**Stat. Auth.: ORS 183.341, 756.040, 756.060**

**Stat. Implemented: ORS 183.390 & 756.040**

**Hist.: NEW**

**860-001-0260**

**Temporary Rulemaking**

**(1) Under ORS 183.335(5), the Commission may temporarily adopt, amend, or suspend a rule without prior notice of hearing or on abbreviated notice of hearing. If no notice is provided before adoption of a temporary rule, then the Commission must give notice of its temporary rulemaking as specified in ORS 183.335(1) by mailing, electronically mailing, or personally delivering a copy of the rule as adopted and a copy of the statements required under ORS 183.335(5). Instead of providing a copy of the temporary rule, the Commission may provide a summary of the temporary rule and explain how to obtain a copy by mail, electronic mail, or from a specified website.**

**(2) The agency must file with the Secretary of State a certified copy of the temporary rule and a copy of the statement required by ORS 183.335(5).**

**(3) A temporary rule is effective for 180 days unless a shorter period is specified in the temporary rule or the certificate of filing for the temporary rule.**

**Stat. Auth.: ORS 183.341, 756.040, 756.060**

**Stat. Implemented: ORS 183.335 – 183.355 & 756.040**

**Hist.: NEW**

**CONTESTED CASE AND DECLARATORY RULING PROCEEDINGS**

**Practice Before the Commission**

**860-001-0300**

**Participation in Contested Case and Declaratory Ruling Proceedings; Intervention**

**(1) Under ORS 774.180, the Citizens' Utility Board has the right to intervene in any Commission proceedings by filing a notice of intervention that includes the names and addresses of the representatives to be included on the service list.**

**(2) Any other person may file a petition to intervene in contested case proceedings before the Commission. Sample petition to intervene forms may be found at [http://www.puc.state.or.us/PUC/admin\\_hearings/Petition\\_to\\_Intervene\\_Form.shtml](http://www.puc.state.or.us/PUC/admin_hearings/Petition_to_Intervene_Form.shtml). The petition to intervene must contain the following information:**

**(a) The petitioner's name and contact information, including telephone number, physical address, and electronic mail address;**

**(b) The name and contact information of the petitioner's attorney or authorized representative, including telephone number, physical address, and electronic mail address;**

**(c) If the petitioner is an organization, the number of members in and the purpose of the organization;**

**(d) The nature and extent of the petitioner's interest in the proceedings;**

**(e) The issues petitioner intends to raise at the proceedings; and**

**(f) Any special knowledge or expertise of the petitioner that would assist the Commission in resolving the issues in the proceedings.**

**(3) Staff and parties named in the pleading initiating Commission action are original parties and need not petition to intervene. All original parties must provide the Commission with the names and contact information, including telephone number, physical address, and electronic mail address, of the party representatives to be included on the service list.**

**(4) Any person may file a petition to intervene in declaratory ruling proceedings before the Commission. In addition to the requirements in section (2) of this rule, the petition to intervene must also state whether the intervenor accepts:**

**(a) The statement of facts as set forth in and for the purposes of the petition for declaratory ruling; and**

**(b) The statement of the questions presented in the petition for declaratory ruling.**

**(5) The petitioner must serve the petition to intervene on the other parties to the proceedings.**

**(6) A party may object to a petition to intervene. Objections must be filed within 10 days of service of the petition to intervene unless otherwise directed by an ALJ. The petitioner may file a reply to an objection within 7 days of service of the objection.**

**(7) If the Commission or ALJ finds the petitioner has sufficient interest in the proceedings and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or delay the proceedings, then the Commission or ALJ must grant the petition. The Commission or ALJ may impose appropriate conditions upon any intervenor's participation in the proceedings, such as restricted**

access to confidential information. The ALJ may rule on a petition to intervene at a prehearing conference.

(8) A person may ask to be listed as an “interested person” in particular proceedings. An interested person receives copies of the orders, rulings, notices, or other documents issued by the Commission or ALJ in the proceeding, but does not receive documents filed by Staff or other parties. An interested person is not a party to the proceedings, and is not entitled to file pleadings, present evidence for the record, conduct cross-examination of witnesses, or file briefs.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 183.417, 756.040 & 756.500 – 756.575

Hist.: Formerly 860-012-0001, NEW

### 860-001-0310

#### Representation and Ethical Conduct

(1) All persons appearing in proceedings in a representative capacity must conform to the standards of ethical conduct required of attorneys appearing before the courts of Oregon. If a person does not conform to these standards, then the Commission may decline to permit the person to appear in a representative capacity in any proceedings.

(2) Except for Staff, a party to contested case proceedings may be represented by an authorized representative who is not an attorney.

(a) A party’s initial pleading in the proceedings must designate the party’s authorized representative.

(b) The ALJ has authority to limit an authorized representative’s presentation of evidence, examination, and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record. The ALJ may not allow an authorized representative who is not an attorney to present legal argument except to the extent authorized in ORS 183.457.

(c) Changes to the designation of authorized representative must be made by written notice to the Commission with copies served on the other parties to the proceedings.

(3) Staff may represent the Commission in a contested case hearing in the following proceedings:

(a) Actions initiated by the Commission to recover telecommunications assistive devices, the value of devices which the recipients fail to return, or the cost of repairing equipment that the recipient returned in a damaged condition; and

(b) Denial or termination of Oregon Telephone Assistance Program benefits.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 183.452-183.458, 756.040 & 756.500 – 756.575

Hist.: Formerly 860-012-0005 and 860-012-0007, NEW

### 860-001-0320

#### Appearance of Attorneys; Pro Hac Vice

(1) To make legal arguments or sign legal documents in Commission proceedings, an attorney must be in good standing with the Oregon State Bar or appear pro hac vice.

