

ORDER NO. 12 085  
ENTERED MAR 13 2012

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 561

In the Matter of  
Revisions to OAR 860-038-0480 to  
Implement House Bill 2960 (Cool  
Schools).

ORDER

DISPOSITION: TEMPORARY RULE AMENDMENTS REPEALED;  
NEW RULE AMENDMENTS ADOPTED

We opened this rulemaking to implement House Bill 2960, commonly referred to as the “Cool Schools” bill. Legislative changes to the distribution of public purpose funds necessitate corresponding changes to OAR 860-038-0480. We previously adopted temporary rules to implement HB 2960 in Order No. 11-386. In this order we adopt permanent rules.

**I. BACKGROUND**

Under ORS 757.612, electric utilities collect a three percent “public purpose charge” from retail customers to fund cost-effective energy conservation and renewable resource development. The first ten percent of those funds are distributed to school districts within the local service territories of the utilities to help pay for energy audits, weatherization, energy conservation education, and other permitted activities. *See* ORS 757.612(3)(e).

Prior to the passage of HB 2960, the utilities would distribute the public purpose funds to Education Service Districts (ESDs), who would in turn distribute the funds to the school districts. The Oregon Department of Energy (ODOE) provided administrative support to the ESDs and had individual service contracts with each of the ESDs receiving public purpose funds. Under the service contracts, ODOE would, among other things, provide technical assistance audits, evaluate proposed projects, and help develop program guidelines to ensure the proper use of the funds. The ESDs would pay ODOE a portion of the public purpose funds to help pay the costs of those administrative activities.

In HB 2960, the legislature amended ORS 757.612(3) to change the method of how utilities distribute the public purpose funds. Rather than distributing the funds to the ESDs, the utilities are now required to directly distribute the funds to the school districts.

## II. TEMPORARY RULEMAKING

To implement HB 2960 as quickly as possible, we adopted temporary rule amendments to require the distribution of funds to school districts rather than ESDs. At ODOE's request, we also added a new section allowing ODOE to request reimbursement for costs associated with administering the public purpose fund expenditures. That provision, set forth in a new section (14), provided:

(14) The Oregon Department of Energy may request reimbursement from electric companies for its costs of administering public purpose funds as described in subsection (3)(e) of ORS 757.612. The Oregon Department of Energy's reimbursement request must be consistent with its legislatively approved budget limitation allotted to administer the schools program. The electric companies must provide the requested reimbursement within 30 days of the Oregon Department of Energy's request.

Under ORS 183.335(6), the temporary rule amendments expire on March 27, 2012.

## III. PERMANENT RULEMAKING

We initiated this permanent rulemaking proceeding on November 15, 2011, when we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact with the Secretary of State. Commission Staff (Staff) proposed that the temporary rule amendments be adopted on a permanent basis without modification. Notice was also provided to certain legislators specified in ORS 183.335(1)(d) and to all interested persons on the service lists maintained under OAR 860-001-0030 on November 16, 2011. Notice of the rulemaking was published in the December 2011 *Oregon Bulletin*.

On December 7, 2011, Staff conducted a workshop to discuss the proposed rules with interested persons; and comments were subsequently filed by Portland General Electric Company (PGE), ODOE, PacifiCorp, dba Pacific Power, the Citizens' Utility Board of Oregon (CUB) and Staff.

### A. Rulemaking Comments

The rulemaking comments generally focused on section (14) allowing ODOE to seek reimbursement of its administrative expenses. All participants acknowledge that, under ORS 757.612(3)(c), the Commission may require a utility to direct public purchase funds to state governmental agencies that are responsible for implementing public purpose programs in order to pay for administrative costs. They further recognize that, although the statute does not explicitly cite ODOE as the administrator for the schools program, ORS 757.612(3)(e)(B) directs school districts to coordinate with ODOE.

