

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 554

In the Matter of a Rulemaking to Update  
Waiver Provisions in the Commission's  
Administrative Rules.

ORDER

DISPOSITION: RULES AND RULE AMENDMENTS ADOPTED

In this rulemaking, we proposed to add express authority to waive application of any of our rules for good cause. On July 15, 2011, we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. Notice also was provided to certain legislators specified in ORS 183.335(1)(d) and to all interested persons on the service lists maintained pursuant to OAR 860-001-0030 on July 20, 2011. The Secretary of State published notice of an August 19, 2011 rulemaking hearing in the August 2011 *Oregon Bulletin*.

**I. INTRODUCTION**

Of the 24 divisions of our administrative rules, only half contain a general waiver provision allowing this Commission to waive any rule for good cause. Various rules within the other divisions contain specific waiver provisions, but the Commission currently lacks the general authority to waive any of these rules in these 12 other divisions, even under circumstances where waiver of the rule would be in the public interest.

We initiated this rulemaking to add general waiver provisions to those divisions without such a waiver provision—Divisions 16, 22-30, and 32.<sup>1</sup> Further, we proposed to use the same consistent waiver language in the general waiver provisions found in Divisions 1, 21, 34-39, and 82-84. Each of these rule divisions would contain the following statement:

Upon request or its own motion, the Commission may waive any of the Division [XX] rules for good cause shown. A request for waiver must be in writing, unless otherwise allowed by the Commission.

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<sup>1</sup> We do not propose to add a general waiver to Division 011, which contains only one rule relating to personal services contracts.

## II. SUMMARY OF COMMENTS

TracFone Wireless, Inc. (TracFone) and Avista Corporation (Avista) unconditionally support adoption of waiver provisions for all Commission rules. TracFone notes that this rulemaking was initiated, at least in part, in response to a stipulation filed in docket UM 1437 to consider TracFone's application for designation as an Eligible Telecommunications Carrier (ETC). TracFone explains that, during the course of that proceeding, the parties discovered that all of the Commission's rules relating to ETC designation were not necessarily applicable to every carrier due to differing technologies and business models. For that reason, the parties to the stipulation recommended the Commission waive application of certain rule provisions in light of the manner in which TracFone operates. Because some of the rules at issue did not contain a waiver provision, the Commission decided to amend its rules before considering whether to approve the stipulation.

TracFone believes that the Commission should have the flexibility to consider and grant waivers of its rules under appropriate circumstances in order to address technological advances and other unique circumstances in a given case. TracFone adds that, based on its experience in other state and federal administrative proceedings, administrative agencies generally have the authority to waive application of their rules.

Avista agrees that the proposed rules are necessary and fair and that the Commission should have the authority to waive application of its rules under certain circumstances. Avista adds that making the rules consistent throughout all divisions would be beneficial to all stakeholders.

The Citizens' Utility Board of Oregon (CUB) agrees that the Commission should have authority to waive its rules, but asks that the Commission specifically articulate that to grant a waiver for good cause, it must find that the waiver is in the public interest. CUB explains that a variance "for good cause shown" establishes a real standard for waiver. Thus, CUB states that, when a party seeks waiver for good cause, it is incumbent on that party to establish a sufficient reason for waiving the rule and to prove that waiver of the rule would be in the public interest. The Commission must then determine that the waiver is consistent with the public interest. With this understanding, CUB fully supports the Commission's proposed changes.

Idaho Power Company (Idaho Power) opposes the rulemaking, which it believes is unnecessary, overbroad, and will result in harm. First, Idaho Power contends the current rules provide utilities and customers with a necessary level of certainty that will be lost if the Commission adopts broad waiver provisions. Idaho Power adds that this loss of certainty is particularly problematic in the context of utility regulation, which requires a measure of predictability to Commission decisions to enable the utility to operate and plan effectively.

Second, Idaho Power contends the proposed rules are unnecessary given the Commission's existing authority to adopt specific waivers or to modify its rules. Idaho

Power notes that the Commission has, on numerous occasions, adopted specific waiver provisions for specific rules or divisions when appropriate. According to Idaho Power, these selective waivers more appropriately allow the Commission to determine on a rule-by-rule basis whether the agency should be authorized to waive a specific provision. Moreover, Idaho Power adds if a rule is outdated or in need of revision, the Commission can promulgate temporary rules under ORS 183.335(5), or initiate permanent rulemaking under ORS 183.325, et seq.

Third, Idaho Power asserts that the majority of the Commission's rules are not impacted by "rapidly changing environments and technologies"—the reason for the rulemaking cited in the notice filed with the Secretary of State. Idaho Power contends that the proposed rules are, therefore, overbroad and result in a greater impact than is necessary to resolve the problem specifically identified in the Notice of Proposed Rulemaking Hearing.

If the Commission decides to adopt the waiver provisions, Idaho Power contends that the provisions should require a greater showing than "good cause." Because waiver should occur rarely and only in extraordinary cases, Idaho Power proposes a revision to the proposed rules to allow waiver only upon a showing that application of the rule would result in "manifest injustice."

PacifiCorp, dba Pacific Power, and Portland General Electric Company (PGE) generally support the intent of the proposed rules but share some of the concerns raised by Idaho Power. They suggest the Commission adopt the general waiver provision for Division 33 to address the TracFone proceeding, but delay action on other rule divisions to further examine the circumstances where other general rule waivers may be appropriate.

The Utility Reform Project (URP) opposes adoption of the general waiver provisions. URP claims that the waivers will allow "*ad hoc* exceptions to any substantive rule the OPUC has adopted, with no apparent notice to potentially interested persons or entities." URP contends that creating a new system of private rulemaking and allowing waivers under the vague standard of "good cause shown" is tantamount to having no rules. URP concludes that the Commission has no authority to exempt itself from fundamental rulemaking requirements.

URP also makes various challenges to the sufficiency of the notice of proposed rulemaking hearing and fiscal impact statement filed with the Secretary of State. First, URP contends the Commission's citation to legal authority to support the rules—"ORS Ch. 183, 756, 757, 759, Ch. 290 OL 1987 & 469A.065"—is defective because it is not specific enough to determine which laws the Commission is relying upon for authority. Second, URP challenges the sufficiency of the statement of fiscal impact on small businesses. URP contends the statement addresses only the impact on small businesses that request waivers, and fails to address the impact on small businesses that rely on the rules as written and are not aware of whether their competitors have been granted private waivers. Third, URP contends that the statement of cost compliance is unlawfully vague because the Commission did not even attempt to estimate the number

of small businesses and types of businesses and industries subject to the rule. Finally, URP contends that the notice of proposed rulemaking failed to include a statement of fiscal impact on state agencies, units of local government, or the public.

### III. RESOLUTION

At the outset, we clarify our rulemaking authority. ORS 756.060 expressly grants the Commission broad rulemaking authority to:

adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission and may adopt and publish reasonable and proper rules to govern proceedings and to regulate the mode and manner of all investigations and hearings of public utilities, telecommunications utilities, and other parties before the Commission.

As this Commission has acknowledged in the past, once we promulgate a rule, we are bound by it. *See Harsh Investment Corp. v. State Housing Division*, 88 Or. App. 151, 157 (1987) (citing *Bronson v. Moonen*, 270 Or 469, 476-77 (1974)). This requirement does not, however, preclude the Commission from adopting provisions to waive our rules. Rather, it means that the Commission may forego enforcement of its own rules only if the rules provide that discretion. *See* 49 Op Atty Gen 284 (2001).

As stated above, most of our rule divisions do not contain general waiver provisions. We initiated this rulemaking to provide this Commission the authority to waive application of any of its rules upon a showing of good cause. Although the rulemaking was prompted by the TracFone proceeding addressed above, we sought to include general waivers in all our rule divisions “to more efficiently regulate utilities under conditions of rapidly changing environments and technologies and under extenuating circumstances.”<sup>2</sup>

The comments filed by CUB seeking further clarification of the good cause standard are well taken. We expressly clarify that a person seeking waiver of any rule under any generic waiver provision adopted here must establish a sufficient reason for the waiver, and that the Commission will only grant the request if waiver of the rule is in the public interest. We decline CUB’s request to clarify this standard in each rule amendment, finding that providing this clarification in this order adopting the rules will more efficiently serve the same purpose.

We are not persuaded by arguments that general waiver provisions are not necessary given our authority to adopt temporary rules or initiate permanent rulemaking proceedings. A waiver is not intended to modify a rule’s application on a prospective basis; rather, it seeks a variance from that rule to address unusual circumstances or those not anticipated when the rules were adopted. Moreover, a waiver is determined on a case-by-case basis, and is limited to those circumstances presented.

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<sup>2</sup> Notice of Proposed Rulemaking Hearing at 1 (July 15, 2011).

We similarly are not persuaded by arguments that we should continue to rely on specific waiver provisions for specified rules, or that we should adopt general waiver provisions only in those divisions subject to “rapidly changing environments and technologies.” Given the dynamic changes occurring in all regulated utility industries, we reject the notion that some of our rule divisions are immune from rapidly changing environments and technologies. Therefore, we decline the proposal by PGE and Pacific Power to conduct further workshops to discuss the appropriate scope of this rulemaking and adopt general waiver provisions in all divisions. This will provide us the needed ability to address the proper application of all of our rules in unusual circumstances.

We dismiss Idaho Power’s argument that the general waiver provisions will eliminate the degree of certainty required for utility regulation. The Commission’s statutory powers provide a “comprehensive and flexible regulatory scheme.” *Multnomah County v. Davis*, 35 Or App 521, 525 (1978). Due to the legislative nature of ratemaking, the Commission needs the flexibility to make appropriate adjustments to its regulatory policies and practices to properly balance the interests of utilities and their customers. Although we strive to provide ample guidelines to help provide regulatory certainty, we have always allowed exceptions to those guidelines when it has been in the public interest to do so. Many utilities, including Idaho Power, have requested exceptions to these guidelines to help address needs unique to them. The addition of general waiver provisions helps make our rules consistent with our flexible regulatory scheme.

We reject URP’s numerous arguments, many of which are based on the mistaken belief that this rulemaking would permit *ad hoc* exceptions with no notice or opportunity for comment. The Commission is required to use an open decision-making process. Requests for waiver are currently addressed in either (1) a contested-case proceeding, such as TracFone’s application for ETC designation in docket UM 1437; or (2) at a public meeting, such as requests for waiver of rules related to the Solar Photovoltaic Pilot Program.<sup>3</sup> The Commission renders its decisions in writing, providing an explanation for granting or rejecting any waiver request. We affirm that the Commission will continue to use this open process when reviewing requests for waivers under the provisions adopted here.<sup>4</sup>

URP’s numerous challenges to the notice of proposed rulemaking lack merit. The legal authority cited to support the rulemaking is necessarily broad and extensive, as the rulemaking addresses 22 separate rule divisions governing various aspects of electric, gas, water, and telecommunications regulation.<sup>5</sup> Moreover, contrary to URP’s assertions,

<sup>3</sup> We note that, at the recent August 23, 2011 Public Meeting, the Commission considered eight requests for waiver of various agency rules. See <http://www.puc.state.or.us/PUC/meetings/pmemos/2011/082311/agenda.shtml>.

<sup>4</sup> URP appears to suggest that a finding of “good cause” to grant a waiver of a rule requires an evidentiary proceeding. See Comments of URP at 5 (Aug 25, 2011). No such requirement exists.

<sup>5</sup> URP specifically questions the citation to “469A.065,” which URP states “is not a proper reference to anything.” Comments of URP at 3 (August 25, 2011). The citation is legitimate: ORS 469A.065 governs renewable portfolio standards for electricity service suppliers. See Oregon Laws 2007, ch. 301 §9.

the statement of fiscal impact and cost of compliance met requirements imposed by ORS 183.335(2)(b)(E) and ORS 183.336.

#### IV. CONCLUSION

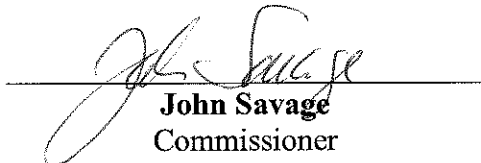
For the reasons stated above, the Commission's administrative rules should be amended to provide general waiver provisions in all rule divisions.

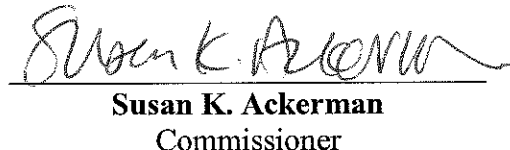
#### V. ORDER

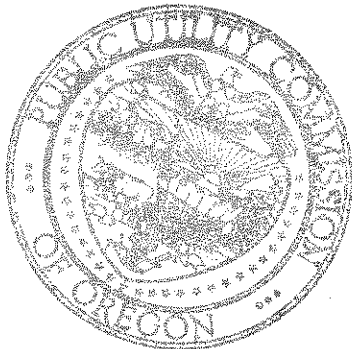
IT IS ORDERED that:

1. The Oregon Administrative Rules and amendments to Oregon Administrative Rules, as set forth in Appendix A, are adopted.
2. The rules and amendments become effective when filed with the Secretary of State.

Made, entered, and effective SEP 08 2011.

  
**John Savage**  
Commissioner

  
**Susan K. Ackerman**  
Commissioner



A person may petition the Commission for the amendment or repeal of a rule under ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule under ORS 183.400.