**(2) A motion to appear pro hac vice before the Commission must contain the following:**

**(a) A certificate of compliance for pro hac vice admission, available on the Oregon State Bar website, which includes most of the Uniform Trial Court Rule (UTCRC) 3.170(1) requirements;**

**(b) A certificate of good standing from the bar association in the jurisdiction in which the attorney regularly practices; and**

**(c) If the attorney's appearance before the Commission constitutes the private practice of law under ORS 9.160 and related statutes, a certificate of insurance covering the attorney's activities in this state and providing professional liability insurance substantially equivalent to the Oregon State Bar Professional Liability Fund Plan.**

**(3) The applying attorney must associate with a member in good standing of the Oregon State Bar who must participate meaningfully in the matter. Applications must be made on a case-by-case basis. Each application is good for one attorney for a single case for one year. For cases continuing for over one year, an attorney appearing pro hac vice must file a new pro hac vice application to continue to participate in the case.**

**(4) A fee is not required. Additional guidance is provided by UTCRC 3.170, which can be found on the Oregon State Bar website.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 183.457, 756.040 & 756.500 – 756.575**

**Hist.: NEW**

**860-001-0330**

**Former Employees**

**(1) A former Commission employee may not appear on behalf of other parties in contested case or declaratory ruling proceedings in which the former employee took an active part on the Commission's behalf.**

**(2) Except with the Commission's written permission, a former Commission employee may not appear as a witness on behalf of other parties in contested case proceedings in which the former employee took an active part on the Commission's behalf.**

**(3) Except with the Commission's written permission, a former employee of a party may not appear as a witness on behalf of the Commission in contested case proceedings in which the person took an active part on the party's behalf. Prior to giving its written permission to the person, the Commission must notify the affected party and all other parties to the proceedings, and allow the affected party an opportunity to object to the Commission granting permission to the person. Other parties to the proceedings may respond to the affected party's objection, if any.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 183.457 – 183.458, 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-012-0010, NEW**

**860-001-0340**

**Ex Parte Communications**

**(1) Ex parte communications are discouraged and, if made, must be disclosed to ensure an open and impartial decision-making process.**

**(2) Except as provided in this rule, an ex parte communication is any oral or written communication that:**

**(a) Is made by a person directly to a Commissioner or presiding ALJ outside the presence of any or all parties of record in pending contested case or declaratory ruling proceedings;**

**(b) Is made without notice to or an opportunity for rebuttal by all parties; and**

**(c) Relates to the merits of an issue in the proceedings.**

**(3) For purposes of this rule, a contested case or declaratory ruling proceeding is pending when the Commission or ALJ issues the first scheduling notice.**

**(4) A person who has an ex parte communication must promptly notify the presiding ALJ that the communication occurred.**

**(5) Upon notice of or receipt of an ex parte communication, the presiding ALJ must promptly notify the parties of record of the communication and place the following in the record:**

**(a) The name of each person who made the communication and the person's relationship, if any, to a party in the case;**

**(b) The date and time of the communication;**

**(c) The circumstances under which the communication was made;**

**(d) A summary of the matters discussed;**

**(e) A copy of any written communication; and**

**(f) Other relevant information concerning the communication.**

**(6) The presiding ALJ may require the person responsible for the ex parte communication to provide the disclosure and notice of the communication required by this rule.**

**(7) Within 10 days of the service date of the notice, a party may file a written rebuttal of the facts or contentions contained in the ex parte communication, with service on the parties of record in the proceeding.**

**(8) The provisions of this rule do not apply to communications that:**

**(a) Address procedural issues, such as scheduling or status inquiries, or requests for information having no bearing on the merits of the case;**

**(b) Are made to a Commissioner or presiding ALJ by a member of Staff who is not a witness in the proceedings;**

**(c) Are made to a Commissioner or presiding ALJ by an Assistant Attorney General who is not representing Staff in the proceedings;**

**(d) Are made in rulemaking proceedings conducted under ORS 183.325 through 183.410; or**

**(e) The presiding ALJ determines are not subject to this rule, including communications from members of the public that are made part of the administrative file or communications that are the subject of *in camera* proceedings.**

**(9) To avoid inadvertent ex parte communications, a person planning to meet individually with a Commissioner or ALJ must indicate whether the discussion will relate to pending proceedings and, if so, which proceedings.**

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 183.417, 183.462, 756.040 & 756.500 – 756.575

Hist.: Formerly 860-012-0015, NEW

860-001-0350

Settlements

(1) In all Commission contested case proceedings, some or all of the parties may enter into a settlement of any or all issues at any time during the proceedings.

(2) A settlement discussion is any communication between two or more parties for the purpose of resolving issues pending in contested case proceedings. Examples of communications not constituting settlement discussions for purposes of this rule include communications primarily for the purpose of discovery and communications occurring before initiation of docketed proceedings.

(3) Without the written consent of all parties, any statement, admission, or offer of settlement made during settlement discussions is not admissible in any Commission proceedings, unless independently discoverable or offered for other purposes allowed under ORS 40.190.

(4) Parties may agree in writing that the information exchanged exclusively within the context of any settlement discussion is confidential.

