

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 664 and AR 666

In the Matters of

Temporary Rulemaking to Update OAR 860-032-0095 to Comport with 2019 Senate Bill 68 Changes to ORS 756.310 (AR 666), and

Permanent Rulemaking to Update OAR 860-032-0095 to Comport with 2019 Senate Bill 68 Changes to ORS 756.310 (AR 664).

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our February 6, 2024 Regular Public Meeting, to adopt Staff's recommendations in this matter. The Staff Report with the recommendations is attached as Appendix A.

Made, entered, and effective Feb 07 2024.



Megan W. Decker
Chair



Letha Tawney
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. RM2

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 6, 2024**

REGULAR ___ **CONSENT** ___ **RULEMAKING** X **EFFECTIVE DATE** _____

DATE: February 2, 2024

TO: Public Utility Commission

FROM: Mandy Standiford, OPUC COO **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION: (Docket Nos. AR 664 and AR 666) Request for approval to open formal rulemaking to adopt rule changes to OAR 860-032-0095, resulting from passage of SB 68.

STAFF RECOMMENDATION:

Approve the request to, without informal proceedings, adopt a temporary rule and issue a notice of proposed permanent rulemaking to adopt changes consistent with 2019's SB 68 (ORS 756.310) for OAR 860-032-0095.

DISCUSSION:

Issues

1. Whether the Commission should, without informal proceedings, adopt a temporary rule to adopt changes consistent with 2019's SB 68 (ORS 756.310) for OAR 860-032-0095.
2. Whether the Commission should, without informal proceedings, issue a notice of proposed rulemaking to adopt changes consistent with 2019's SB 68 (ORS 756.310) for OAR 860-032-0095.

Applicable Rule or Law

In executing its general powers under ORS 756.040, the Commission "is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction."

Under ORS 756.060, the Commission is authorized to "adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission"

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and to “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 and telecommunications utilities and other parties before the commission.”

This rulemaking implements 2019’s Senate Bill (SB) 68, codified in ORS 756.310 which raised the existing annual fee of a maximum of thirty-five hundredths of one percent (0.35 percent) of a competitive telecommunications provider’s utility’s gross retail intrastate revenue.

Need for Rulemaking

The minimum amount due (\$100 for competitive telecommunications provider) has not changed. This fee change will apply to all regulated competitive telecommunications providers.

The rulemaking addresses a rule for competitive telecommunications providers and removes the percentage cap, consistent with SB 68. The administrative rules for small and large telecommunication utilities were amended in 2019. Due to an administrative error, OAR 860-032-0095 was overlooked when amending the administrative rules upon the passage of SB 68. Competitive telecommunications providers have been paying the annual fee rate of 0.35 percent since 2019, but the change in statute has not been reflected in the administrative rule.

Background

SB 68 authorizes a fee change that was initiated as a result of legislation including, 2016 SB 1547 (Coal to Clean), 2017 SB 978 (investigation into regulated electric system incentives and trends, technologies, and policy drivers), anticipated 2021’s HB 2021 (Oregon Climate Action Program) and 2019’s SB 98 (Renewable Natural Gas). Because of the requirements of these legislative bills, the PUC has experienced and will experience increased staffing, professional services, and attorney general costs.

Adding to the need for increased funding, discussions with stakeholders conducted as part of the PUC’s 2018 strategic planning process noted the necessity for additional staffing in the Utility Program and in the Commission Office. Furthermore, administrative costs such as rent, state assessment fees, and other personnel expenses are increasing above current service levels.

The proposed rule amendment is shown in Attachment A.

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Conclusion

As a result of SB 68, the Commission's administrative rule for competitive telecommunications providers should be updated accordingly.

Recommended Procedural Timeline

If the request to adopt a temporary rule is approved, the temporary rule will be effective on March 1, 2024 and will sunset 180 days after passage.

If the request to initiate the formal phase of permanent rulemaking is adopted at this public meeting, the notice may be published in the *March Oregon Bulletin*, with comments due by the end of March 2024.

The fiscal and economic impact results from the change in the law, not from the rule changes to implement the law. The potential cost of compliance for competitive telecommunications providers is five hundredths of a percent (0.05 percent) of their gross retail intrastate revenue.

PROPOSED COMMISSION MOTION:

Approve the request to, without informal proceedings, adopt a temporary rule.

Approve the request to issue a notice of proposed permanent rulemaking to adopt changes consistent with 2019's SB 68 (ORS 756.310) for OAR 860-032-0095.

PROPOSED RULE AMENDMENT

AMEND: 860-032-0095

RULE TITLE: Annual Fees Payable to the Commission by a Competitive Provider

RULE SUMMARY: This rulemaking implements 2019 Senate Bill 68, which raises the maximum annual fee from 0.30 percent to 0.35 percent of a competitive telecommunications provider's gross retail intrastate revenue.

RULE TEXT:

(1) On statement forms prescribed by the Commission, each competitive provider must provide the requested information for the subject year.

(2) Each competitive provider must pay to the Commission **an annual fee on gross retail intrastate revenue derived within Oregon at a rate determined by Commission orders entered on or before November 1 of each year:**

(a) A minimum annual fee of \$100. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based. The annual fee rate will not exceed ~~three tenths of one percent (0.3 percent)~~ **the rate authorized in ORS 756.310** of the gross retail intrastate revenue during the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0110, if the Commission has not received the competitive provider's statement form, completed in compliance with section (1) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350 and OAR 860-032-0008(1).

(d) A service fee in accordance with OAR 860-011-0110 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the competitive provider.

(3) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(4) Each competitive provider must:

(a) Collect the annual fee by charging an equitable amount to each retail customer, using apportionment methods that are consistently applied by the competitive provider through Oregon, and

(b) Describe the amount of the apportioned charge upon each retail customer's bill.

(5) Each competitive provider must:

(a) Maintain its records in sufficient detail to readily provide gross retail intrastate revenue from Oregon telecommunications services, as defined in OAR 860-032-0080;

(b) Follow the revenue allocation procedures in OAR 860-032-0090; and

(c) Make its revenue accounting records available to the Commission upon the Commission's request. A competitive provider must keep all records supporting each statement form for three (3) years, or until a Commission review or audit is complete, whichever is later.

(6) For any year in which a competitive provider's statement form was due, the Commission may audit the competitive provider as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three years after the statement form's due date. However, if the competitive provider failed to obtain a certificate of authority, an audit may occur at any time.

(b) If the Commission determines that the competitive provider has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the competitive provider has overpaid its annual fee, the Commission may, at its discretion, recompense the competitive provider with a refund or a credit against annual fees subsequently due.

(7) If the Commission receives a public record request for the confidential information required by this rule, the Commission may assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure.

(8) A cooperative that is a competitive provider must pay an annual fee only on the gross retail intrastate revenue from telecommunications services that are provided under the cooperative's ORS 759.020 certificate of authority. A cooperative should not pay an annual fee on revenue from telecommunications services that are provided under the cooperative's 759.025 certificate of authority.

Statutory/Other Authority: ORS 183, 192, 756 & 759

Statutes/Other Implemented: ORS 756.310, 756.320 & 756.350