Division 16 – Mediation and Arbitration under the 1996 Telecommunications Act  
**860-016-0005**

**Waiver**

**Upon request or its own motion, the Commission may waive any of the Division 016 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission or Arbitrator.**

**Stat. Auth.: ORS 756.040**

**Stats. Implemented: ORS 756.040**

Division 21 – Utility Regulation

**860-021-0005**

**Scope of the Rules**

**The adoption of these rules shall in no way preclude the Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any utility. Furthermore, these rules shall not in any way relieve any utility from any of its duties under Oregon law. Upon application by a utility, the Commission may relieve the utility of any obligations under these rules. Upon request or its own motion, the Commission may waive any of the Division 021 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

**Stat. Auth.: ORS 183 & 756.040**

**Stats. Implemented: ORS 756.040**

Division 22 – Rates

**860-022-0000**

**Applicability of Division 022**

**(1) The rules contained in this Division apply to energy utilities and large telecommunications utilities, as defined in OAR 860-022-0001.**

**(2) Upon request or its own motion, the Commission may waive any of the Division 022 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

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

**Stats. Implemented: ORS 756.040, 759.0306, 759.040 & 759.045**

**860-022-0045**

**Relating to Local Government Fees, Taxes, and Other Assessments Imposed Upon an Energy or Large Telecommunications Utility**

**(1) If any county in Oregon, other than a city-county, imposes upon an energy or large telecommunications utility any new taxes or license, franchise, or operating permit fees, or increases any such taxes or fees, the utility required to pay such taxes or fees shall collect from**

its customers within the county imposing such taxes or fees the amount of the taxes or fees, or the amount of increase in such taxes or fees. However, if the taxes or fees cover the operations of an energy or large telecommunications utility in only a portion of a county, then the affected utility shall recover the amount of the taxes or fees or increase in the amount thereof from customers in the portion of the county which is subject to the taxes or fees. "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) The amount collected from each utility customer pursuant to section (1) of this rule shall be separately stated and identified in all customer billings.

(3) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date.

~~(4) If any county, energy or large telecommunications utility, or customer affected by this rule deems the rule's application in any instance to be unjust or unreasonable, it may apply for a waiver of this rule by petition to the Commission, setting forth the reasons why the rule should not apply.~~

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

Stats. Implemented: ORS 757.110 & 759.115 219

#### Division 23 – Service Standards

##### 860-023-0000

##### **Applicability of Division 023**

(1) The rules contained in this Division apply to energy utilities, large telecommunications utilities, telecommunications carriers, and intrastate toll service providers, as defined in OAR 860-023-0001.

(2) Upon request or its own motion, the Commission may waive any of the Division 023 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

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

Stats. Implemented: ORS 756.040, 759.036, 759.040 & 759.045

##### 860-023-0054

##### **Retail Intrastate Toll Service Provider Service Standards**

Every intrastate toll service provider must adhere to the following standards:

(1) Measurement and Reporting Requirement. Each intrastate toll service provider must take the measurements required by this rule and report them to the Commission as specified.

(2) Additional Reporting Requirements. The Commission may require a telecommunications carrier to provide additional reports on any item covered by this rule.

(3) Blocked Calls. An intrastate toll service provider must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of all properly dialed calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of the Commission-approved service levels listed in subsection (b) of this section, or alternatively, provide the level of service specified by the intrastate toll service provider in accordance with ORS 759.020(6).



(a) Measurement:

(A) An intrastate toll service provider must collect traffic data; that is, peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups;

(B) System blockage will be determined by special testing at the wire center. Commission Staff or a carrier technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percent of completion of the calls shall be calculated.

(b) Commission-Approved Service Level:

(A) An intrastate toll service provider must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P01 grade of service);

(B) An intrastate toll service provider must maintain its network operation so that 99 percent of the calls do not experience blockage during any normal busy hour. If a final trunk group provisioned by an intrastate toll service provider exceeds the blockage standard specified herein for four consecutive months, the trunk group will be considered in violation of this standard.

(c) Reporting Requirement: In accordance with ORS 759.020(6), each intrastate toll service provider must inform customers of the service level furnished by the carrier. Each provider must also identify the service level it plans to furnish in its annual report filed with the Commission. An intrastate toll service provider must file a switching system blockage report after a Commission-directed switching-system blockage test is completed.

(d) Retention Requirement: Each intrastate toll service provider must maintain records for one year.

(4) Special Service Lines. All special service access lines must meet the performance requirements specified in applicable intrastate toll service provider tariffs or contracts.

(5) An intrastate toll service provider connected to the facilities of other telecommunications carriers as defined in ORS 759.400(3) shall operate its system in a manner that will not impede a telecommunications carrier's or intrastate toll service provider's ability to meet required standards of service. A telecommunications carrier or intrastate toll service provider shall report interconnection operational problems promptly to the Commission.

~~(6) Alternatives to These Telecommunications Standards. An intrastate toll service provider whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules, if it specifically indicates the alternative standards to be applied, or indicates which standards would be waived.~~

~~(67)~~ Remedies for Violation of This Standard:

(a) If a telecommunications carrier subject to this rule violates one or more of its service standards, the Commission must require the intrastate toll service provider to submit a plan for improving performance as provided in ORS 759.450(5). If an intrastate toll carrier does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, penalties may be assessed in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that an intrastate toll service provider subject to this rule has violated one or more of its service standards, the Commission shall give the intrastate toll service provider notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the

Commission may require the intrastate toll service provider to provide the following relief to the affected customers:

(A) Customer billing credits equal to the associated nonrecurring and recurring charges of the intrastate toll service provider for the affected service for the period of the violation; or

(B) Other relief authorized by Oregon law.

**(78) Exemption from these rules:**

~~(a) An intrastate toll service provider may petition the Commission for an exemption, in whole or in part, from these rules.~~

~~(b) The Commission may grant an exemption including, but not limited to, the following circumstance:~~ **(a)** If the Commission determines that effective competition exists in one or more exchange, it may exempt all telecommunications carriers providing telecommunications services in those exchanges from the requirements of this rule, in whole or in part. In making this determination, the Commission must consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Price to cost ratios;

(F) Number of suppliers;

(G) Price demand side substitutability (for example, customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

~~(be)~~ When a telecommunications carrier or intrastate toll service provider petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications carriers providing the applicable service(s) in the exchange(s) in question. Such notified telecommunications carriers will be provided an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in Section ~~(7)8(ab)~~ (A) through (H), the commenting telecommunications carrier be exempt from these rules for the applicable service(s) in the relevant exchange(s).

**(cd)** For purposes of this rule, if a final trunk group provisioned by an intrastate toll provider exceeds the blockage standard specified by the provider for four consecutive months, that trunk group will be considered in violation of the provider's service standard.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.036, 759.050 & 759.450

**860-023-0055**

### **Retail Telecommunications Service Standards for Large Telecommunications Utilities**

Every large telecommunications utility must adhere to the following standards:

(1) Definitions.

(a) "Access Line" -- A facility engineered with dialing capability to provide retail telecommunications service that connects a customer's service location to the Public Switched Telephone Network;

(b) "Average Busy Season Busy Hour" -- The hour that has the highest average traffic for the three highest months, not necessarily consecutive, in a 12-month period. The busy hour traffic averaged across the busy season is termed the average busy season busy hour traffic;

(c) "Average Speed of Answer" -- The average time that elapses between the time the call is directed to a representative and the time it is answered;

(d) "Blocked Call" -- A properly dialed call that fails to complete to its intended destination except for a normal busy (60 interruptions per minute);

(e) "Customer" -- Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity that has applied for, been accepted, and is currently receiving local exchange telecommunications service;

(f) "Exchange" -- Geographic area defined by maps filed with and approved by the Commission for the provision of local exchange telecommunications service;

(g) "Final Trunk Group" -- A last-choice trunk group that receives overflow traffic and that may receive first-route traffic for which there is no alternative route;

(h) "Force Majeure"-- Circumstances beyond the reasonable control of a large telecommunications utility, including but not limited to, delays caused by:

(A) A vendor in the delivery of equipment, where the large telecommunications utility has made a timely order of equipment;

(B) Local, state, federal, or tribal government authorities in approving easements or access to rights of way, where the large telecommunications utility has made a timely application for such approval;

(C) The customer, including but not limited to, the customer's construction project or lack of facilities, or failure to provide access to the customer's premises;

(D) Uncontrollable events, such as explosion, fire, floods, frozen ground, tornadoes, severe weather, epidemics, injunctions, wars, acts of terrorism, strikes or work stoppages, and negligent or willful misconduct by customers or third parties, including but not limited to, outages originating from introduction of a virus onto the provider's network;

(i) "Held Order for Lack of Facilities" -- Request for access line service delayed beyond the initial commitment date due to lack of facilities. An access line service order includes an order for new service, transferred service, additional lines, or change of service;

(j) "Initial Commitment Date" -- The initial date pledged by the large telecommunications utility to provide a service, facility, or repair action. This date is within the minimum time set forth in these rules or a date determined by good faith negotiations between the customer and the large telecommunications utility;

(k) "Network Interface" -- The point of interconnection between the large telecommunications utility's communications facilities and customer terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface must be located on the customer's side of the large telecommunications utility's protector;

(l) "Retail Telecommunications Service" -- A telecommunications service provided for a fee to customers. Retail telecommunications service does not include a service provided by a large telecommunications utility to another telecommunications utility or competitive telecommunications provider, unless the telecommunications utility or competitive telecommunications provider receiving the service is the end user of the service;

(m) "Tariff" -- A schedule showing rates, tolls, and charges that the large telecommunications utility has established for a retail service;

(n) "Trouble Report" -- A report of a malfunction that affects the functionality and reliability of retail telecommunications service on existing access lines, switching equipment, circuits, or features made up to and including the network interface, to a large telecommunications utility by or on behalf of that large telecommunications utility's customer;

(o) "Wire Center" -- A facility where local telephone subscribers' access lines converge and are connected to switching equipment that provides access to the Public Switched Telephone Network, including remote switching units and host switching units. A wire center does not include collocation arrangements in a connecting large telecommunications utility's wire center or broadband hubs that have no switching equipment.

(2) Measurement and Reporting Requirements. A large telecommunications utility must take the measurements required by this rule and report them to the Commission as specified. Reported measurements must be reported to the first significant digit (i.e., one number should be reported to the right of the decimal point). The service quality objective service levels set forth in sections 4 through 8 of this rule apply only to normal operating conditions and do not establish a level of performance to be achieved during force majeure events.

(3) Additional Reporting Requirements. The Commission may require a large telecommunications utility to submit additional reports on any item covered by this rule.

(4) Provisioning and Held Orders for Lack of Facilities. The representative of the large telecommunications utility must give a retail customer an initial commitment date of not more than six business days after a request for access line service, unless a later date is determined through good faith negotiations between the customer and the large telecommunications utility. The large telecommunications utility may change the initial commitment date only if requested by the customer. When establishing the initial commitment date, the large telecommunications utility may take into account the actual time required for the customer to meet prerequisites; e.g., line extension charges or trench and conduit requirements. If a request for service becomes a held order for lack of facilities, the serving large telecommunications utility must, within five business days, send or otherwise provide the customer a written commitment to fill the order.

(a) Measurement:

(A) Commitments Met -- A large telecommunications utility must calculate the monthly percentage of commitments met for service, based on the initial commitment date, across its Oregon service territory. Commitments missed for reasons solely attributed to customers, another telecommunications utility or a competitive telecommunications provider may be excluded from the calculation of the "commitments met" results;

(B) Held Orders for Lack of Facilities -- A large telecommunications utility must determine the total monthly number of held orders, due to lack of facilities, not completed by the initial commitment date during the reporting month and the number of primary (initial access line) held orders, due to lack of facilities, over 30 days past the initial commitment date.

(b) Objective Service Level:

(A) Commitments Met -- Each large telecommunications utility must meet at least 90 percent of its commitments for service;

(B) Held Orders:

(i) The number of held orders for the lack of facilities for each large telecommunications utility must not exceed the larger of two per wire center per month averaged over the large

telecommunications utility's Oregon service territory, or five held orders for lack of facilities per 1,000 inward orders;

(ii) The total number of primary held orders for lack of facilities in excess of 30 days past the initial commitment date must not exceed 10 percent of the total monthly held orders for lack of facilities within the large telecommunications utility's Oregon service territory.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission the percentage of commitments met for service, total number of held orders for lack of facilities, and the total number of primary held orders for lack of facilities over 30 days past the initial commitment date.

(d) Retention Requirement: Each large telecommunications utility must maintain records about held orders for lack of facilities for one year. The record must explain why each order is held and the initial commitment date.

(5) Trouble Reports. Each large telecommunications utility must maintain an accurate record of all reports of malfunction made by its customers.

(a) Measurement: A large telecommunications utility must determine the number of customer trouble reports that were received during the month. The large telecommunications utility must relate the count to the total working access lines within a reporting wire center. A large telecommunications utility need not report those trouble reports that were caused by circumstances beyond its control. The approved trouble report exclusions are:

(A) Cable Cuts: A large telecommunications utility may take an exclusion if the "buried cable location" (locate) was either not requested or was requested and was accurate. If a large telecommunications utility or the utility's contractor caused the cut, the exclusion can only be used if the locate was accurate and all general industry practices were followed;

(B) Internet Service Provider (ISP) Blockage: If an ISP does not have enough access trunks to handle peak traffic;

(C) Modem Speed Complaints: An exclusion may be taken if the copper cable loop is tested at the subscriber location and the objective service levels in section 10 of this rule were met;

(D) No Trouble Found: Where no trouble is found, one exemption may be taken. If a repeat report of the same trouble is received within a 30-day period, the repeat report and subsequent reports must be counted;

(E) New Feature or Service: Trouble reports related to a customer's unfamiliarity with the use or operation of a new (within 30 days) feature or service;

(F) No Access: An exclusion may be taken if a repair appointment was kept and the copper based access line at the nearest accessible terminal met the objective service levels in section 10 of this rule. If a repeat trouble report is received within the following 30-day period, the repeat report and subsequent reports must be counted;

(G) Subsequent Tickets/Same Trouble/Same Access Line: Only one trouble report for a specific complaint for the same access line should be counted within a 48-hour period. All repeat trouble reports after the 48-hour period must be counted;

(H) Non-Regulated or Deregulated Equipment: Trouble associated with such equipment should not be counted;

(I) Trouble with Other Telecommunications Utilities or Competitive Telecommunications Providers: A trouble report caused solely by another telecommunications utility or competitive telecommunications provider;

(J) Lightning Strikes: Trouble reports received for damage caused by lightning strikes can be excluded if all accepted grounding, bonding, and shielding practices were followed by the large telecommunications utility at the damaged location; and

(K) Other exclusions: As approved by the Commission.

(b) Objective Service Level: A large telecommunications utility must maintain service so that the monthly trouble report rate, after approved trouble report exclusions, does not exceed:

(A) For wire centers with more than 1,000 access lines: two per 100 working access lines per wire center more than three times during a sliding 12-month period.