(5) Subject to the signing of an applicable confidentiality agreement, all parties may attend a meeting in which Staff participates to discuss settlement. Staff must provide to all parties to the proceedings reasonable prior notice of any settlement meeting in which Staff intends to participate. The notice must include the time and place of the settlement meeting, the party or parties involved, and the issues to be discussed. Once Staff has given notice of a settlement meeting involving a particular issue, additional notice of continuing settlement meetings involving the same issue need only be provided to parties attending the initial meeting or parties who request continuing notice. Persons who are not associated with a party may not attend a settlement meeting without the consent of all participating parties.

(6) For purposes of ORS 192.502(4), the Commission obligates itself to protect from disclosure any document submitted in confidence during settlement discussions.

(7) Settlements must be memorialized in a written stipulation signed by the settling parties, served on the parties on the service list for the docket, and filed for review by the Commission. With the stipulation, the parties must file:

(a) An explanatory brief or written testimony in support of the stipulation, unless waived by the Commission or ALJ; and

(b) A motion to offer the stipulation and any testimony as evidence in the proceeding, together with witness affidavits in support of the testimony.

(8) Within 15 days of the filing of a stipulation, a party may file written objections to the stipulation or request a hearing. Upon request or its own motion, the Commission or ALJ may set another time period for objections and request for hearing. Objections may be on the merits or based upon failure of Staff or a party to comply with this rule. The Commission or ALJ may hold a hearing to receive testimony and evidence regarding the stipulation. The Commission or ALJ may require evidence of any facts

stipulated. The parties must be afforded notice and an opportunity to submit proof if such evidence is requested.

(9) A stipulation is not binding on the Commission. The Commission may adopt or reject a stipulation, or propose that a stipulation be modified prior to approval. If the Commission proposes to modify a stipulation, the Commission must explain its decision and, if necessary, provide the parties sufficient opportunity on the record to present evidence and argument to support the stipulation. No further hearing need be held when a review hearing has already been held under section (8) of this rule and the Commission or ALJ determines that the issues were fully addressed in the prior hearing.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 183.417, 756.040 & 756.500 – 756.575

Hist.: Formerly 860-014-0085, NEW

### Pleadings and Motions

#### 860-001-0400

##### Pleadings Requirements

(1) All pleadings must be signed by the person filing the pleading or an authorized representative. By signing a pleading, the signatory makes the certification in ORCP 17C. For electronic filings, a person may use any identifier that is adopted by the person with the intent to authenticate a document (for example, “/s/John Doe”).

(2) Applications, petitions, complaints, and other initiating pleadings must include:

(a) The filer’s name and contact information, including telephone number, physical address, and electronic mail address;

(b) The name and contact information, including telephone number, physical address, and electronic mail address of any other party named in the filing;

(c) A clear and concise statement of the authorization, action, or relief sought;

(d) Appropriate references to the statutory provision or other authority under which the filing is made; and

(e) Other information as required by the Commission’s rules.

(3) Answers, protests, and other responsive pleadings must be in writing and must include:

(a) The filer’s name and address;

(b) The identification of the initiating pleading to which the response is made, including the docket number if one had been assigned; and

(c) A specific response to the pleading including, if necessary, an answer to material allegations and affirmative defenses.

(4) Unless otherwise directed by the Commission or ALJ, responses must be filed within the following timeframes:

(a) An answer to a complaint, application, or petition must be filed within 20 days after the pleading is served.

(b) An answer to a consumer complaint under OAR 860-021-0015 must be filed within 15 days after the Commission serves the complaint.

**(c) An answer to a petition to intervene must be filed within 10 days after service of the petition.**

**(d) An answer to a complaint under OAR 860-029-0100 must be filed within 10 days after the Commission serves the complaint.**

**(e) An answer to any other type of pleading must be filed within 15 days after the pleading is served.**

**(5) A reply to a responsive pleading is not permitted unless otherwise allowed by the Commission or ALJ.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-013-0010 – 860-013-0030, NEW**

### **860-001-0410**

#### **Default upon Failure to Answer Complaint**

**(1) If a party fails to answer a complaint or otherwise appear within the time periods specified in OAR 860-001-0400, then the party is deemed in default. All material allegations of the complaint are deemed admitted, and the hearing is waived. The proceedings may be disposed of without further notice to the defaulting party.**

**(2) A defaulting party may file an application for reconsideration of a Commission order of default under OAR 860-001-0720. The Commission may grant the application for reconsideration if the moving party shows the default resulted from mistake, inadvertence, surprise, excusable neglect, or other good cause.**

**(3) An application made under this rule must be accompanied by a pleading or motion that contains an assertion of a claim or a defense.**

**(4) The filing of an application under this rule does not excuse the defaulted party from complying with the order and the enforcement of the order is neither stayed nor postponed except upon Commission order.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-013-0055, NEW**

### **860-001-0420**

#### **Motions, Responses, and Replies**

**(1) A motion is a request to the Commission or ALJ for a ruling or other action. A motion must be made in writing unless otherwise allowed by the Commission or ALJ.**

**(2) For purposes of these rules, “substantive motions” address the rights or duties of a party or seek summary determination of any or all issues in the proceedings. Substantive motions include a motion to dismiss. “Procedural motions” address the means by which the Commission regulates its proceedings; for example, a motion to modify a schedule.**

**(3) Before filing a procedural motion, the moving party must make a good faith effort to confer with other parties to seek agreement about the subject of the motion. A procedural motion must describe the effort to confer and the result of the effort.**

**(4) A motion against an initiating or responsive pleading under OAR 860-001-0400 must be filed within 10 days after the pleading is served.**