To ensure that the public purpose funds are being spent in a manner consistent with the legislative intent, the participants recommended additional language to clarify this statutory authority and to provide more specificity about ODOE's administrative services. All participants recommended that the rule clarify that reimbursement to ODOE is provided under ORS 757.612(3)(c). PGE, Pacific Power, and CUB also proposed language to clarify what types of activities are eligible for reimbursement, and to require an annual reporting by ODOE of its activities and accounting of reimbursements. PGE's proposed language, which is supported by Pacific Power and is similar to that of CUB's, provides:

(14) Should the Oregon Department of Energy request reimbursement from electric companies for its costs of administering public purpose funds in accordance with its responsibilities under subsection (3)(e) of ORS 757.612, the electric companies shall direct public purpose funds for such reimbursement to the Oregon Department of Energy as provided in ORS 757.612(3)(c). The electric companies must provide the requested reimbursement within 30 days of the Oregon Department of Energy's request. The Oregon Department of Energy's reimbursement request must be solely for activities directly related to providing technical assistance, approval of energy audits and verification of installed measures, and be consistent with its legislatively approved budget limitation allotted to administer the schools program. The Oregon Department of Energy shall provide an annual accounting to the Commission of how the reimbursed costs meet the requirements of this subsection.

ODOE contends that the proposed clarifications that address the administration and oversight of the public purpose funds are outside the scope of this rulemaking. ODOE believes that issues relating to elements of program administration and oversight of its activities are more appropriately addressed with the school districts receiving public purpose funds and other key stakeholders.

## **B. Resolution**

Under ORS Chapters 756 and 757, this Commission is statutorily obligated to represent ratepayers and ensure that they receive service at just and reasonable rates. To fulfill these duties, we must take all necessary steps to ensure that all ratepayer money—including that collected under the public purpose charge—is being used prudently and consistent with the legislature's intent.

For this reason, we conclude that additional steps must be taken to clarify the administrative duties undertaken by ODOE in support of the school districts. First, we agree with ODOE that the scope of activities performed in support of the public purpose fund projects are most appropriately addressed in meetings between ODOE, the school

districts, and stakeholders. Accordingly, we direct our Staff to facilitate workshops to identify the activities ODOE will perform to assist the school districts under ORS 757.612(3). The workshops should include representatives of ODOE, the school districts, electric utilities, and residential ratepayers, including CUB. We also ask Staff to present a report of the identified activities, along with information as to the expected amount of funds needed by ODOE to perform those activities, to the Commission for acknowledgement.

We further conclude that the rule should be amended to include an annual reporting by ODOE to show the amount of public purpose funds received for administrative activities in support of the school districts under ORS 757.612. The report will be filed with the Commission Staff and made available to interested persons. The Commission will take no formal action on the report unless requested to do.

Accordingly, we modify section (14) to read as follows:

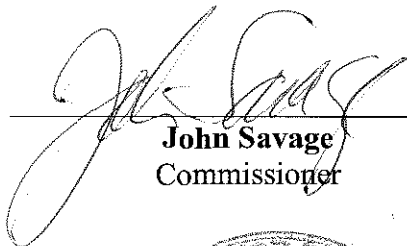
(14) Should the Oregon Department of Energy request reimbursement for costs of administering public purpose funds in accordance with its responsibilities under ORS 757.612(3)(e), the electric companies must, within 30 days, provide reimbursement as provided in ORS 757.612(3)(c). The Oregon Department of Energy's reimbursement request must be limited to activities related to implementing public purpose programs and be consistent with its legislatively approved budget limitation allotted to administer the schools program. On March 1 of each year, the Oregon Department of Energy must provide to the Commission an accounting of the reimbursements received the preceding calendar year for administrative activities performed under ORS 757.612(3)(e).

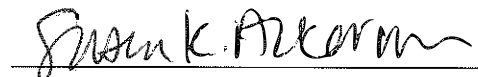
**IV. ORDER**


IT IS ORDERED that:

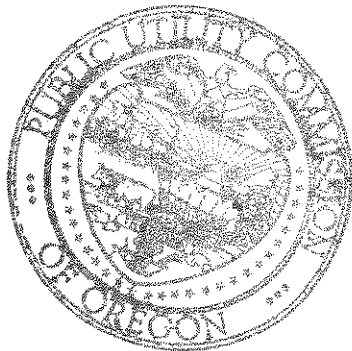
1. The temporary amendments to Oregon Administrative Rule 860-038-0480 are repealed.
2. The modifications to Oregon Administrative Rule 860-038-0480, as set forth in Appendix A, are adopted and become effective upon filing with the Secretary of State.
3. The Commission Staff will present to the Commission for acknowledgement an assessment of administrative functions to be performed by the Oregon Department of Energy to implement the schools programs authorized under ORS 757.612(3)(e)(B).