(B) For wire centers with 1,000 or less access lines: three per 100 working access lines per wire center more than three times during a sliding 12-month period.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission:

(A) The trouble report rate by wire center;

(B) The reason(s) a wire center meeting the standard (did not exceed the trouble report rate threshold for more than three of the last 12 months) exceeded a trouble report rate of 3.0 per 100 working access lines during the reporting month;

(C) The reason(s) a wire center not meeting the standard, after the exclusion adjustment, exceeded the trouble report rate threshold per 100 access lines during the reporting month; and

(D) The access line count for each wire center.

(d) Retention Requirement: Each large telecommunications utility must maintain a record of reported trouble in such a manner that it can be forwarded to the Commission upon the Commission's request. The large telecommunications utility must keep all records for a period of one year. The record of reported trouble must contain as a minimum the:

(A) Telephone number;

(B) Date and time received;

(C) Time cleared;

(D) Type of trouble reported;

(E) Location of trouble; and

(F) Whether or not the present trouble was within 30 days of a previous trouble report.

(6) Repair Clearing Time. This standard establishes the clearing time for all trouble reports from the time the customer reports the trouble to the large telecommunications utility until the trouble is resolved. The large telecommunications utility must provide each customer making a network trouble report with a commitment time when the large telecommunications utility will repair or resolve the problem.

(a) Measurement: A large telecommunications utility must calculate the percentage of trouble reports cleared within 48 hours for each repair center.

(b) Objective Service Level: A large telecommunications utility must monthly clear at least 95 percent of all trouble reports within 48 hours of receiving a report.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission the percentage of trouble reports cleared within 48 hours by each repair center.

(d) Retention Requirement: None.

(7) Blocked Calls. A large telecommunications utility must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of levels listed in subsection (7)(b) of this rule.

(a) Measurement:

(A) A large telecommunications utility must collect traffic data; i.e., peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups;

(B) System blockage is determined by special testing at the wire center. Commission Staff or a telecommunications utility technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percentage of calls completed must be calculated.

(b) Objective Service Level:

(A) A large telecommunications utility must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P.01 grade of service);

(B) A large telecommunications utility must maintain its switch operation so that 99 percent of the calls do not experience blockage during the normal busy hour.

(C) When a large telecommunications utility fails to maintain the interoffice final trunk group P.01 grade of service for four or more consecutive months, it will be considered out-of-standard until the condition is resolved. A single repeat blockage within two months of restoring the P.01 grade of service will be considered a continuation of the original blockage.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission:

(A) Local and extended area service (EAS) final trunk groups that do not meet the objective service level for trunk group blockage, measured from each of its switches, regardless of the ownership of the terminating switch;

(B) Its tandem switch final trunk group blockages associated with EAS traffic;

(C) Any known cause for the blockage and actions to bring the trunks into standard; and

(D) Identity of the telecommunications utility or competitive telecommunications provider, if other than the reporting large telecommunications utility, responsible for maintaining those final trunk groups not meeting the standard.

(d) Retention Requirement: Each large telecommunications utility must maintain records for one year.

(8) Access to Large Telecommunications Utility Representatives. This rule sets the allowed time for large telecommunications utility business office or repair service center representatives to answer customer calls.

(a) Measurement:

(A) Direct Representative Answering: A large telecommunications utility must measure the answer time from the first ring at the large telecommunications utility business office or repair service center;

(B) Driven, Automated, or Interactive Answering System: The option of transferring to the large telecommunications utility representative must be included in the initial local service-screening message. The large telecommunications utility must measure the answering time from the point a call is directed to its representatives; e.g., when the call leaves the Voice Response Unit;

(C) Each large telecommunications utility must calculate:

(i) The monthly percentage of the total calls placed to the business office and repair service center and the number of calls answered by representatives within 20 seconds; or

(ii) The average speed of answer time for the total calls received by the business office and repair service center.

(b) Objective Service Level:

(A) No more than 1 percent of calls to the large telecommunications utility business office or repair service center may encounter a busy signal; and

(B) The large telecommunications utility representatives must answer at least 80 percent of calls within 20 seconds or have an average speed of answer time of 50 seconds or less.

(c) Reporting Requirement:

(A) Each large telecommunications utility must report monthly to the Commission an exception report if busy signals were encountered in excess of 1 percent for either the business office or repair service center; and

(B) Each large telecommunications utility must report monthly to the Commission the percentage of calls answered within 20 seconds or the average speed of answer time for both the business office and repair service center. Once a method of measurement is reported by the provider, that method can only be changed with permission of the Commission.

(d) Retention Requirement: None.

(9) Interruption of Service Notification. A large telecommunications utility must report significant outages that affect customer service. These interruptions could be caused by switch outage, electronic outage, cable cut, or construction.

(a) Measurement: A large telecommunications utility must notify the Commission when an interruption occurs that exceeds the following thresholds:

(A) Cable cuts, excluding service wires and wires placed in lieu of cable, or electronic outages lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(B) Toll or Extended Area Service isolation lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(C) Isolation of a central office (host or remote) from the E 9-1-1 emergency dialing code or isolation of a Public Safety Answering Position (PSAP).

(D) Isolation of a wire center for more than 15 minutes.

(E) Outage of the business office or repair center access system lasting longer than 15 minutes in those instances where the traffic cannot be re-routed to a different center.

(b) Objective Service Level: Not applicable.

(c) Reporting Requirement: A large telecommunications utility must report service interruptions to the Commission engineering staff by telephone, by facsimile, by electronic mail, or personally within two hours during normal work hours of the business day after the company becomes aware of such interruption of service. Interim reports will be given to the Commission as significant information changes (e.g., estimated time to restore, estimated impact to customers, cause of the interruption, etc.) until it is reported that the affected service is restored.

(d) Retention Requirement: None.

(10) Customer Access Line Testing. All customer access lines must be designed, installed, and maintained to meet the levels in subsection (b) of this section.

(a) Measurement: Each large telecommunications utility must make all loop parameter measurements at the network interface, or as close as access allows.

(b) Objective Service Level: Each access line must meet the following levels:

(A) Loop Current: The serving wire center loop current, when terminated into a 400-ohm load, must be at least 20 milliamperes;

(B) Loop Loss: The maximum loop loss, as measured with a 1004-hertz tone from the serving wire center, must not exceed 8.5 decibels (dB);



(C) Metallic Noise: The maximum metallic noise level, as measured on a quiet line from the serving wire center, must not exceed 20 decibels above referenced noise level -- C message weighting (dBrnC);

(D) Power Influence: As a goal, power influence, as measured on a quiet line from the serving wire center, must not exceed 80 dBrnC.

(c) Reporting Requirement: A large telecommunications utility must report measurement readings as directed by the Commission.

(d) Retention Requirement: None.

(11) Customer Access Lines and Wire Center Switching Equipment. All combinations of access lines and wire center switching equipment must be capable of accepting and correctly processing at least the following network control signals from the customer premises equipment. The wire center must provide dial tone and maintain an actual measured loss between interoffice and access trunk groups.

(a) Measurement: Each large telecommunications utility must make measurements at or to the serving wire center.

(b) Objective Service Level:

(A) Dial Tone Speed. Ninety-eight percent of originating average busy hour call attempts must receive dial tone within three seconds;

(B) A large telecommunications utility must maintain all interoffice and access trunk groups so that the actual measured loss (AML) in no more than 30 percent of the trunks deviates from the expected measured loss (EML) by more than 0.7 dB and no more than 4.5 percent of the trunks deviates from EML by more than 1.7 dB.

(c) Reporting Requirement: None.

(d) Retention Requirement: None.

(12) Special Service Access Lines. All special service access lines must meet the performance requirements specified in applicable large telecommunications utility tariffs or contracts.

(13) Large Telecommunications Utility Interconnectivity. A large telecommunications utility connected to the facilities of another telecommunications utility or competitive telecommunications provider must operate its system in a manner that will not impede either company's ability to meet required standards of service. A large telecommunications utility must report interconnection operational problems promptly to the Commission.

**~~(14) Alternatives to These Telecommunications Standards. A large telecommunications utility whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules if it specifically indicates the alternative standards to be applied or indicates which standards would be waived.~~**

**~~(145)~~** Remedies for Violation of This Standard.

(a) If a large telecommunications utility subject to this rule fails to meet a minimum service quality standard, the Commission must require the large telecommunications utility to submit a plan for improving performance as provided in ORS 759.450(5). If a large telecommunications utility does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, the Commission may assess penalties in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that a large telecommunications utility subject to this rule has violated one or more of its service

standards, the Commission must give the large telecommunications utility notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the large telecommunications utility to provide the following relief to the affected customers:

(A) An alternative means of telecommunications service for violations of paragraph (4)(b)(B) of this rule;

(B) Customer billing credits equal to the associated non-recurring and recurring charges of the large telecommunications utility for the affected service for the period of the violation; and

(C) Other relief authorized by Oregon law.

**(156) Exemption From These Rules.**

~~(a) A large telecommunications utility may petition the Commission for an exemption, in whole or in part, from these rules.~~

~~(b) The Commission may grant an exemption, including but not limited to, the following circumstance:~~ (a) If the Commission determines that effective competition exists in one or more exchange(s), it may exempt all telecommunications utilities and competitive telecommunications providers providing telecommunications services in the exchange(s) from the requirements of this rule, in whole or in part. In making this determination, the Commission will consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Number of suppliers;

(F) Price to cost ratios;

(G) Demand side substitutability (e.g., customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

~~(be)~~ When a large telecommunications utility petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications utilities and competitive telecommunications providers providing the applicable service(s) in the exchange(s) in question. The Commission will provide such notified telecommunications utilities and competitive telecommunications providers an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in paragraphs (156)(a)(A) through (H), the commenting telecommunications utilities and competitive telecommunications providers be exempt from these rules for the applicable service(s) in the relevant exchange(s).

~~(dc)~~ The Commission may grant a large telecommunications utility's petition for an exemption from service quality reporting requirements if the large telecommunications utility meets all service quality objective service levels set forth in sections (4) through (8) of this rule for the 12 months prior to the month in which the petition is filed.

[Publications: Publications referenced are available from the agency]

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.036 & 759.050

Division 24 – Safety Standards

**860-024-0000**

**Applicability of Division 024**

(1) Unless otherwise noted, the rules in this Division apply to every operator, as defined in OAR 860-024-0001.

(2) Upon request or its own motion, the Commission may waive any of the Division 024 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

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

Stats. Implemented: ORS 756.040, 757.035, 757.039, 757.649, 759.036, 759.040 & 759.045

**860-024-0012**

**Prioritization of Repairs by Operators of Electric Supply Facilities and Operators of Communication Facilities**

(1) A violation of the Commission Safety Rules that poses an imminent danger to life or property must be repaired, disconnected, or isolated by the operator immediately after discovery.

(2) Except as otherwise provided by this rule, the operator must correct violations of Commission Safety Rules no later than two years after discovery.

(3) An operator may elect to defer correction of violations of the Commission Safety Rules that pose little or no foreseeable risk of danger to life or property to correction during the next major work activity.

(a) In no event shall a deferral under this section extend for more than ten years after discovery.

(b) The operator must develop a plan detailing how it will remedy each such violation.

(c) If more than one operator is affected by the deferral, all affected operators must agree to the plan. If any affected operators do not agree to the plan, the correction of violation(s) may not be deferred.

~~(4) For good cause shown, or where equivalent safety can be achieved, unless otherwise prohibited by law, the Commission may for a specific installation waive the requirements of OAR 860-024-0012.~~

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

Stat. Implemented: ORS 757.035

Division 025 – Regulations to Prevent Duplication of Facilities

**860-025-0000**

**Applicability of Division 025**

(1) The rules contained in this Division apply to electric utilities, gas utilities, and large telecommunications utilities, as defined in OAR 860-025-0001.

**(2) Upon request or its own motion, the Commission may waive any of the Division 025 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

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

Stats. Implemented: ORS 756.040, 759.036, 759.040 & 759.500 - 759.595

#### Division 026 – Sales Promotion

##### 860-026-0000

##### **Applicability of Division 026**

**(1)** The rules contained in this Division apply to energy utilities and large telecommunications utilities, as defined in OAR 860-026-0005.

**(2) Upon request or its own motion, the Commission may waive any of the Division 026 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

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

Stats. Implemented: ORS 756.040, 759.036, 759.040 & 759.045

#### Division 027 – Budgets, Finance, Accounting and Annual Reports

##### 860-027-0000

##### **Applicability of Division 027**

**(1)** The rules contained in this Division apply to energy utilities and large telecommunications utilities, as defined in OAR 860-027-0001.

**(2) Upon request or its own motion, the Commission may waive any of the Division 027 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

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

Stats. Implemented: ORS 756.040, 759.036, 759.040 & 759.045

##### 860-027-0043

##### **Application for Waiver of Requirements Under of OARs 860-027-0040 and 860-027-0041**

**Upon petition by a utility and approval by the Commission for good cause, the requirements of OARs 860-027-0040 and 860-027-0041 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of circumstances demonstrating in advance that the transaction or transactions will be fair and reasonable and not contrary to the public interest, transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for waiver. The Commission will not waive the requirements of OAR 860-027-0040 or 860-027-0041 for any transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues unless the transaction or transactions can be demonstrated in advance to be fair and reasonable and not contrary to the public interest.**

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.015, 757.490 & 757.495

#### 860-027-0044

##### Large Telecommunications Utilities' Application for Waiver of Requirements by Large Telecommunications Utilities Under of OARs 860-027-0040 and 860-027-0041

~~(1) This rule does not apply to transactions subject to ORS 759.385(4), 759.390(7), or 759.394.~~

~~(2) Upon petition by a large telecommunications utility and approval by the Commission for good cause, the requirements of OARs 860-027-0040 and 860-027-0041 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of circumstances demonstrating in advance that the transaction or transactions will be fair and reasonable and not contrary to the public interest, transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for waiver.~~

The Commission will not grant a request by a large telecommunications utility for a waiver of OAR 860-027-0040 or 860-027-0041 for any transactions that:

(1) Are subject to ORS 759.385(4), 759.390(7) or 759.394; or

(2) Exceed 0.1 percent of the previous calendar year's Oregon utility operating revenues.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.005, ~~759.010~~, 759.385 & 759.390

#### Division 028 – Pole and Conduit Attachments

#### 860-028-0000

##### Applicability

(1) The rules contained in this Division apply to every pole or conduit owner and every pole or conduit occupant, as defined in OAR 860-028-0020.