**(5) A party may file a response to a motion. A response to a substantive motion must be filed within 15 days of service of the motion. A response to a procedural motion must be filed within 7 days of service of the motion.**

**(6) The moving party may file a reply to a response to a substantive motion within 7 days of service of the response. The moving party is not permitted to file a reply to a response to a procedural motion unless permitted by the ALJ.**

**(7) If expedited consideration of a motion is requested, the moving party must:**

**(a) Certify that the moving party has attempted to contact the other parties to the proceedings to discuss the motion and state whether the parties support the motion;**

**(b) Identify the request for expedited consideration in the document caption; and**

**(c) Include a request to shorten the time for responses and, if applicable, replies.**

**(8) Unless granted by the ALJ, a request for an extension or other related motion does not stay a pending due date.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-013-0031 – 860-013-0035, NEW**

#### **860-001-0430**

##### **Petition for Declaratory Ruling**

**(1) A petition for a declaratory ruling under ORS 756.450 must contain:**

**(a) The rule or statute that may apply to the person, property, or facts;**

**(b) A detailed statement of the relevant or assumed facts, including sufficient facts to show petitioner's interest;**

**(c) All propositions of law or arguments asserted by petitioner;**

**(d) The questions presented;**

**(e) The specific relief requested; and**

**(f) The name and contact information, including telephone number, physical address, and electronic mail address of petitioner and of any other person known by petitioner to have legal rights, duties, or privileges that will be affected by the request.**

**(2) Within 60 days after the petition is properly filed, the Commission must determine whether it will substantively consider the request. The Commission will make the decision at a public meeting and allow public comment on whether it should substantively consider the request. The Commission will notify the petitioner of its decision in writing. If the Commission decides to substantively consider the request for a declaratory ruling, then it will refer the matter to the Administrative Hearings Division to initiate proceedings.**

**(3) A person may petition to intervene as a party under OAR 860-001-0300(4).**

**(4) No testimony or other evidence may be submitted. The petition for declaratory ruling will be decided on the facts stated in the petition, except that the presiding ALJ may agree to accept a statement of alternative facts or alternative questions for the Commission's consideration.**

**(5) All parties will have the right to file briefs to present legal argument. Parties may request the opportunity to also present oral argument.**

**Stat. Auth.: ORS 756.040 & 756.060**  
**Stat. Implemented: ORS 756.040 & 756.450**  
**Hist.: NEW**

**Evidence**

**860-001-0450**

**Evidence**

- (1) Relevant evidence:**
- (a) Means evidence tending to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence;**
  - (b) Is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and**
  - (c) May be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay.**
- (2) A party objecting to the introduction of evidence must state the grounds for the objection at the time the evidence is offered.**
- (3) When an objection is made to the admissibility of evidence, the Commission or ALJ may have the evidence presented and reserve ruling until a later time.**
- (4) When a party takes exception to a ruling excluding certain evidence, the Commission or ALJ may require that the party make an offer of proof by stating what the evidence would indicate if received. Alternatively, the Commission or ALJ may permit the excluded evidence to be received like other evidence, but it must be marked and designated as evidence offered, excluded, and to which exception has been taken.**

**Stat. Auth.: ORS 756.040 & 756.060**  
**Stat. Implemented: ORS 183.450, 756.040 & 756.500 – 756.575**  
**Hist.: Formerly 860-014-0045, NEW**

**860-001-0460**

**Official Notice**

- (1) The Commission or ALJ may take official notice of the following:**
- (a) All matters of which the courts of the State of Oregon take judicial notice;**
  - (b) Rules, regulations, administrative rulings, and reports of the Commission and other governmental agencies;**
  - (c) Permits, certificates, and licenses issued by the Commission;**
  - (d) Documents and records in the files of the Commission that have been made a part of the files in the regular course of performing the Commission's duties;**
  - (e) General, technical, or scientific facts within the specialized knowledge of the agency;**
  - (f) The results of the Commission's or ALJ's inspection of property at issue in the proceedings if advance notice of the inspection was provided to the parties.**
- (2) The Commission or the ALJ must notify the parties when official notice is taken. The notice may be given on the record during the hearing, in an ALJ ruling, or in a Commission order. A party may object to the fact noticed within 15 days of the hearing**

**during which notice was given, the ALJ ruling, or the Commission order. The objecting party may explain or rebut the noticed fact.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 183.450, 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0050, NEW**

**860-001-0470**

**Resolutions**

**(1) Properly authenticated resolutions of governing bodies of government, business, agricultural, or civic organizations may be received in evidence if offered at the hearing by the president, secretary, or other person authorized to offer the resolution.**

**(2) Parties may rebut the authenticity of the resolution or the circumstances surrounding its adoption.**

**(3) Recitals of fact contained in resolutions are not proof of the facts. The Commission or ALJ may receive a resolution for the limited purpose of showing the official action of the resolving body to the extent relevant in the proceedings.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0055, NEW**

**860-001-0480**

**Testimony and Exhibits**

**(1) Unless otherwise directed by the ALJ, all written testimony and exhibits must be paginated in the top right corner as follows:**

**Party Name/Exhibit Number**

**Witness Last Name/Page Number**

**(2) Each party must consecutively number its written testimony and exhibits, beginning with 100. Within each round of testimony, each witness or witnesses testifying jointly must be designated with a separate numbering series. For example, Mr. Smith, Staff's first witness in the first round of testimony, would be assigned Staff/100. Ms. Jones, Staff's second witness in first round, would be assigned Staff/200. Mr. Smith's second round of testimony would be assigned Staff/300. Each attachment must be marked as a separate exhibit. For example, the first attachment to Staff/100 would be marked as Staff/101. A separate numbering series must also be used to identify all exhibits marked at hearing.**