Made, entered, and effective MAR 13 2012

  
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**John Savage**  
Commissioner

  
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**Susan K. Ackerman**  
Commissioner

  
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**Stephen M. Bloom**  
Commissioner



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



**860-038-0480****Public Purposes**

(1) Each electric company that offers direct access to its retail electricity consumers and each electricity service supplier that provides electricity services to direct access consumers in the electric company's service territory will collect a public purpose charge from its retail electricity consumers until January 1, 2026.

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

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

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

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

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

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

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

(7) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to July 23, 1999. For energy conservation measures that were started on or after July 23, 1999, but prior to the implementation of direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions is met:

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

(b) The energy conservation measure did receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999, but the self-directing consumer repaid the amount of such funding (cost of

audit and incentives plus interest) no later than 90 days following the implementation of direct access; provided that, a self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures.

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

(8) The Oregon Department of Energy will establish specific rules and procedures that are consistent with these rules for qualifying a self-directing consumer's expenditures.

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

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

(a) Energy conservation in schools;

(b) New cost-effective local energy conservation and new market transformation;

(c) Above-market costs of new renewable energy resources;

(d) New low-income weatherization; and

(e) Construction and rehabilitation of low-income housing.

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

(a) Energy conservation in schools — 10.0 percent;

(b) Local and market transformation conservation — 56.7 percent;

(c) Above market costs of new renewable energy resources — 17.1 percent;

(d) Low-income weatherization — 11.7 percent; and

(e) Low-income housing — 4.5 percent.

(12) Each electric company will adjust the local and market transformation conservation and above market costs of new renewable energy resources accounts specified in subsections 11(b) and (c) of this rule for the credits returned to self-directing customers for conservation or renewable resource expenditures certified by the Oregon Department of Energy.

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

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

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

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

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

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

**(14) Should the Oregon Department of Energy request reimbursement for costs of administering public purpose funds in accordance with its responsibilities under ORS 757.612(3)(e), the electric companies must, within 30 days, provide**

**reimbursement as provided in ORS 757.612(3)(c). The Oregon Department of Energy's reimbursement request must be limited to activities related to implementing public purpose programs and be consistent with its legislatively approved budget limitation allotted to administer the schools program. On March 1 of each year, the Oregon Department of Energy must provide to the Commission an accounting of the reimbursements received the preceding calendar year for administrative activities performed under ORS 757.612(3)(e).**

**(154)** Each electric company will **coordinate with the Oregon Department of Energy** to determine, by January 1 of each year, the allocation of public purpose funds for schools to the **Education Service Dschool** districts according to the following methodology:

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

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

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

(d) Add the estimates of ADMw for each **Education Service Dschool** district; and

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

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

**(176)** The electric companies and the administrators of the public purpose funds will collect sufficient information so that biennial reports can be made to the Legislature on what has been accomplished with the public purpose funds and how those funds have benefited the consumers of each electric company. Specifically, information must be collected so that the reporting requirements of ORS 757.617 can be fulfilled.

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

- (b) Each administrator of public purpose funds must report, at a minimum:
- (A) The amount of funds received;
  - (B) The amount of funds spent;
  - (C) Its administrative costs; and
  - (D) Its results, for example, measures installed, projects funded, energy saved, homes weatherized, and low-income homes built/rehabilitated.

Stat. Authority: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 1-2001, f. & cert. ef. 1-5-01; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 13-2004, f. & cert. ef. 8-31-04; PUC 7-2007, f. & cert. ef. 5-15-07; PUC 13-2007, f. & cert. ef. 12-31-07; PUC 3-2011, f. & cert. ef. 6-17-11; PUC 8-2011, f. & cert. ef. 9-30-11 through 3-27-12