(2) Upon request or its own motion, the Commission may waive any of the Division 028 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

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

Stats. Implemented: ORS 756.040, 757.035, 757.270, 759.045 & 759.650

#### Division 029 – Electric Utilities Interconnection with Electric Cogeneration and Small Power Production Facilities

#### 860-029-0005

##### Applicability of Rules

(1) Except as otherwise provided, these rules shall apply to all interconnection arrangements between a "public utility" as defined by ORS 758.505 and facilities which are qualifying

facilities as defined herein. Provisions of these rules shall not supersede contracts existing before the effective date of this rule. At the expiration of such an existing contract between a public utility and a cogenerator or small power producer, any contract extension or new contract shall comply with these rules.

(2) Nothing in these rules limits the authority of a public utility or a qualifying facility to agree to a rate, terms, or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be provided by these rules, provided such rate, terms, or conditions do not burden the public utility's customers.

(3) Within 30 days following the initial contact between a prospective qualifying facility and a public utility, the public utility shall submit informational documents, approved by the Commission, to the qualifying facility which state:

- (a) The public utility's internal procedural requirements and information needs;
- (b) Any contract offered by the public utility is subject to negotiation;
- (c) Avoided costs are subject to change pursuant to OAR 860-029-0080(3); and
- (d) That the avoided costs actually paid to a qualifying facility will depend on the quality and quantity of power to be delivered to the public utility. The avoided costs may be recalculated to reflect stream flows, generating unit availability, loads, seasons, or other conditions.

**(4) Upon request or its own motion, the Commission may waive any of the Division 029 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

#### **860-029-0050**

##### **Rates for Sales**

(1) Rates for sales by public utilities shall:

- (a) Be just and reasonable and in the public interest; and
- (b) Not discriminate against qualifying facilities.

(2) Rates for sales which are based on accurate data and consistent, system-wide costing principles shall be considered not to discriminate against any qualifying facility to the extent that such rates apply to the public utility's other customers with similar load or other cost-related characteristics.

(3) The following additional services shall be provided by a public utility to a qualifying facility at its request:

- (a) Supplementary power;
- (b) Back-up power;
- (c) Maintenance power; and
- (d) Interruptible power.

(4) **When a waiver request is filed under OAR 860-029-0005(4),** the Commission may waive any requirement of section (3) of this rule if, after notice in the area served by the public utility and after opportunity for public comment, the public utility demonstrates and the Commission finds that compliance with such requirement will:

- (a) Impair the public utility's ability to render adequate service to its other customers; or
- (b) Place an undue burden on the public utility.

(5) The rate for sale of back-up power or maintenance power:

(a) Shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on a public utility's system will occur simultaneously, during the system peak, or both; and

(b) Shall take into account the extent to which scheduled outages of the qualifying facilities can be coordinated usefully with the scheduled outages of the public utility's facilities.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040 & 758.505 - 758.555

#### Division 030 – Residential and Commercial Energy Conservation

##### 860-030-0000

##### Exemptions Applicability

(1) Except as provided in section (2) of this rule, the rules contained in this Division do not apply to unincorporated associations and cooperative corporations or to investor-owned electric utilities that satisfy their public purpose obligations under ORS 757.612.

(2) These rules apply to investor-owned electric utilities to the extent required by ORS 469.860 through 469.900.

**(3) Upon request or its own motion, the Commission may waive any of the Division 030 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

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

Stats. Implemented: ORS 756.040 & 757.612

#### Division 031 - Inspection of Gas Pipeline Operators and Waiver of Safety Standards

##### 860-031-0040

##### Waivers of Gas Pipeline Safety Standards

**(1) Upon request or its own motion, the Commission may waive any of the Division 031 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission. Upon application by an operator, the Commission may grant a waiver from compliance with the gas pipeline safety regulations for intrastate pipeline transportation.** The application ~~shall~~**must** include a statement of reasons why the regulations are not appropriate and why a waiver is consistent with gas pipeline safety. The Commission may grant a waiver if:

(a) The noncompliance does not entail a significant risk to the operator's employees or the public; or

(b) The degree of risk does not justify the expense of bringing the system into compliance.

(2) If the Commission decides to grant a waiver, it shall issue the waiver under such terms and conditions as are appropriate, with a statement of reasons for granting the waiver. The waiver shall contain a recital that it is subject to the approval of the Secretary of Transportation of the United States Department of Transportation. If the Commission denies the waiver, it shall notify the applicant of the reasons for the denial.

(3) The Commission shall give the Secretary of Transportation of the United States Department of Transportation written notice 60 days before the effective date of the waiver. If, before the effective date of the waiver, the Secretary objects in writing to the granting of the waiver, the Commission's action granting the waiver will be stayed. The Commission may present the case for the waiver to the Secretary, who, in such case, shall determine finally whether the requested waiver will be granted. If the Commission does not present the case for the waiver to the Secretary, the grant of the waiver shall be withdrawn and the waiver shall be denied.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.039

Division 032 – Telecommunications

**860-032-0000**

**Waiver**

**Upon request or its own motion, the Commission may waive any of the Division 032 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

**Stat. Auth.: ORS. 756.040**

**Stats. Implemented: ORS 756.040, 759.005 & 759.020**

**860-032-0007**

**Conditions of Certificates of Authority**

A certificate to provide telecommunications service shall be subject to the following conditions:

(1) The certificate holder shall provide only the telecommunications service authorized in the certificate.

(2) A telecommunications utility shall not abandon service except as authorized under the Commission's rules.

(3) For telecommunications utilities, the records and books of the certificate holder are open to inspection by the Commission, and shall be maintained according to the Commission's rules.

(4) For competitive providers and cooperatives, the books and records of the certificate holder shall be open to inspection by the Commission to the extent necessary to verify information required of the certificate holder. The books and records shall be maintained according to the applicable rules of the Commission.

(5) The certificate holder shall pay all access charges and subsidies imposed pursuant to the Commission's rules, orders, tariffs, or price lists.

(6) The certificate holder involved in the provision of an operator service shall:

(a) Notify all callers at the beginning of each call of the telecommunications provider's name; however, a telecommunications provider furnishing operator service for another telecommunications provider may brand the call by identifying the other provider;

(b) Disclose rate and service information to the caller when requested;

(c) Maintain a current list of emergency numbers for each service territory it serves;



(d) Transfer an emergency call to the appropriate emergency number when requested, free of charge;

(e) Transfer a call to, or instruct the caller how to reach, the originating telecommunications utility's operator service upon request of the caller, free of charge;

(f) Not transfer a call to another operator service provider without the caller's notification and consent;

(g) Not bill or collect for calls not completed to the caller's destination telephone number; and

(h) Not screen calls and prevent or block the completion of calls which would allow the caller to reach an operator service company different from the certificate holder. In addition, the certificate holder shall, through contract provisions with its call aggregator clients, prohibit the blocking of a caller's access to his or her operator service company of choice. A certificate holder may apply for a waiver from this requirement ~~e-Commission~~ if necessary to prevent fraudulent use of its services.

(7) Telecommunications providers who enter into operator service contracts or arrangements with call aggregators shall include in those contracts or arrangements provisions for public notification as follows:

(a) A sticker or name plate identifying the name of the certificate holder shall be attached to each telephone available to the public; and

(b) A brochure, pamphlet, or other notice shall be available in the immediate vicinity of the telephone giving the name of the operator service provider, stating that rate quotes are available upon request, listing a toll-free telephone number for customer inquiry, and giving instructions on how the caller may access other operator service providers.

(8) Competitive providers may contract with telecommunications utilities, other competitive providers, or other persons for customer billing and collection under the following conditions:

(a) The telecommunications utility, other competitive provider, or other person, in billing for the competitive provider, shall include on the bill the name of a company with the information and authority to provide information and resolve disputes about billing entries, a toll-free number to reach that company, and details of the services and charges billed;

(b) The telecommunications utility shall not deny telecommunications service to customers for failure to pay charges for competitive provider services or unregulated utility services.

(9) The certificate holder shall comply with Commission rules and orders applicable to the certificate holder.

(10) The certificate holder shall not take any action that impairs the ability of other certified telecommunications providers to meet service standards specified by the Commission;

(11) The certificate holder shall respond in a timely manner to Commission inquiries.

(12) The certificate holder shall submit required reports in a timely manner.

(13) The certificate holder shall notify the Commission of changes to the certificate holder's name, address, or telephone numbers within ten days of such change.

(14) Telecommunications providers shall meet service standards set forth in applicable Commission's rules, including OAR 860-032-0012.

(15) The certificate holder shall timely pay all Commission taxes, fees, or assessments adopted pursuant to Oregon law or Commission rules, orders, tariffs or price lists.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.036, 759.050, 759.225 & 759.690

**860-032-0012****Retail Telecommunications Service Standards for Competitive Telecommunications Providers**

Every large telecommunications utility, as defined in OAR 860-023-0001(2), must adhere to the standards in OAR 860-023-0055. Every small telecommunications utility, as defined in OAR 860-034-0010(3)(a) must adhere to the standards in OAR 860-034-0390. Every competitive telecommunications provider, as defined in ORS 759.005(1), that maintains more than 1,000 access lines on a statewide basis, must adhere to the following service standards:

(1) Definitions.

(a) "Access Line" -- A facility engineered with dialing capability to provide retail telecommunications service that connects a customer's service location to the Public Switched Telephone Network;

(b) "Average Busy Season Busy Hour" -- The hour that has the highest average traffic for the three highest months, not necessarily consecutive, in a 12-month period. The busy hour traffic averaged across the busy season is termed the average busy season busy hour traffic;

(c) "Average Speed of Answer" -- The average time that elapses between the time the call is directed to a representative and the time it is answered;

(d) "Blocked Call" -- A properly dialed call that fails to complete to its intended destination except for a normal busy (60 interruptions per minute);

(e) "Customer" -- Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity that has applied for, been accepted, and is currently receiving local exchange telecommunications service;

(f) "Exchange" -- Geographic area defined by maps filed with and approved by the Commission for the provision of local exchange telecommunications service;

(g) "Final Trunk Group" -- A last-choice trunk group that receives overflow traffic and that may receive first-route traffic for which there is no alternative route;

(h) "Force Majeure"-- Circumstances beyond the reasonable control of a competitive telecommunications provider, including but not limited to, delays caused by:

(A) A vendor in the delivery of equipment, where the competitive telecommunications provider has made a timely order of equipment;

(B) Local, state, federal, or tribal government authorities in approving easements or access to rights of way, where the competitive telecommunications provider has made a timely application for such approval;

(C) The customer, including but not limited to, the customer's construction project or lack of facilities, or failure to provide access to the customer's premises;

(D) Uncontrollable events, such as explosion, fire, floods, frozen ground, tornadoes, severe weather, epidemics, injunctions, wars, acts of terrorism, strikes or work stoppages, and negligent or willful misconduct by customers or third parties, including but not limited to, outages originating from introduction of a virus onto the provider's network;

(i) "Held Order for Lack of Facilities" -- Request for access line service delayed beyond the initial commitment date due to lack of facilities. An access line service order includes an order for new service, transferred service, additional lines, or change of service;

(j) "Initial Commitment Date" -- The initial date pledged by the competitive telecommunications provider to provide a service, facility, or repair action. This date is within

the minimum time set forth in these rules or a date determined by good faith negotiations between the customer and the competitive telecommunications provider;

(k) "Network Interface" -- The point of interconnection between the competitive telecommunications provider's communications facilities and customer terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface must be located on the customer's side of the competitive telecommunications provider's protector;

(l) "Retail Telecommunications Service" -- A telecommunications service provided for a fee to customers. Retail telecommunications service does not include a service provided by a competitive telecommunications provider to another competitive telecommunications provider or telecommunications utility, unless the competitive telecommunications provider or telecommunications utility receiving the service is the end user of the service;

(m) "Service Area" -- The entire geographic area the Commission has certified a competitive telecommunications provider to serve. A competitive telecommunications provider may petition the Commission to designate a different geographic area as its service quality reporting area.

(n) "Tariff" -- A schedule showing rates, tolls, and charges that the competitive telecommunications provider has established for a retail service;

(o) "Trouble Report" -- A report of a malfunction that affects the functionality and reliability of retail telecommunications service on existing access lines, switching equipment, circuits, or features made up to and including the network interface, to a competitive telecommunications provider by or on behalf of that competitive telecommunications provider's customer, which affects the functionality and reliability of retail telecommunications service;

(p) "Wire Center" -- A facility where local telephone subscribers' access lines converge and are connected to switching equipment that provides access to the Public Switched Telephone Network, including remote switching units and host switching units. A wire center does not include collocation arrangements in a connecting competitive telecommunications provider's wire center or broadband hubs that have no switching equipment.

(2) Measurement and Reporting Requirements. A competitive telecommunications provider must take the measurements required by this rule and report them to the Commission as specified. Reported measurements must be reported to the first significant digit (i.e., one number should be reported to the right of the decimal point). The service quality objective service levels set forth in sections 4 through 8 of this rule apply only to normal operating conditions and do not establish a level of performance to be achieved during force majeure events.

(3) Additional Reporting Requirements. The Commission may require a competitive telecommunications provider to submit additional reports on any item covered by this rule.

(4) Provisioning and Held Orders for Lack of Facilities. The representative of the competitive telecommunications provider must give a retail customer an initial commitment date of not more than six business days after a request for access line service, unless a later date is determined through good faith negotiations between the customer and the competitive telecommunications provider. The competitive telecommunications provider may change the initial commitment date only if requested by the customer. When establishing the initial commitment date, the competitive telecommunications provider may take into account the actual time required for the customer to meet prerequisites; e.g., line extension charges or trench and conduit requirements. If a request for service becomes a held order for lack of facilities, the serving competitive telecommunications provider must, within five business days, send or otherwise provide the customer a written commitment to fill the order.