**(3) Each page of a multipage exhibit must be marked with a page number. Pages within each exhibit must be marked consecutively, beginning with page 1.**

**(4) The ALJ may waive the requirement of marking each page of voluminous photocopied documents.**

**(5) At the time of filing testimony and exhibits, the filing party must simultaneously serve a copy of all work papers to Staff, the utility named in the initiating pleading, and all other parties that have asked to receive a copy. As used in this rule, work papers consist of documents that show the source, calculations, and details supporting the**

**testimony and other exhibits submitted. Parties must provide electronic copies of work papers if available.**

**(6) Within the time specified by the ALJ, each party must file a list, in numerical order, of the written testimony and exhibits the party offered during the proceedings. The list must specify the document, witness, number of pages, and whether the exhibit was received into evidence.**

**(7) When testimony or exhibits are offered in evidence at a hearing and were not previously filed, the offering party must give copies to each party, the Commission, and the ALJ. When practicable, the parties must distribute copies of exhibits before or at the beginning of the hearing.**

**(8) When relevant evidence offered by a party is included in a book, paper, or document containing irrelevant material, the party offering the exhibit must plainly designate the relevant material offered:**

**(a) If irrelevant material is included in the exhibit and would encumber the record, then the exhibit may be excluded. The exhibit may be marked for identification and the relevant material may be read into the record if properly authenticated.**

**(b) If the Commission or ALJ directs, a copy of the relevant portions of the exhibit may be received as evidence. The offering party must offer copies of the document to all other parties appearing at the hearing. The parties must be afforded an opportunity to examine the exhibit and to offer in evidence other relevant portions of the exhibit.**

**(9) Papers and documents on file with the Commission may be introduced by reference to number, date, or by any other method of identification satisfactory to the Commission or ALJ.**

**(10) The Commission or ALJ may direct that the testimony of a witness, including supporting exhibits, be submitted in writing prior to hearing. Unless otherwise directed by the Commission or ALJ, written testimony, when sworn to orally or in writing by the witness under oath to be true, will be received in the same manner as an exhibit. The written testimony must be double-spaced, prepared in question and answer or narrative form, and contain a statement of the qualifications of the witness. The written testimony is subject to rules of admissibility and cross-examination.**

**(11) The Commission or ALJ may direct that demonstrative evidence be reduced to a diagram, map, photograph, or similar representation.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 183.450, 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0060, NEW**

**860-001-0490**

**Records in Other Proceedings**

**If a party offers in evidence all or part of the record from another Commission proceeding, then the party must provide a copy of the offered record to the ALJ and copies to other parties upon request.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 183.450, 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0080, NEW**

## Discovery

### 860-001-0500

#### Discovery in Contested Case Proceedings

(1) Discovery must be commensurate with the needs of the case, the resources available to the parties, and the importance of the issues to which the discovery relates.

(2) Discovery that is unreasonably cumulative, duplicative, burdensome, or overly broad is not allowed. Instructions and definitions included in discovery requests must be consistent with these rules and ORS Chapters 756, 757, and 759.

(3) Privileged material is not discoverable except as provided under the Oregon Rules of Evidence.

(4) A party will not be required to develop information or prepare a study for another party, unless the capability to prepare the study is possessed uniquely by the party from whom discovery is sought, the discovery request is not unduly burdensome, and the information sought has a high degree of relevance to the issues in the proceedings.

(5) Parties must make every effort to engage in cooperative informal discovery and to resolve disputes themselves. If a party receives a data request that is likely to lead to a discovery dispute, then that party must inform the requesting party of the dispute as soon as practicable and attempt to resolve it informally.

(6) If parties are unable to resolve a dispute informally, then any of the parties involved in the dispute may request that the ALJ conduct a conference to facilitate the resolution of discovery disputes. A requesting party must identify the specific discovery sought and describe the efforts of the parties to resolve the dispute informally.

(7) A party may file a motion to compel discovery. The motion must contain a certification that the parties have conferred and been unable to resolve the dispute. A party filing a motion to compel will be allowed the opportunity to file a reply to the response to the motion.

(8) A party may by motion, or the ALJ may on the ALJ's own motion, propose that sanctions be imposed if a party fails or refuses to comply with an oral or written order resolving a discovery dispute. The ALJ may impose sanctions including: default; dismissal; or striking of testimony, evidence, or cross-examination.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 183.425, 183.450, 756.040 & 756.500 – 756.575

Hist.: NEW

### 860-001-0510

#### Subpoenas

(1) A subpoena may be issued by an attorney of record for a party and subscribed by the signature of the attorney.

(2) Parties not represented by an attorney may request the issuance of a subpoena by the ALJ. The request must be in writing and identify the general relevance and reasonable scope of the testimonial, documentary, or physical evidence sought.