(a) Measurement:

(A) Commitments Met -- A competitive telecommunications provider must calculate the monthly percentage of commitments met for service, based on the initial commitment date, across its Oregon service territory. Commitments missed for reasons solely attributed to customers, another competitive telecommunications provider or telecommunications utility may be excluded from the calculation of the "commitments met" results;

(B) Held Orders for Lack of Facilities -- A competitive telecommunications provider must determine the total monthly number of held orders, due to lack of facilities, not completed by the initial commitment date during the reporting month and the number of primary (initial access line) held orders, due to lack of facilities, over 30 days past the initial commitment date.

(b) Objective Service Level:

(A) Commitments Met -- Each competitive telecommunications provider must meet at least 90 percent of its commitments for service.

(B) Held Orders:

(i) The number of held orders for the lack of facilities for each competitive telecommunications provider must not exceed the greater of two per wire center, or designated service area, per month averaged over the entire Oregon geographic area served by the competitive telecommunications provider, or five held orders for lack of facilities per 1,000 inward orders and

(ii) The total number of primary held orders for lack of facilities in excess of 30 days past the initial commitment date must not exceed 10 percent of the total monthly held orders for lack of facilities within the entire Oregon geographic area served by the competitive telecommunications provider.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission the percentage of commitments met for service, total number of held orders for lack of facilities, and the total number of primary held orders for lack of facilities over 30 days past the initial commitment date.

(d) Retention Requirement: Each competitive telecommunications provider must maintain records about held orders for lack of facilities for one year. The record must explain why each order is held and the initial commitment date.

(5) Trouble Reports. Each competitive telecommunications provider must maintain an accurate record of all reports of malfunction made by its customers.

(a) Measurement: A competitive telecommunications provider must determine the number of customer trouble reports that were received during the month. The competitive telecommunications provider must relate the count to the total working access lines within a reporting wire center, or designated service area. A competitive telecommunications provider need not report those trouble reports that were caused by circumstances beyond its control. The approved trouble report exclusions are:

(A) Cable Cuts: A competitive telecommunications provider may take an exclusion if the "buried cable location" (locate) was either not requested or was requested and was accurate. If a competitive telecommunications provider or the provider's contractor caused the cut, the exclusion can only be used if the locate was accurate and all general industry practices were followed;

(B) Internet Service Provider (ISP) Blockage: If an ISP does not have enough access trunks to handle peak traffic;

(C) Modem Speed Complaints: An exclusion may be taken if the copper cable loop is tested at the subscriber location and the objective service levels in section 10 of this rule were met;

(D) No Trouble Found: Where no trouble is found, one exemption may be taken. If a repeat report of the same trouble is received within a 30-day period, the repeat report and subsequent reports must be counted;

(E) New Feature or Service: Trouble reports related to a customer's unfamiliarity with the use or operation of a new (within 30 days) feature or service;

(F) No Access: An exclusion may be taken if a repair appointment was kept and the copper based access line at the nearest accessible terminal met the objective service levels in section 10 of this rule. If a repeat trouble report is received within the following 30-day period, the repeat report and subsequent reports must be counted;

(G) Subsequent Tickets/Same Trouble/Same Access Line: Only one trouble report for a specific complaint for the same access line should be counted within a 48-hour period. All repeat trouble reports after the 48-hour period must be counted;

(H) Non-Regulated or Deregulated Equipment: Trouble associated with such equipment should not be counted;

(I) Trouble with Other Competitive Telecommunications Providers or Telecommunications Utilities: A trouble report caused solely by another competitive telecommunications provider or telecommunications utility;

(J) Lightning Strikes: Trouble reports received for damage caused by lightning strikes can be excluded if all accepted grounding, bonding, and shielding practices were followed by the competitive telecommunications provider, at the damaged location; and

(K) Other exclusions: As approved by the Commission.

(b) Objective Service Level: A competitive telecommunications provider must maintain service so that the monthly trouble report rate, after approved trouble report exclusions, does not exceed:

(A) For wire centers, or designated service areas with more than 1,000 access lines: two per 100 working access lines per wire center, or designated service area, more than three times during a sliding 12-month period.

(B) For wire centers, or designated service area, with 1,000 or less access lines: three per 100 working access lines per wire center, or designated service area, more than three times during a sliding 12-month period.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission:

(A) The trouble report rate by wire center, or designated service area;

(B) The reason(s) a wire center, or designated service area, meeting the standard (did not exceed the trouble report rate threshold for more than three of the last 12 months) exceeded a trouble report rate of 3.0 per 100 working access lines during the reporting month;

(C) The reason(s) a wire center, or designated service area, not meeting the standard, after the exclusion adjustment, exceeded the trouble report rate threshold per 100 access lines during the reporting month; and

(D) The access line count for each wire center, or designated service area.

(d) Retention Requirement: Each competitive telecommunications provider must maintain a record of reported trouble in such a manner that it can be forwarded to the Commission upon the Commission's request. The competitive telecommunications provider must keep all records for a period of one year. The record of reported trouble must contain as a minimum the:

(A) Telephone number;

(B) Date and time received;

- (C) Time cleared;
- (D) Type of trouble reported;
- (E) Location of trouble; and
- (F) Whether or not the present trouble was within 30 days of a previous trouble report.

(6) Repair Clearing Time. This standard establishes the clearing time for all trouble reports from the time the customer reports the trouble to the competitive telecommunications provider until the trouble is resolved. The competitive telecommunications provider must provide each customer making a network trouble report with a commitment time when the competitive telecommunications provider will repair or resolve the problem.

(a) Measurement: The competitive telecommunications provider must calculate the percentage of trouble reports cleared within 48 hours for each repair center, or designated service area.

(b) Objective Service Level: A competitive telecommunications provider must monthly clear at least 95 percent of all trouble reports within 48 hours of receiving a report. Trouble reports attributed solely to customers or another competitive telecommunications provider or telecommunications utility may be excluded from the calculation of the "repair clearing time" results.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission the percentage of trouble reports cleared within 48 hours by each repair center, or designated service area.

(d) Retention Requirement: None.

(7) Blocked Calls. A competitive telecommunications provider must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of levels listed in subsection (7)(b) of this rule.

(a) Measurement:

(A) A competitive telecommunications provider must collect traffic data; i.e., peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups.

(B) System blockage is determined by special testing at the wire center. Commission Staff or a competitive telecommunications provider technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percentage of calls completed must be calculated.

(b) Objective Service Level:

(A) A competitive telecommunications provider must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P.01 grade of service); and

(B) A competitive telecommunications provider must maintain its switch operation so that 99 percent of the calls do not experience blockage during the normal busy hour.

(C) When a competitive telecommunications provider fails to maintain the interoffice final trunk group P.01 grade of service for four or more consecutive months, it will be considered out-of-standard until the condition is resolved. A single repeat blockage within two months of restoring the P.01 grade of service will be considered a continuation of the original blockage.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission:

(A) Local and extended area service (EAS) final trunk groups that do not meet the objective service level for trunk group blockage, measured from each of its switches, regardless of the ownership of the terminating switch;

(B) Its tandem switch final trunk group blockages associated with EAS traffic;

(C) Any known cause for the blockage and actions to bring the trunks into standard; and

(D) Identity of the competitive telecommunications provider or telecommunications utility, if other than the reporting competitive telecommunications provider, responsible for maintaining those final trunk groups not meeting the standard.

(d) Retention Requirement: Each competitive telecommunications provider must maintain records for one year.

(8) Access to Competitive Telecommunications Provider Representatives. This rule sets the allowed time for competitive telecommunications provider business office or repair service center representatives to answer customer calls.

(a) Measurement:

(A) Direct Representative Answering: A competitive telecommunications provider must measure the answer time from the first ring at the competitive telecommunications provider business office or repair service center;

(B) Driven, Automated, or Interactive Answering System: The option of transferring to the competitive telecommunications provider representative must be included in the initial local service-screening message. The competitive telecommunications provider must measure the answering time from the point a call is directed to its representatives; e.g., when the call leaves the Voice Response Unit;

(C) Each competitive telecommunications provider must calculate:

(i) The monthly percentage of the total calls placed to the business office and repair service center and the number of calls answered by representatives within 20 seconds; or

(ii) The average speed of answer time for the total calls received by the business office and repair service center.

(b) Objective Service Level:

(A) No more than 1 percent of calls to the competitive telecommunications provider business office or repair service center may encounter a busy signal.

(B) The competitive telecommunications provider representatives must answer at least 80 percent of calls within 20 seconds or have an average speed of answer time of 50 seconds or less.

(c) Reporting Requirement:

(A) Each competitive telecommunications provider must report monthly to the Commission an exception report if busy signals were encountered in excess of 1 percent for either the business office or repair service center; and

(B) Each competitive telecommunications provider must report monthly to the Commission the percentage of calls answered within 20 seconds or the average speed of answer time for both the business office and repair service center. Once a method of measurement is reported by the provider, that method can only be changed with permission of the Commission.

(d) Retention Requirement: None.

(9) Interruption of Service Notification. A competitive telecommunications provider must report significant outages that affect customer service. These interruptions could be caused by switch outage, electronic outage, cable cut, or construction.

(a) Measurement: A competitive telecommunications provider must notify the Commission when an interruption occurs that exceeds any of the following thresholds:

(A) Cable cuts, excluding service wires and wires placed in lieu of cable, or electronic outages lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(B) Toll or Extended Area Service isolation lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(C) Isolation of a central office (host or remote) from the E 9-1-1 emergency dialing code or isolation of a Public Safety Answering Position (PSAP).

(D) Isolation of a wire center for more than 15 minutes.

(E) Outage of the business office or repair center access system lasting longer than 15 minutes in those instances where the traffic cannot be re-routed to a different center.

(b) Objective Service Level: Not applicable.

(c) Reporting Requirement: A competitive telecommunications provider must report service interruptions to the Commission engineering staff by telephone, by facsimile, by electronic mail, or personally within two hours during normal work hours of the business day after the company becomes aware of such interruption of service. Interim reports will be given to the Commission as significant information changes (e.g., estimated time to restore, estimated impact to customers, cause of the interruption, etc.) until it is reported that the affected service is restored.

(d) Retention Requirement: None.

(10) Customer Access Line Testing. All customer access lines must be designed, installed, and maintained to meet the levels in subsection (b) of this section.

(a) Measurement: Each competitive provider must make all loop parameter measurements at the network interface, or as close as access allows;

(b) Objective Service Level: Each access line must meet the following levels:

(A) Loop Current: The serving wire center loop current, when terminated into a 400-ohm load, must be at least 20 milliamperes;

(B) Loop Loss: The maximum loop loss, as measured with a 1004-hertz tone from the serving wire center, must not exceed 8.5 decibels (dB);

(C) Metallic Noise: The maximum metallic noise level, as measured on a quiet line from the serving wire center, must not exceed 20 decibels above referenced noise level -- C message weighting (dBrnC); and

(D) Power Influence: As a goal, power influence, as measured on a quiet line from the serving wire center, must not exceed 80 dBrnC.

(c) Reporting Requirement: A competitive telecommunications provider must report measurement readings as directed by the Commission;

(d) Retention Requirement: None.

(11) Customer Access Lines and Wire Center Switching Equipment. All combinations of access lines and wire center switching equipment must be capable of accepting and correctly processing at least the following network control signals from the customer premises equipment. The wire center must provide dial tone and maintain an actual measured loss between interoffice and access trunk groups.

(a) Measurement: Each competitive telecommunications provider must make measurements at or to the serving wire center;

(b) Objective Service Level:

(A) Dial Tone Speed. Ninety-eight percent of originating average busy hour call attempts must receive dial tone within three seconds; and

(B) A competitive telecommunications provider must maintain all interoffice and access trunk groups so that the actual measured loss (AML) in no more than 30 percent of the trunks



deviates from the expected measured loss (EML) by more than 0.7 dB and no more than 4.5 percent of the trunks deviates from EML by more than 1.7 dB.

(c) Reporting Requirement: None.

(d) Retention Requirement: None.

(12) Special Service Access Lines. All special service access lines must meet the performance requirements specified in applicable competitive telecommunications provider tariffs or contracts.

(13) Competitive Telecommunications Provider Interconnectivity. A competitive telecommunications provider connected to the facilities of another competitive telecommunications provider or telecommunications utility must operate its system in a manner that will not impede either company's ability to meet required standards of service. A competitive telecommunications provider must report interconnection operational problems promptly to the Commission.

~~(14) Alternatives to These Telecommunications Standards. A competitive telecommunications provider whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules if it specifically indicates the alternative standards to be applied or indicates which standards would be waived.~~

~~(15)~~ Remedies for Violation of This Standard.

(a) If a competitive telecommunications provider subject to this rule fails to meet a minimum service quality standard, the Commission must require the competitive telecommunications provider to submit a plan for improving performance as provided in ORS 759.450(5). If a competitive telecommunications provider does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, the Commission may assess penalties in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that a competitive telecommunications provider subject to this rule has violated one or more of its service standards, the Commission must give the competitive telecommunications provider notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the competitive telecommunications provider to provide the following relief to the affected customers:

(A) An alternative means of telecommunications service for violations of paragraph (4)(b)(B) of this rule;

(B) Customer billing credits equal to the associated non-recurring and recurring charges of the competitive telecommunications provider for the affected service for the period of the violation; and

(C) Other relief authorized by Oregon law.

~~(15)~~ **Exemption From These Rules.**

~~(a) A competitive telecommunications provider may petition the Commission for an exemption, in whole or in part, from these rules.~~

~~(b) The Commission may grant an exemption, including but not limited to, the following circumstance: (a)~~ If the Commission determines that effective competition exists in one or more exchange(s), it may exempt all competitive telecommunications providers and telecommunications utilities providing telecommunications services in those exchanges from the requirements of this rule, in whole or in part. In making this determination, the Commission will consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Number of suppliers;

(F) Price to cost ratios;

(G) Demand side substitutability (e.g., customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(eb) When a competitive telecommunications provider petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant competitive telecommunications providers and telecommunications utilities providing the applicable service(s) in the exchange(s) in question. The Commission will provide such notified competitive telecommunications providers and telecommunications utilities an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in paragraphs (156)(ab)(A) through (H), the commenting competitive telecommunications provider or telecommunications utilities be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(dc) The Commission may grant a competitive telecommunications provider's petition for an exemption from service quality reporting requirements if the competitive telecommunications provider meets all service quality objective service levels set forth in sections (4) through (8) of this rule for the 12 months prior to the month in which the petition is filed.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.036 & 759.050

#### Division 033 – Residential Service Protection Fund (RSPF)

##### 860-033-0001

##### Applicability

(1) The rules in this Division apply to all telecommunications providers that offer service in Oregon with access to the Oregon Telecommunications Relay Service and to the applicants for and recipients of RSPF benefits.

**(2) Upon request or its own motion, the Commission may waive any of the Division 033 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987

## Division 034 – Small Telecommunications Utilities and Cooperatives

## 860-034-0010

## Scope of the Rules

(1) ~~The adoption of these rules does not preclude the Commission from altering or amending them in whole or in part or from requiring any other or additional service, equipment, facility, or standard upon a complaint, Commission motion, or small telecommunications utility application. Furthermore, these rules do not in any way relieve any utility from any of its duties under Oregon law. Upon application by a small telecommunications utility and for good cause shown, the Commission may relieve the small telecommunications utility of any obligations under these rules. Upon request or its own motion, the Commission may waive any of the Division 034 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.~~

(2) The rules contained in this division apply exclusively to telecommunications cooperatives and small telecommunications utilities as defined in section (3) of this rule.

(3) As used in this division:

(a) "Small telecommunications utility" means a telecommunications utility partially exempt from regulation under ORS 759.040;

(b) "Telecommunications utility" has the meaning given the term in ORS 759.005;

(c) "Telecommunications cooperative" or "Type 1 cooperative" means an unincorporated association or cooperative corporation that provides telecommunications services; and

(d) "Type 2 cooperative" means an unincorporated association or cooperative corporation that charges joint rates or provides through services as defined in OAR 860-034-0015.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.045, 759.220 & 759.225

## 860-034-0050

## Multilingual Notices

(1) A small telecommunications utility shall provide a multilingual disconnect notice when 5 percent or 500 customers, whichever is the lesser, have requested such a notice.

(2) Disconnect notices as required in section (1) of this rule shall contain the following information translated into the requested languages:

IMPORTANT NOTICE: Your telephone services will be shut off due to an unpaid balance on your account. You must act immediately to avoid shutoff. Important information about how you can avoid shutoff is printed in English in the enclosed notice. If you cannot understand English, please find someone to translate the notice. If translation assistance is unavailable, please contact (name) at (phone number) who will try to help you. Information on customer's rights and responsibilities printed in this language is also available by calling that number. YOU MUST ACT NOW TO AVOID SHUTOFF.

(3) ~~A small telecommunications utility may petition the Commission for a waiver of the requirement in sections (1) and (2) of this rule to provide multilingual notice for two calendar years, which may be renewed, upon a showing that such notices are not necessary. The Commission may grant a waiver of the multilingual notice requirement under OAR 860-034-0010(1), for a period not to exceed two calendar years, if the small telecommunications utility shows that it Oregon customers would not benefit from such~~

**notice. The small telecommunications utility may request a waiver of the multilingual notice every two years.**

(4) The Commission will translate a consumer's rights and responsibilities summary into the following non-English languages: Spanish, Vietnamese, Cambodian, Laotian, and Russian. The Commission will provide copies to a small telecommunications utility upon request.

(5) The small telecommunications utility shall record all requests and promptly mail the requested version of the summary to the consumer.

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.036

**860-034-0260**

**Disconnection Procedures for Commercial and Residential Utility Customers**

(1) This rule applies to the involuntary termination of all utility service provided by a small telecommunications utility.

(2) The small telecommunications utility must provide written notice to the customer at least five business days before disconnecting service except when the disconnection is made:

(a) At the request of the customer; or

(b) When the facilities provided are unsafe creating an emergency endangering life or property under OAR 860-021-0315.

(3) The notice must be printed in boldface type and must state language that is as clear and simple as possible:

(a) The reasons for the proposed disconnection;

(b) The earliest date for disconnection;

(c) The amount to be paid to avoid disconnection of utility services;

(d) An explanation of the Commission's complaint process and the Commission's toll-free number; and

(e) An explanation of the availability of an emergency medical certificate for local exchange residential service customers under OAR 860-034-0270.

(4) The small telecommunications utility may not send the notice before the due date for payment for the utility services billed.

(5) The small telecommunications utility must serve the notice of disconnection in person or send it by first-class mail to the last known addresses of the customer and the customer's designated representative. Notice is served on the date of personal delivery or, if delivery is by U S Mail, on the day after the U S Postal Service postmark or postage metering.

(6) If a premises visit is required to complete disconnection, the small telecommunications utility must make a good-faith effort to personally contact the customer or a resident at the service address to be disconnected. If the small telecommunications utility's attempt to make personal contact fails, the utility must leave a notice in a conspicuous place at the premises informing the customer that service has been disconnected.

(7) In lieu of permanent disconnection, a small telecommunications utility may temporarily curtail utility service by preventing the transmission of incoming telephone messages and/or outgoing toll messages while continuing to let the customer make outgoing local messages. Temporary curtailment of utility service, as defined in this section, shall be permitted only upon five days' written notice as set forth in section (3) of this rule. The notice shall state that

permanent disconnection will follow within ten days unless the customer makes full payment of any overdue amount or any other obligation.

(8) Except for utility service provided by a small telecommunications utility to its customers served by an office incapable of restricting toll service, a small telecommunications utility shall not disconnect or deny local exchange service for an applicant's or customer's failure to pay for utility services not under the local exchange utility's tariff or price list. A small telecommunications utility may limit access to toll and special services using the "9XX" prefix or Numbering Plan Area (NPA) for the failure to pay for such services.

(9) A small telecommunications utility may not disconnect or deny local service to customers or applicants, who are eligible to receive OTAP, for failure to pay toll charges.

(10) A small telecommunications utility may request a limited waiver of the requirement of section (9) of this rule under OAR 860-034-0010(1), upon meeting all the following conditions:

(a) Showing the small telecommunications utility would incur substantial costs in complying with the requirement;

(b) Demonstrating the small telecommunications utility offers toll-blocking services to customers identified in section (9) of this rule; and

(c) Showing that telecommunications subscribership among low-income customers in its service area in Oregon is at least as high as the national subscribership level for low-income customers.

Stat. Auth.: ORS 183, 756, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 759.045 & Ch. 290, OL 1987

#### **860-034-0340**

#### **Relating to Local Government Fees, Taxes, and Other Assessments Imposed Upon a Small Telecommunications Utility or Type 2 Cooperative**

(1) "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) For a Type 2 cooperative: If any county in Oregon, other than a city-county, should impose upon a Type 2 cooperative any taxes or license, franchise, or operating permit fees, the Type 2 cooperative may not collect such assessments from joint rates or rates for through services.

(3) For a small telecommunications utility:

(a) If any county in Oregon, other than a city-county, should impose upon a small telecommunications utility any new taxes or license, franchise, or operating permit fees, or increase any such taxes or fees, the small telecommunications utility required to pay such taxes or fees shall collect from its customers within the county imposing such taxes or fees the amount of the taxes or fees, or the amount of increase in such taxes or fees. However, if the taxes or fees cover the operations of a small telecommunications utility in only a portion of a county, then the affected utility shall recover the amount of the taxes or fees or increase in the amount thereof from customers in the portion of the county which is subject to the taxes or fees;

(b) The amount collected from each small telecommunications utility customer pursuant to section (3)(a) of this rule shall be separately stated and identified in all customer billings;

(c) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date;

~~(d) If any county, small telecommunications utility, or customer affected by this rule deems the rule's application in any instance to be unjust or unreasonable, it may apply for a waiver of this rule by petition to the Commission, setting forth the reasons why the rule should not apply.~~

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 759.045

#### 860-034-0390

#### **Retail Telecommunications Service Standards for Small Telecommunications Utilities**

Every small telecommunications utility must adhere to the following standards:

(1) Definitions.

(a) "Access Line" -- A facility engineered with dialing capability to provide retail telecommunications service that connects a customer's service location to the Public Switched Telephone Network;

(b) "Average Busy Season Busy Hour" -- The hour that has the highest average traffic for the three highest months, not necessarily consecutive, in a 12-month period. The busy hour traffic averaged across the busy season is termed the average busy season busy hour traffic;

(c) "Blocked Call" -- A properly dialed call that fails to complete to its intended destination except for a normal busy (60 interruptions per minute);

(d) "Customer" -- Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity that has applied for, been accepted, and is currently receiving local exchange telecommunications service;

(e) "Exchange" -- Geographic area defined by maps filed with and approved by the Commission for the provision of local exchange telecommunications service;

(f) "Final Trunk Group" -- A last-choice trunk group that receives overflow traffic and that may receive first-route traffic for which there is no alternative route;

(g) "Force Majeure" -- Circumstances beyond the reasonable control of a small telecommunications utility, including but not limited to, delays caused by:

(A) A vendor in the delivery of equipment, where the small telecommunications utility has made a timely order of equipment;

(B) Local, state, federal, or tribal government authorities in approving easements or access to rights of way, where the small telecommunications utility has made a timely application for such approval;

(C) The customer, including but not limited to, the customer's construction project or lack of facilities, or failure to provide access to the customer's premises;

(D) Uncontrollable events, such as explosion, fire, floods, frozen ground, tornadoes, severe weather, epidemics, injunctions, wars, acts of terrorism, strikes or work stoppages, and negligent or willful misconduct by customers or third parties, including but not limited to, outages originating from introduction of a virus onto the provider's network;

(h) "Held Order for Lack of Facilities" -- Request for access line service delayed beyond the initial commitment date due to lack of facilities. An access line service order includes an order for new service, transferred service, additional lines, or change of service;

(i) "Initial Commitment Date" -- The initial date pledged by the small telecommunications utility to provide a service, facility, or repair action. This date is within the minimum time set

forth in these rules or a date determined by good faith negotiations between the customer and the small telecommunications utility;

(j) "Network Interface" -- The point of interconnection between the small telecommunications utility provider's communications facilities and customer terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface must be located on the customer's side of the small telecommunications utility's protector;

(k) "Retail Telecommunications Service" -- A telecommunications service provided for a fee to customers. Retail telecommunications service does not include a service provided by a small telecommunications utility to another telecommunications utility or competitive telecommunications provider, unless the telecommunications utility or competitive telecommunications provider receiving the service is the end user of the service;

(l) "Tariff" -- A schedule showing rates, tolls, and charges that the small telecommunications utility has established for a retail service;

(m) "Trouble Report" -- A report of a malfunction that affects the functionality and reliability of retail telecommunications service on existing access lines, switching equipment, circuits, or features made up to and including the network interface, to a small telecommunications utility by or on behalf of that small telecommunications utility's customer;

(n) "Wire Center" -- A facility where local telephone subscribers' access lines converge and are connected to switching equipment that provides access to the Public Switched Telephone Network, including remote switching units and host switching units. A wire center does not include collocation arrangements in a connecting small telecommunications utility's wire center or broadband hubs that have no switching equipment.

(2) Measurement and Reporting Requirements. A small telecommunications utility that maintains 1,000 or more access lines on a statewide basis must take the measurements required by this rule and report them to the Commission as specified. Reported measurements must be reported to the first significant digit (i.e., one number should be reported to the right of the decimal point). A telecommunications utility that maintains fewer than 1,000 access lines on a statewide basis need not take the required measurements and file the required reports unless ordered to do so by the Commission. The service quality objective service levels set forth in sections 4 through 8 of this rule apply only to normal operating conditions and do not establish a level of performance to be achieved during force majeure events.

(3) Additional Reporting Requirements. The Commission may require a small telecommunications utility to submit additional reports on any item covered by this rule.

(4) Provisioning and Held Orders for Lack of Facilities. The representative of the small telecommunications utility must give a retail customer an initial commitment date of not more than six business days after a request for access line service, unless a later date is determined through good faith negotiations between the customer and the small telecommunications utility. The small telecommunications utility may change the initial commitment date only if requested by the customer. When establishing the initial commitment date, the small telecommunications utility may take into account the actual time required for the customer to meet prerequisites; e.g., line extension charges or trench and conduit requirements. If a request for service becomes a held order for lack of facilities, the serving small telecommunications utility must, within five business days, send or otherwise provide the customer a written commitment to fill the order.

(a) Measurement:

(A) Commitments Met -- A small telecommunications utility must calculate the monthly percentage of commitments met for service, based on the initial commitment date, across its

Oregon service territory. Commitments missed for reasons solely attributed to customers, another telecommunications utility or competitive telecommunications provider may be excluded from the calculation of the "commitments met" results;

(B) Held Orders for Lack of Facilities -- A small telecommunications utility must determine the total monthly number of held orders, due to lack of facilities, not completed by the initial commitment date during the reporting month and the number of primary (initial access line) held orders, due to lack of facilities, over 30 days past the initial commitment date.

(b) Objective Service Level:

(A) Commitments Met -- Each small telecommunications utility must meet at least 90 percent of its commitments for service.

(B) Held Orders:

(i) The number of held orders for the lack of facilities for each small telecommunications utility must not exceed the greater of two per wire center per month averaged over the small telecommunications utility's Oregon service territory, or five held orders for lack of facilities per 1,000 inward orders; and

(ii) The total number of primary held orders for lack of facilities in excess of 30 days past the initial commitment date must not exceed 10 percent of the total monthly held orders for lack of facilities within the small telecommunications utility's Oregon service territory.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission the percentage of commitments met for service, total number of held orders for lack of facilities, and the total number of primary held orders for lack of facilities over 30 days past the initial commitment date.

(d) Retention Requirement: Each small telecommunications utility must maintain records about held orders for lack of facilities for one year. The record must explain why each order is held and the initial commitment date.

(5) Trouble Reports. Each small telecommunications utility must maintain an accurate record of all reports of malfunction made by its customers.