**(3) Requests for subpoenas duces tecum must specify a particular document or part of a document to be produced.**

**(4) Parties must serve subpoenas as provided in the circuit courts of the State of Oregon under the ORCP.**

**Stat. Auth.:ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.543**

**Hist.: Formerly 860-014-0040, NEW**

**860-001-0520**

**Depositions**

**(1) The testimony of a witness may be taken by deposition at any time before the record in a docket is closed.**

**(2) A party proposing to take a deposition must notify all other parties in writing. Unless notice is waived, a party must provide 10 days' notice to the parties of a deposition to be taken within the state and 15 days' notice for a deposition to be taken out of state. The notice must state the witness's name and address, the subject matter of the deposition, the time and place for taking the deposition, the method by which the deposition will be recorded, any materials to be produced at the deposition, and the reason for the deposition.**

**(3) Deposition testimony must be taken under oath before a court reporter and must be transcribed or recorded. The court reporter must certify that the witness was sworn in the court reporter's presence and that the transcript is a true record of the testimony or a correct transcription of a recording.**

**(4) A party may examine a deponent on any matter not privileged that appears reasonably calculated to lead to the discovery of relevant evidence.**

**(5) Unless received in evidence by the Commission or ALJ, no portion of a deposition is a part of the record in the docket. A party may object to receiving in evidence any portion of a deposition. Upon request, the deposing party must provide the Commission or ALJ a transcribed copy of the deposition.**

**(6) The deposing party must pay the deponent and the court reporter the same fees as are paid for like services in the courts of the state where the deposition is taken.**

**(7) A party may request that an ALJ attend a deposition to address any objections. A party may also request that an ALJ put appropriate conditions or limitations on a deposition.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 183.450, 756.040 & 756.538**

**Hist.: Formerly 860-014-0065, NEW**

**860-001-0530**

**Admissions**

**A party may serve a request for admission on any other party under ORCP 45. Responses to each request must be served within 7 days of receipt. Requests not denied within 7 days are deemed admitted.**

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORCP 45, ORS 756.040 & 756.500 – 756.575

Hist.: NEW

860-001-0540

Data Requests

(1) A party may submit data requests to any other party, subject to the discovery rules in the ORCP. Data requests are written interrogatories or requests for production of documents. Data requests must be answered within 14 days from the date of service. Each data request must be answered fully and separately in writing or by production of documents, or objected to in writing.

(2) A party submitting a data request must serve the request on all parties to the proceedings. If the request contains confidential information, then the submitting party must serve a complete copy on all parties eligible to receive confidential information under the terms of a protective order and a redacted copy to all other parties.

(3) The party answering the data request must provide a response to the submitting party and all other parties that filed a written request for a copy of the response. A party must agree to be bound by the applicable protective order to be eligible to receive a response containing confidential information.

(4) A party may offer into evidence data requests and the answers to the data requests. Any objection to substance or form of a data request or answer must be attached to the submitted data request or answer with specific reference and grounds. Every remedy available to a party using deposition procedures is available to a party using data requests.

(5) Except when requested by the Commission or ALJ, or when seeking resolution of a discovery dispute under these rules, data requests are not filed with the Commission's Filing Center or provided to the ALJ.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: Formerly 860-014-0070, NEW

Hearings, Meetings, and Conferences

860-001-0550

Joint Hearings with other Entities

(1) In proceedings in which the Commission participates jointly with a federal regulatory agency, the federal agency's rules of practice and procedure govern.

(2) In proceedings in which the Commission participates jointly with an administrative body of another state, the rules of procedure of the state where the hearing is held govern. Any person entitled to appear in a representative capacity before any of the agencies involved in the joint hearing may appear in the joint hearing.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 756.040

Hist.: Formerly 860-012-0020, NEW

**860-001-0560**

**Public Meetings**

**Except in cases of emergency, all Commissioners are required to participate in a decision of the Commission at a public meeting that proposes a major rate change for an electric or natural gas utility under ORS 757.205. For purposes of this rule, a major rate change is an increase of two percent or more for any customer class.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 192.610 et seq., 756.040**

**Hist.: Formerly 860-012-0040, NEW**

**860-001-0570**

**Notice of Contested Case Hearing**

**The Commission or ALJ sets the time and place for contested case hearings. Notice of a hearing must be served on all parties at least 10 days before the hearing date. For good cause, the Commission may hold a hearing on less than 10 days' notice.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 183.413, 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0005, NEW**

**860-001-0580**

**Postponements and Continuances of Hearings**

**(1) A party may request a postponement of a hearing. The party must provide the reason why postponement is necessary. The Commission or ALJ may require oral requests for postponement of a hearing to be made in writing.**

**(2) The Commission or ALJ may postpone a hearing for good cause shown or on the Commission's or the ALJ's own motion.**

**(3) The Commission or ALJ may continue a hearing to receive additional evidence or argument. Additional notice of a continued hearing involving the same issue need only be provided to parties attending the initial hearing and other parties who have requested continuing notice.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0010, NEW**

**860-001-0590**

**Conferences**

**(1) The ALJ may schedule conferences to facilitate the resolution of contested case and declaratory ruling proceedings.**

**(2) The purposes of a conference may include:**

**(a) Establishing a procedural schedule, including dates for discovery, testimony, and exhibits;**

**(b) Identifying, simplifying, and clarifying issues;**

- (c) Eliminating irrelevant or immaterial issues;
  - (d) Facilitating discovery and resolving disagreements about discovery;
  - (e) Obtaining stipulations, authenticating documents, admitting documents into evidence, adopting witness and cross-examination schedules, and deciding the order of presentation and other procedural matters;
  - (f) Considering other matters that may expedite the orderly conduct and disposition of the proceedings; and
  - (g) Discussing settlement or other resolution or partial resolution of the proceedings.
- (3) The record must reflect the results of the conference, and the decisions made at the conference are binding on all parties.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: Formerly 860-014-0020, NEW

860-001-0600

Consolidation of Proceedings

Proceedings may be consolidated for hearing at the discretion of the Commission or ALJ.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: Formerly 860-014-0025, NEW

860-001-0610

Failure to Appear

(1) If a party fails to appear at a conference or hearing, then that party waives its right to participate in the conference or hearing.