(a) Measurement: A small telecommunications utility must determine the number of customer trouble reports that were received during the month. The small telecommunications utility must relate the count to the total working access lines within a reporting wire center. A small telecommunications utility need not report those trouble reports that were caused by circumstances beyond its control. The approved trouble report exclusions are:

(A) Cable Cuts: A small telecommunications utility may take an exclusion if the "buried cable location" (locate) was either not requested or was requested and was accurate. If a small telecommunications utility or a utility's contractor caused the cut, the exclusion can only be used if the locate was accurate and all general industry practices were followed;

(B) Internet Service Provider (ISP) Blockage: If an ISP does not have enough access trunks to handle peak traffic;

(C) Modem Speed Complaints: An exclusion may be taken if the copper cable loop is tested at the subscriber location and the objective service levels in section 10 of this rule were met;

(D) No Trouble Found: Where no trouble is found, one exemption may be taken. If a repeat report of the same trouble is received within a 30-day period, the repeat report and subsequent reports must be counted;

(E) New Feature or Service: Trouble reports related to a customer's unfamiliarity with the use or operation of a new (within 30 days) feature or service;



(F) No Access: An exclusion may be taken if a repair appointment was kept and the copper based access line at the nearest accessible terminal met the objective service levels in section 10 of this rule. If a repeat trouble report is received within the following 30-day period, the repeat report and subsequent reports must be counted;

(G) Subsequent Tickets/Same Trouble/Same Access Line: Only one trouble report for a specific complaint for the same access line should be counted within a 48-hour period. All repeat trouble reports after the 48-hour period must be counted;

(H) Non-Regulated or Deregulated Equipment: Trouble associated with such equipment should not be counted;

(I) Trouble with Other Telecommunications Utilities or Competitive Telecommunications Providers: A trouble report caused solely by another telecommunications utility or competitive telecommunications provider;

(J) Lightning Strikes: Trouble reports received for damage caused by lightning strikes can be excluded if all accepted grounding, bonding, and shielding practices were followed by the small telecommunications utility at the damaged location; and

(K) Other exclusions: As approved by the Commission.

(b) Objective Service Level: A small telecommunications utility must maintain service so that the monthly trouble report rate, after approved trouble report exclusions, does not exceed:

(A) For wire centers with more than 1,000 access lines: two per 100 working access lines per wire center more than three times during a sliding 12-month period.

(B) For wire centers with 1,000 or less access lines: three per 100 working access lines per wire center more than three times during a sliding 12-month period.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission:

(A) The trouble report rate by wire center;

(B) The reason(s) a wire center meeting the standard (did not exceed the trouble report rate threshold for more than three of the last 12 months) exceeded a trouble report rate of 3.0 per 100 working access lines during the reporting month;

(C) The reason(s) a wire center not meeting the standard, after the exclusion adjustment, exceeded the trouble report rate threshold per 100 access lines during the reporting month; and

(D) The access line count for each wire center.

(d) Retention Requirement: Each small telecommunications utility must maintain a record of reported trouble in such a manner that it can be forwarded to the Commission upon the Commission's request. The small telecommunications utility must keep all records for a period of one year. The record of reported trouble must contain as a minimum the:

(A) Telephone number;

(B) Date and time received;

(C) Time cleared;

(D) Type of trouble reported;

(E) Location of trouble; and

(F) Whether or not the present trouble was within 30 days of a previous trouble report.

(6) Repair Clearing Time. This standard establishes the clearing time for all trouble reports from the time the customer reports the trouble to the small telecommunications utility until the trouble is resolved. The small telecommunications utility must provide each customer making a network trouble report with a commitment time when the small telecommunications utility will repair or resolve the problem.

(a) Measurement: The small telecommunications utility must calculate the percentage of trouble reports cleared within 48 hours for each repair center.

(b) Objective Service Level: A small telecommunications utility must monthly clear at least 95 percent of all trouble reports within 48 hours of receiving a report.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission the percentage of trouble reports cleared within 48 hours by each repair center.

(d) Retention Requirement: None.

(7) Blocked Calls. A small telecommunications utility must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of levels listed in subsection (7)(b) of this rule.

(a) Measurement:

(A) A small telecommunications utility must collect traffic data; i.e., peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups.

(B) System blockage is determined by special testing at the wire center. Commission Staff or a small telecommunications utility technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percentage of calls completed must be calculated.

(b) Objective Service Level:

(A) A small telecommunications utility must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P.01 grade of service); and

(B) A small telecommunications utility must maintain its switch operation so that 99 percent of the calls do not experience blockage during the normal busy hour.

(C) When a small telecommunications utility fails to maintain the interoffice final trunk group P.01 grade of service for four or more consecutive months, it will be considered out-of-standard until the condition is resolved. A single repeat blockage within two months of restoring the P.01 grade of service will be considered a continuation of the original blockage.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission:

(A) Local and extended area service (EAS) final trunk groups that do not meet the objective service level for trunk group blockage, measured from each of its switches, regardless of the ownership of the terminating switch;

(B) Its tandem switch final trunk group blockages associated with EAS traffic;

(C) Any known cause for the blockage and actions to bring the trunks into standard; and

(D) Identity of the telecommunications utility or competitive telecommunications provider, if other than the reporting small telecommunications utility, responsible for maintaining those final trunk groups not meeting the standard.

(d) Retention Requirement: Each small telecommunications utility must maintain records for one year.

(8) Access to Small Telecommunications Utility Representatives. Small telecommunications utilities are not required to measure or report repair center and sales office access times to the Commission.

(9) Interruption of Service Notification. A small telecommunications utility must report significant outages that affect customer service. These interruptions could be caused by switch outage, electronic outage, cable cut, or construction.

(a) Measurement: A small telecommunications utility must notify the Commission when an interruption occurs that exceeds any of the following thresholds:

(A) Cable cuts, excluding service wires and wires placed in lieu of cable, or electronic outages lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(B) Toll or Extended Area Service isolation lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(C) Isolation of a central office (host or remote) from the E 9-1-1 emergency dialing code or isolation of a Public Safety Answering Position (PSAP).

(D) Isolation of a wire center for more than 15 minutes.

(E) Outage of the business office or repair center access system lasting longer than 15 minutes in those instances where the traffic cannot be re-routed to a different center.

(b) Objective Service Level: Not applicable.

(c) Reporting Requirement: A small telecommunications utility must report service interruptions to the Commission engineering staff by telephone, by facsimile, by electronic mail, or personally within two hours during normal work hours of the business day after the company becomes aware of such interruption of service. Interim reports will be given to the Commission as significant information changes (e.g., estimated time to restore, estimated impact to customers, cause of the interruption, etc.) until it is reported that the affected service is restored.

(d) Retention Requirement: None.

(10) Customer Access Line Testing. All customer access lines must be designed, installed, and maintained to meet the levels in subsection (b) of this section.

(a) Measurement: Each small telecommunications utility must make all loop parameter measurements at the network interface, or as close as access allows.

(b) Objective Service Level: Each access line must meet the following levels:

(A) Loop Current: The serving wire center loop current, when terminated into a 400-ohm load, must be at least 20 milliamperes;

(B) Loop Loss: The maximum loop loss, as measured with a 1004-hertz tone from the serving wire center, must not exceed 8.5 decibels (dB);

(C) Metallic Noise: The maximum metallic noise level, as measured on a quiet line from the serving wire center, must not exceed 20 decibels above referenced noise level - C message weighting (dBrnC); and

(D) Power Influence: As a goal, power influence, as measured on a quiet line from the serving wire center, must not exceed 80 dBrnC.

(c) Reporting Requirement: A small telecommunications utility must report measurement readings as directed by the Commission.

(d) Retention Requirement: None.

(11) Customer Access Lines and Wire Center Switching Equipment. All combinations of access lines and wire center switching equipment must be capable of accepting and correctly processing at least the following network control signals from the customer premises equipment. The wire center must provide dial tone and maintain an actual measured loss between interoffice and access trunk groups.

(a) Measurement: Each small telecommunications utility must make measurements at or to the serving wire center;

## (b) Objective Service Level:

(A) Dial Tone Speed. Ninety-eight percent of originating average busy hour call attempts must receive dial tone within three seconds; and

(B) A small telecommunications utility must maintain all interoffice and access trunk groups so that the actual measured loss (AML) in no more than 30 percent of the trunks deviates from the expected measured loss (EML) by more than 0.7 dB and no more than 4.5 percent of the trunks deviates from EML by more than 1.7 dB.

(c) Reporting Requirement: None.

(d) Retention Requirement: None.

(12) Special Service Access Lines. All special service access lines must meet the performance requirements specified in applicable small telecommunications utility tariffs or contracts.

(13) Small Telecommunications Utility Interconnectivity. A small telecommunications utility connected to the facilities of another telecommunications utility or competitive telecommunications provider must operate its system in a manner that will not impede either company's ability to meet required standards of service. A small telecommunications utility must report interconnection operational problems promptly to the Commission.

**~~(14) Alternatives to These Telecommunications Standards. A small telecommunications utility whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules if it specifically indicates the alternative standards to be applied or indicates which standards would be waived.~~**

## (154) Remedies for Violation of This Standard.

(a) If a small telecommunications utility subject to this rule fails to meet a minimum service quality standard, the Commission must require the small telecommunications utility to submit a plan for improving performance as provided in ORS 759.450(5). If a small telecommunications utility does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, the Commission may assess penalties in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that a small telecommunications utility subject to this rule has violated one or more of its service standards, the Commission must give the small telecommunications utility notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the small telecommunications utility to provide the following relief to the affected customers:

(A) An alternative means of telecommunications service for violations of paragraph (4)(b)(B) of this rule;

(B) Customer billing credits equal to the associated non-recurring and recurring charges of the small telecommunications utility for the affected service for the period of the violation; and

(C) Other relief authorized by Oregon law.

**(165) Exemption From These Rules.**

**~~(a) A small telecommunications utility may petition the Commission for an exemption, in whole or in part, from these rules.~~**

**~~(b) The Commission may grant an exemption, including but not limited to, the following circumstance: (a) If the Commission determines that effective competition exists in one or more exchange(s), it may exempt all telecommunications utilities or competitive~~**

telecommunications providers providing telecommunications services in the exchange(s) from the requirements of this rule, in whole or in part. In making this determination, the Commission will consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Number of suppliers;

(F) Price to cost ratios;

(G) Demand side substitutability (e.g., customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(be) When a small telecommunications utility petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications utilities and competitive telecommunications providers providing the applicable service(s) in the exchange(s) in question. The Commission will provide such notified small telecommunications utilities and competitive telecommunications providers an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in paragraphs (156)(ab)(A) through (H), the commenting telecommunications utilities and competitive telecommunications providers be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) The Commission may grant a small telecommunications utility's petition for an exemption from service quality reporting requirements if the small telecommunications utility meets all service quality objective service levels set forth in sections (4) through (8) of this rule for the 12 months prior to the month in which the petition is filed.

[Publications: Publications referenced are available from the agency]

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 759.035 & 759.240

## Division 36 – Water Utilities and Associations

860-036-0001

### Scope and Applicability of Rules

~~(1) Adoption of these rules shall in no way preclude the Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any water utility subject to these rules. Furthermore, these rules shall not in any way relieve any water utility subject to them from any of its duties under the laws of this State. Upon application by a water utility, the Commission may relieve it of any obligations under these rules. Upon request or its own motion, the Commission may waive~~

**any of the Division 036 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

(2) The rules contained in ~~d~~Division 036 are applicable to public utilities, as defined in OAR 860-036-0010, providing service in the State of Oregon.

(3) The rules contained in ~~d~~Division 036 do not restrict the authority of the Commission to require service improvements incorporating standards other than those set forth in this division when, after investigation, the Commission determines that such improvements are necessary.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

### **860-036-0110**

#### **Testing Water Meters**

(1) All meters shall be tested before installation, or within 30 days thereafter. No meter will be placed in service or be allowed to remain in service that has an error in registration in excess of 2 percent under conditions of normal operation. The water utility may seek ~~Commission approval for~~ a waiver of this requirement **under OAR 860-036-0001(1)** if it can demonstrate to the satisfaction of the Commission a suitable random sampling technique for testing new meters.

(2) New meters, repaired meters, and meters that have been removed from service shall be correct to within 2 percent fast or slow before being installed or reinstalled.

(3) Each water utility shall adopt schedules for periodic tests and repairs of meters. The length of time meters may be allowed to remain in service before receiving periodic tests and repairs is to be determined from periodic analysis of the accuracy of meters tested. The schedules adopted shall be subject to the Commission's approval.

(4) Whenever any meter is tested, the water utility shall prepare a test record, including the information needed for identifying the meter, the reason for making the test, the reading of the meter, the result of the test, and all data taken at the time of the test in complete form to permit the convenient checking of methods employed. The water utility shall retain the current and immediately prior test records for all meters tested.

(5) Each water utility shall provide such laboratory meter-testing equipment and other equipment and facilities as needed to make the tests required of it by these rules or other orders of the Commission. The apparatus and equipment so provided may be subject to the Commission's approval.

(6) All meters used for measuring the quantity of water to a customer shall be in good working condition. They shall be adequate in size and design for the type of service measured and shall be accurate to register no more than 2 percent fast or slow under conditions of normal operation. The water utility is responsible for repairing or replacing inaccurate or substandard meters at its own cost. Any such repair or replacement will be completed promptly at the water utility's expense and, until such completion, the customer water service bill must be adjusted to compensate for the inaccuracy.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.250

**860-036-0235****Multilingual Disconnection Notice**

(1) Except as provided in section (2) of this rule, all disconnect notices shall contain the following information translated into Spanish, Vietnamese, Cambodian, Laotian, and Russian (translations are available from the Consumer Services Division):

IMPORTANT NOTICE: Your water services will be shut off because of an unpaid balance on your account. You must act immediately to avoid shut-off. Important information about how you can avoid shut-off is printed in English in the enclosed notice. If you cannot understand English, please find someone to translate the notice. If translation assistance is unavailable, please contact (name) at (phone number) who will try to help you. Information on customer's rights and responsibilities printed in this language is also available by calling that number. YOU MUST ACT NOW TO AVOID SHUT-OFF.