(2) Unless allowed by the Commission or ALJ, the party that failed to appear may not reopen any matter decided at the conference or hearing, or recall for further examination witnesses available at the hearing and excused.

(3) Upon motion by any party or upon the Commission's own motion, the Commission may enter an order dismissing a party that failed to appear at a hearing from the entire proceedings. The order must be served on the party dismissed. If the Commission or ALJ finds there was good cause for the party's failure to appear or the interests of other parties or the public would be prejudiced, then the Commission or ALJ may reinstate the party.

Stat. Auth.: ORS 756.040 & 756.060

Stat. Implemented: ORS 756.040 & 756.500 – 756.575

Hist.: Formerly 860-014-0032, NEW

**Legal Argument and Major Proceedings**

**860-001-0650**

**Legal Argument**

**Parties may request the opportunity to file briefs in any proceedings. The Commission or ALJ may require a party to file a brief, or to present oral arguments instead of or in addition to briefs.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0090, NEW**

**860-001-0660**

**Major Proceedings**

**(1) For purposes of ORS 756.518(2), a “major proceeding” is a proceeding that has or is expected to have a full procedural schedule with written testimony or written comments and:**

**(a) Has a substantial impact on utility rates or service quality for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines; or**

**(b) Has a significant impact on utility customers or the operations of a regulated utility for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines.**

**(2) A party in a proceeding that does not meet the criteria in section (1) of this rule may petition the ALJ for major proceeding status if the case:**

**(a) Is likely to result in a significant change in regulatory policy; or**

**(b) Raises novel questions of fact or law.**

**(3) When a docket is opened, a party may file a motion with the ALJ requesting that the case be classified as a major proceeding.**

**(a) The motion must:**

**(A) Specify how the case qualifies as a major proceeding under the criteria listed in section (1) of this rule; or**

**(B) Argue how the case qualifies as a major proceeding under section (2) of this rule.**

**(b) Responses to the motion are due within 7 days of filing.**

**(4) If a case is classified as a major proceeding, the Commission must afford the parties an opportunity to present oral argument to a quorum of Commissioners before a final order is issued. A party must make a request for oral argument at the prehearing conference or as soon thereafter as possible.**

**(5) The ALJ will determine the length of each party’s oral argument to the Commission, the right of any party to rebuttal of other parties’ oral arguments, and the order of presentation.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0023, NEW**

**Compliance with and Reconsideration of Orders**

**860-001-0700**

**Extension or Postponement of Date to Comply with Rules and Orders**

**(1) Within 60 days of the date of service of a Commission order, any party may file a petition for extension or postponement of an effective date or of time to comply with the order.**

**(2) The petition must specify reasons for the requested extension or postponement.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0093, NEW**

**860-001-0710**

**Notice of Acceptance of Terms of Orders**

**The Commission may require any utility or person affected by any order to notify the Commission within a specified time whether the terms of the order are accepted and the time within which the utility or person will comply with the order.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0094, NEW**

**860-001-0720**

**Rehearing or Reconsideration**

**(1) Within 60 days from the date of service of an order entered by the Commission, a party may file an application for rehearing or reconsideration of the order as provided by ORS 756.561. The application must identify all grounds for rehearing or reconsideration.**

**(2) The application must specify:**

**(a) The portion of the challenged order that the applicant contends is erroneous or incomplete;**

**(b) The portion of the record, laws, rules, or policy relied upon to support the application;**

**(c) The change in the order that the Commission is requested to make;**

**(d) How the applicant's requested change in the order will alter the outcome; and**

**(e) One or more of the grounds for rehearing or reconsideration in section (3) of this rule.**

**(3) The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:**

**(a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;**

**(b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;**

**(c) An error of law or fact in the order that is essential to the decision; or**

**(d) Good cause for further examination of an issue essential to the decision.**

**(4) Within 15 days from the date the application is filed, any party may file a response to the application. Replies to a response are not permitted unless requested by the ALJ.**

**(5) Unless ordered by the Commission under OAR 860-001-0700, compliance with the original order is not stayed or postponed by an order granting an application for rehearing or reconsideration.**

**(6) The application is deemed denied if the Commission has not issued an order granting the application by the 60th day after filing. If the application is granted, the Commission may affirm, modify, or rescind its prior order or take other appropriate action.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040 & 756.500 – 756.575**

**Hist.: Formerly 860-014-0095, NEW**

**860-022-0019**

**General Rate Revisions**

**(1) Any utility filing new or revised tariff schedules that constitute a general rate revision must include supporting testimony and exhibits, work papers, and an executive summary. A general rate revision is a filing by a utility that affects all or most of the utility's rate schedules. The term "general rate revision" does not include the exclusions in OAR 860-022-0017(1). The executive summary must contain an exhibit showing in summary form the following information:**

**(a) The dollar amount of total revenues that would be collected under the proposed rates;**

**(b) The dollar amount of revenue change requested, total revenues, and revenues net of any credits from federal agencies;**

**(c) The percentage change in revenues requested, total revenues, and revenues net of any credits from federal agencies;**

**(d) The test period;**

**(e) The requested return on capital and return on equity;**

**(f) The rate base proposed in the filing;**

**(g) The results of operations before and after the proposed rate change;**

**(h) The proposed effect of the rate change on each class of customers; and**

**(i) All information required by the most recent version of the Utility Staff General Rate Case Data Request Form A, available at <http://www.puc.state.or.us>.**

**(2) Telecommunications utilities partially exempt from regulation under ORS 759.040 must file tariffs as specified in OAR 860-034-0300.**

**Stat. Auth.: ORS 756.040 & 756.060**

**Stat. Implemented: ORS 756.040, 757.205 and 759.175**

**Hist.: Formerly 860-013-0075, NEW**

## **GENERAL**

860-001-0000 (Former 860-011-0000): Applicability and Waiver of Rules  
860-001-0010 (Former 860-011-0035): Definitions  
860-001-0020 (Former 860-011-0010 & OPUC website): Location, Contact Information, Hours  
860-001-0030 (Former 860-011-0001): Notice of Commission Proceedings  
860-001-0040 (Former 860-011-0100): Commission Publications  
860-001-0050 (Former 860-011-0110): Late Fees and Penalties  
860-001-0060 (Former 860-011-0090): Public Records Requests  
860-001-0070 (Former 860-011-0080): Confidential Information  
860-001-0080 (OPUC website): Protective Orders

## **ADMINISTRATIVE LAW JUDGE**

860-001-0090 (Former 860-012-0035): Delegation of Authority to Administrative Law Judge  
860-001-0100 (Former 860-012-0035): Impartiality  
860-001-0110 (Former 860-014-0091): Appeal to the Commission for Ruling of Administrative Law Judge

## **FUNDING**

860-001-0120 (Former 860-012-0100): Grant Eligibility (Precertification and Case Certification)  
860-001-0130 (Former 860-012-0190): Termination of Eligibility, Decertification

## **FILING REQUIREMENTS**

860-001-0140 (Former 860-011-0011): General  
860-001-0150 (Former 860-013-0037): Filing Dates  
860-001-0160: Filing Requirements in Rulemaking Proceedings  
860-001-0170 (Former 860-012-0036, 860-013-0060 & 860-013-0065): Filing Requirements in Contested Case and Declaratory Ruling Proceedings  
860-001-0180 (Former 860-013-0070): Service in Contested Case and Declaratory Ruling Proceedings

## **RULEMAKING PROCEEDINGS**

860-001-0200: Public Participation  
860-001-0210: Permanent Rulemaking Notice  
860-001-0220: Conduct of Rulemaking Hearing  
860-001-0230: Rulemaking Record  
860-001-0240: Rulemaking Action  
860-001-0250: Petition to Promulgate, Amend, or Repeal Rule  
860-001-0260: Temporary Rulemaking

## **CONTESTED CASE AND DECLARATORY RULING PROCEEDINGS**

### **PRACTICE BEFORE THE COMMISSION**

- 860-001-0300 (Former 860-012-0001): Participation in Contested Case and Declaratory Ruling Proceedings; Intervention
- 860-001-0310 (Former 860-012-0005 & 860-012-0007): Representation and Ethical Conduct
- 860-001-0320 (OPUC website): Appearance of Attorneys, Pro Hac Vice
- 860-001-0330 (Former 860-012-0010): Former Employees
- 860-001-0340 (Former 860-012-0015): Ex Parte Communications
- 860-001-0350 (Former 860-014-0085): Settlements

### **PLEADINGS AND MOTIONS**

- 860-001-0400 (Former 860-013-0010 –860-013-0030): Pleadings Requirements
- 860-001-0410 (Former 860-013-0055): Default upon Failure to Answer Complaint
- 860-001-0420 (Former 860-013-0031 – 860-013-0035): Motions, Responses, and Replies
- 860-001-0430: Petition for Declaratory Ruling

### **EVIDENCE**

- 860-001-0450 (Former 860-014-0045): Evidence
- 860-001-0460 (Former 860-014-0050): Official Notice
- 860-001-0470 (Former 860-014-0055): Resolutions
- 860-001-0480 (Former 860-014-0060, OPUC website): Testimony and Exhibits
- 860-001-0490 (Former 860-014-0080): Records in Other Proceedings

### **DISCOVERY**

- 860-001-0500: Discovery in Contested Case Proceedings
- 860-001-0510(Former 860-014-0040): Subpoenas
- 860-001-0520 (Former 860-014-0065): Depositions
- 860-001-0530 (OPUC website): Admissions
- 860-001-0540 (Former 860-014-0070): Data Requests

### **HEARINGS, MEETINGS, AND CONFERENCES**

- 860-001-0550 (Former 860-012-0020): Joint Hearings with other Entities
- 860-001-0560 (Former 860-012-0040): Public Meetings
- 860-001-0570 (Former 860-014-0005): Notice of Contested Case Hearing
- 860-001-0580 (Former 860-014-0010): Postponements and Continuances of Hearings
- 860-001-0590 (Former 860-014-0020): Conferences
- 860-001-0600 (Former 860-014-0025): Consolidation of Proceedings
- 860-001-0610 (Former 860-014-0032): Failure to Appear

**LEGAL ARGUMENT AND MAJOR PROCEEDINGS**

860-001-0650 (Former 860-014-0090): Legal Argument  
860-001-0660 (Former 860-014-0023): Major Proceedings

**COMPLIANCE WITH AND RECONSIDERATION OF ORDERS**

860-001-0700 (Former 860-014-0093): Extension or Postponement of Date to Comply with  
Rules and Orders  
860-001-0710 (Former 860-014-0094): Notice of Acceptance of Terms of Orders  
860-001-0720 (Former 860-014-0095): Rehearing or Reconsideration

**GENERAL RATE FILINGS**

860-022-0019 (Former 860-013-0075): General Rate Revisions