~~(2) Upon petition by a water utility, the Commission shall waive the requirement to provide multilingual notice for two calendar years, which may be renewed upon a showing that the lesser of 5 percent or 500 of the water utility's Oregon customers would benefit from use of multilingual notification or show other reasons why such notices are not necessary.~~ (2) The Commission may grant a waiver of the multilingual notice requirement under OAR 860-036-0001(1), for a period not to exceed two calendar years, if the water utility shows that

(a) for a water utility with less than 50,000 customers, less than 5 percent of its Oregon customers would benefit from such notice, or

(b) for a water utility with 50,000 or more customers, less than 500 of its Oregon customers would benefit from such notice.

The water utility may request a waiver of the multilingual notice every two years.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

**860-036-0738****Applications for Waiver of Requirements Under of OARs 860-036-0730 and 860-036-0735**

~~This rule applies to rate-regulated water utilities as defined in ORS 757.005 and 757.061. Upon petition by a rate-regulated water utility and approval by the Commission for good cause, the requirements of OARs 860-036-0730 and 860-036-0735 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of circumstances demonstrating in advance that the transaction or transactions will be fair and reasonable and not contrary to the public interest, transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for waiver. The Commission will not waive the requirements of OARs 860-036-0730 or 860-036-0735 for any transactions exceeding 01 percent of the previous calendar year's Oregon utility operating revenues unless the transaction or transactions can be demonstrated in advance to be fair and reasonable and not contrary to the public interest.~~

Stat. Auth.: ORS 183, 756

Stats. Implemented: ORS 756.040

**860-036-0750**

**Relating to Local Government Fees, Taxes, and Other Assessments**

(1) If any county in Oregon, other than a city-county, imposes upon a water utility any new taxes or license, franchise, or operating permit fees, or increases any such taxes or fees, the water utility required to pay such taxes or fees shall collect from its customers within the county imposing such taxes or fees the amount of the taxes or fees, or the amount of increase in such taxes or fees. However, if the taxes or fees cover the operations of a water utility in only a portion of a county, then the affected water utility shall recover the amount of the taxes or fees or increase in the amount thereof from customers in the portion of the county that is subject to the taxes or fees. "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) The amount collected from each water utility customer pursuant to section (1) of this rule shall be separately stated and identified in all customer billings.

(3) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date.

~~(4) If any county, water utility, or customer affected by this rule deems the rule's application in any instance to be unjust or unreasonable, it may apply for a waiver of this rule by petition to the Commission, setting forth the reasons why the rule should not apply.~~

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.110

Division 037 – Wastewater Service Regulation for Joint Water/Wastewater Utilities  
**860-037-0001**

**Scope and Applicability of Rules**

~~(1) Adoption of these rules shall in no way preclude the Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any wastewater utility subject to these rules. Furthermore, these rules shall not in any way relieve any wastewater utility subject to them from any of its duties under the laws of this State. Upon application by a wastewater utility the Commission may relieve it of any obligations under these rules. Upon request or its own motion, the Commission may waive any of the Division 037 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.~~

(2) The rules contained in this division are applicable to wastewater service provided by public wastewater utilities, as defined in OAR 860-037-0010(28) and (36), providing service in the State of Oregon.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

**860-037-0235****Multilingual Disconnection Notice**

(1) Except as provided in section (2) of this rule, all disconnect notices shall contain the following information translated into Spanish, Vietnamese, Cambodian, Laotian, and Russian (translations are available from the Consumer Services Section):



**IMPORTANT NOTICE:** Your water service will be shut off because of an unpaid balance on your wastewater account. You must act immediately to avoid shut-off. Important information about how you can avoid shut-off is printed in English in the enclosed notice. If you cannot understand English, please find someone to translate the notice. If translation assistance is unavailable, please contact (name) at (phone number) who will try to help you. Information on customer's rights and responsibilities printed in this language is also available by calling that number. **YOU MUST ACT NOW TO AVOID SHUT-OFF.**

~~(2) Upon petition by a wastewater utility, the Commission shall waive the requirement to provide multilingual notice for two calendar years, which may be renewed upon a showing that the lesser of 5 percent or 500 of the wastewater utility's Oregon customers would benefit from use of multilingual notification or show other reasons why such notices are not necessary.~~ (2) The Commission may grant a waiver of the multilingual notice requirement under OAR 860-037-0001(1), for a period not to exceed two calendar years, if the water utility shows that

(a) for a water utility with less than 50,000 customers, less than 5 percent of its Oregon customers would benefit from such notice, or

(b) for a water utility with 50,000 or more customers, less than 500 of its Oregon customers would benefit from such notice.

The water utility may request a waiver of the multilingual notice every two years.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

#### **860-037-0545**

**Applications for Waiver of Requirements Under of OARs 860-037-0530 and 860-037-0535**

The Commission will not waive the requirements of OAR 860-037-0530 or 860-037-0535 for any transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues unless the transaction or transactions can be demonstrated in advance to be fair and reasonable and in the public interest. Upon petition by a wastewater utility and approval by the Commission for good cause, the requirements of OARs 860-037-0530 and 860-037-0535 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of circumstances demonstrating in advance that the transaction or transactions are fair and reasonable and not contrary to the public interest, transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for waiver.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

#### **860-037-0560**

**Relating to Local Government Fees, Taxes, and Other Assessments**

(1) If any county in Oregon, other than a city-county, imposes upon a wastewater utility any new taxes or license, franchise, or operating permit fees, or increases any such taxes or fees, the wastewater utility required to pay such taxes or fees shall collect from its wastewater customers within the county imposing such taxes or fees the amount of the taxes or fees, or the proportional

share of increase in such taxes or fees. However, if the taxes or fees cover the operations of a wastewater utility in only a portion of a county, then the affected wastewater utility shall recover the amount of the taxes or fees or increase in the amount thereof from wastewater customers in the portion of the county that is subject to the taxes or fees. "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) The amount collected from each wastewater service customer pursuant to section (1) of this rule shall be separately stated and identified in all wastewater customer billings.

(3) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date.

~~(4) If any county, wastewater utility, or customer affected by this rule deems the rule's application in any instance to be unjust or unreasonable, it may apply for a waiver of this rule by petition to the Commission, setting forth the reasons why the rule should not apply.~~

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.110

#### Division 038 – Direct Access Regulation

##### 860-038-0001

##### Scope and Applicability of Rules

(1) The rules contained in this division apply to electric companies and electricity service suppliers, except that these rules do not apply to an electric company serving fewer than 25,000 consumers in this state unless the electric company:

- (a) Offers direct access to any of its retail electricity consumers in this state; or
- (b) Offers to sell electricity services available under direct access to more than one retail electricity consumer of another electric company in this state.

(2) Except as otherwise provided in these rules, an electric company must comply with all other divisions of OAR chapter 860.

(3) OAR 860-038-0380, sections (1) through (9), apply to aggregators; section (10) applies to electric companies.

(4) These rules shall not in any way relieve any entity from its duties under Oregon law.

**Upon request or its own motion, the Commission may waive any of the Division 038 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission. Upon application by an entity subject to these rules and for good cause shown, the Commission may relieve it of any obligations under these rules.**

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

#### Division 039 – Net Metering Rules

##### 860-039-0005

##### Scope and Applicability of Net Metering Facility Rules

(1) OAR 860-039-0010 through 860-039-0080 (the "net metering rules") establish rules governing net metering facilities interconnecting to a public utility as required under ORS

757.300. Net metering is available to a customer-generator only as provided in these rules. These rules do not apply to a public utility that meets the requirements of ORS 757.300(9).

(2) ~~Upon request For good cause shown, a person or its own motion, may request~~ the Commission may waive any of the ~~net metering facility~~ Division 039 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

(a) A public utility and net metering applicant may mutually agree to reasonable extensions to the required times for notices and submissions of information set forth in these rules for the purpose of allowing efficient and complete review of a net metering application.

(b) If a public utility unilaterally seeks waiver of the timelines set forth in these rules, the Commission must consider the number of pending applications for interconnection review and the type of applications, including review level and facility size.

(3) As used in OAR 860-039-0010 through 860-039-0080:

(a) "ANSI C12.1 standards" means the standards prescribed by the 2001 edition of the American National Standards Institute, Committee C12.1 (ANSI C12.1), entitled "American National Standard for Electric Meters - Code for Electricity Metering," approved by the C12.1 Accredited Standard Committee on July 9, 2001.

(b) "Applicant" means a person who has filed an application to interconnect a net metering facility to an electric distribution system.

(c) "Area network" means a type of electric distribution system served by multiple transformers interconnected in an electrical network circuit in order to provide high reliability of service. This term has the same meaning as the term "secondary grid network" as defined in IEEE standard 1547 Section 4.1.4 (published July 2003).

(d) "Customer-generator" means a customer-generator as defined in ORS 757.300(1)(a).

(e) "Electric distribution system" means that portion of an electric system which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises.

(f) "Equipment package" means a group of components connecting an electric generator with an electric distribution system, and includes all interface equipment including switchgear, inverters, or other interface devices. An equipment package may include an integrated generator or electric production source.

(g) "Fault current" means electrical current that flows through a circuit and is produced by an electrical fault, such as to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase.

(h) "Generation capacity" means the nameplate capacity of the power generating device(s). Generation capacity does not include the effects caused by inefficiencies of power conversion or plant parasitic loads.

(i) "Good utility practice" means a practice, method, policy, or action engaged in or accepted by a significant portion of the electric industry in a region, which a reasonable utility official would expect, in light of the facts reasonably discernable at the time, to accomplish the desired result reliably, safely and expeditiously.

(j) "IEEE standards" means the standards published in the 2003 edition of the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, entitled "Interconnecting Distributed Resources with Electric Power Systems," approved by the IEEE SA Standards Board on June 12, 2003, and in the 2005 edition of the IEEE Standard 1547.1, entitled "IEEE Standard

Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems," approved by the IEEE SA Standards Board on June 9, 2005.

(k) "Impact study" means an engineering analysis of the probable impact of a net metering facility on the safety and reliability of the public utility's electric distribution system.

(l) "Interconnection agreement" means an agreement between a customer-generator and a public utility, which governs the connection of the net metering facility to the electric distribution system, as well as the ongoing operation of the net metering facility after it is connected to the system. An interconnection agreement will follow the standard form agreement developed by the public utility and filed with the Commission.

(m) "Interconnection facilities study" means a study conducted by a utility for the customer-generator that determines the additional or upgraded distribution system facilities, the cost of those facilities, and the time schedule required to interconnect the net metering facility to the utility's distribution system.

(n) "Net metering facility" means a net metering facility as defined in ORS 757.300(1)(d).

(o) "Non-residential customer" means a retail electricity consumer that is not a residential customer, except "non-residential customer" does not include a customer who would be a residential customer but for the residency provisions of subsection (r) of this rule.

(p) "Point of common coupling" means the point beyond the customer-generator's meter where the customer-generator facility connects with the electric distribution system.

(q) "Public utility" has the meaning set forth in ORS 757.005 and is limited to a public utility that provides electric service.

(r) "Residential customer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential customer" does not include retail electricity customers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. "Dwelling" includes, but is not limited to, single-family dwellings, separately-metered apartments, adult foster homes, manufactured dwellings, and floating homes.

(s) "Spot network" means a type of electric distribution system that uses two or more inter-tied transformers protected by network protectors to supply an electrical network circuit. A spot network may be used to supply power to a single customer or a small group of customers.

(t) "Written notice" means a required notice sent by the utility via electronic mail if the customer-generator has provided an electronic mail address. If the customer-generator has not provided an electronic mail address, or has requested in writing to be notified by United States mail, or if the utility elects to provide notice by United States mail, then written notices from the utility shall be sent via First Class United States mail. The utility shall be deemed to have fulfilled its duty to respond under these rules on the day it sends the customer-generator notice via electronic mail or deposits such notice in First Class mail. The customer-generator shall be responsible for informing the utility of any changes to its notification address.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.300

## Division 082 – Small Generator Interconnection Rules

## 860-082-0010

**Waiver**

(1) ~~For Upon request good cause shown, a public utility, an applicant, or an interconnection customer, or its own motion, may request that~~ the Commission may waive any of the ~~small generator interconnection~~ **Division 082** rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

(2) A public utility and an applicant or interconnection customer may agree to reasonable extensions to the required timelines in these rules without requesting a waiver from the Commission.

(a) If a public utility and an applicant or interconnection customer are unable to agree to waive a timeline, then the public utility, applicant, or interconnection customer may request that the Commission grant a waiver.

(b) In deciding whether to grant a waiver of a timeline, the Commission will consider the number of pending applications for interconnection review and the type of applications, including review level, facility type, and facility size.

(c) Waiver of a timeline, whether by agreement or Commission order, does not affect an application's queue position.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 756.060

## Division 083 – Renewable Portfolio Standards

## 860-083-0005

**Scope and Applicability of Renewable Portfolio Standards Rules**

(1) OAR 860-083-0005 through 860-083-0500 (the “Renewable Portfolio Standards rules”) establish rules governing implementation of Renewable Portfolio Standards for electric companies and electricity service suppliers provided under ORS 469A.005 through 469A.210.

(2) ~~Upon request For good cause shown, a person or its own motion, may request~~ the Commission may waive any of the ~~Renewable Portfolio Standards~~ **Division 083** rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

Stat. Auth.: ORS 756.040, 757.659, 469A.065

Stats. Implemented: 469A.065

## Division 084 – Solar Photovoltaic Programs

## 860-084-0000

**Scope and Applicability of Solar Photovoltaic Programs**

(1) OAR 860-084-0020 through 860-084-0080 (“the Solar Photovoltaic Capacity Standard”) govern implementation of programs requiring electric company installation of solar photovoltaic capacity.

(2) OAR 860-084-0100 through 860-084-0450 (the “Solar Photovoltaic Pilot Programs”) govern implementation of pilot programs to demonstrate the use and effectiveness of volumetric incentive rates and payments for electricity delivered from solar photovoltaic energy systems.

(3) **Upon request or its own motion,** The Commission may waive any of the **Division 084** rules **contained in Division 084** for good cause **shown**. **A request for waiver must be made in writing, unless otherwise allowed by the Commission.**

Stat Auth: ORS 757.360 - 757.380

Stats. Implemented: ORS 757.360 - 757.380