

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 396

In the Matter of a Rulemaking to Amend)
860-027-0040, 860-027-0100, 860-034-0396,)
860-036-0815 and 860-037-0625.) ORDER

DISPOSITION: RULES AMENDED

At its December 19, 2000, public meeting, the Public Utility Commission opened a rulemaking proceeding to amend Oregon Administrative Rules 860-027-0040, 860-027-0100, 860-034-0396, 860-036-0815 and 860-037-0625. These rules are concerned with telecommunications affiliated interest contracts and associated reporting requirements.

The revisions as shown in Appendix A bring congruence with statutory changes effective October 23, 1999, in which ORS 759.385 and 759.390 were amended, and ORS 759.394 was repealed. Also, annual affiliated interest reporting standards are established for fully regulated water and all water/wastewater utilities.

The Commission filed Notice of the Proposed Rulemaking with the Secretary of State on December 21, 2000, and subsequently served it on all interested parties. The notice set out the amendments proposed by Commission Staff, and included a Statement of Need, Statutory Authority, Principal Documents Relied Upon, and Fiscal and Economic Impact. The notice was published in the January 1, 2001, *Oregon Bulletin*.

Written comments filed by Qwest Corporation and Verizon Northwest Inc. supported Staff's proposed revisions. No other written comments were filed and no request was made for a public hearing as a result of the notice.

At its public meeting on March 20, 2001, the Commission approved Staff's recommendation to adopt the proposed rules as set forth in Appendix A.

ORDER

IT IS ORDERED that:

1. Oregon Administrative Rules 860-027-0040, 860-027-0100, 860-034-0396, 860-036-0815 and 860-037-0625, as set forth in Appendix A, are adopted.
2. The amended rules shall be effective upon filing with the Secretary of State.

Made, entered, and effective MAR 21 2001.

BY THE COMMISSION:

Vikie Bailey-Goggins
Commission Secretary

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.

860-027-0040**Applications for Approval of Transactions Between Affiliated Interests**

(1) Except as provided in ~~section~~ sections (3) and 4 of this rule, the requirements of this rule will apply to all utilities seeking authority under ORS 757.490, ORS 757.495, ORS 759.385, and ORS 759.390. An application for financing to an affiliated interest shall be made under OAR 860-027-0030.

(2) Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information:

(a) The applicant's exact name and the address of its principal business office;

(b) The name and address of the person authorized, on the utility's behalf, to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the utility and the contracting entity as defined by ORS 757.015, ORS 757.490, ORS 759.010, or ORS 759.385;

(d) The amount, kind and ratio to total voting securities held, if applicable;

(e) A list of all officers and directors of the affiliated interest who are also officers or directors of the applicant;

(f) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(g) A description of the goods or services to be provided, the cost incurred in providing each of the goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(h) An estimate of the amount the utility will pay annually for the goods or services and the accounts in which it will record the charges;

(i) The reasons, in detail, relied upon by the utility for procuring the proposed goods or services from the affiliate and benefits, if any, utility customers-and the general public will derive from the provision of goods or services;

(j) A description of the procurement process and the reasons, in pertinent detail appropriate to the complexity of the procurement, relied upon by the utility for procuring the proposed goods or services without a competitive procurement process, if such a process is not used;

(k) Transfer prices in contracts or agreements for the procurement of goods or services under competitive procurement shall be presumed to be the market value, subject to evaluation of the procurement process;

(l) A copy of the proposed contract or agreement between the utility and the contracting entity; and

(m) Copies of all resolutions of directors authorizing the proposed transactions and, if stockholders' approval has been obtained, copies of the resolutions approved by the stockholders.

(3) This rule shall not apply to utilities seeking to purchase or contracting to purchase, directly or indirectly, from any person or corporation having an affiliated interest as defined in ORS 757.015 or ORS 759.010 or any corporation defined in ORS 757.490(1) or ORS 759.385(1)

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210 or ORS 759.180; or

(b) Any service provided under a rate or schedule or rates which:

(A) Has been filed with an agency charged with the regulation of utilities,

(B) Has been approved as just and reasonable or in compliance with another comparable standard, and

(C) Is available to a broad class of customers.

(4) This rule shall not apply to telecommunications utilities electing price cap regulation under ORS 759.405 and 759.410.

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

Stats. Implemented: ORS 756.040, 757.005, 757.015, 757.490, 757.495, 759.005, 759.010, 759.385 & 759.390

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 21-1990, f. & cert. Ef. 12-31-90 (Order No. 90-1904); PUC 17-1994, f. & cent. Ef. 12-28-94 (Order No. 94-1953); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

860-027-0100

Reporting of Affiliated Transactions

~~(1) By June 1, on forms approved and provided by the Commission, all utilities shall file with the Commission a report of all affiliated interest, intercompany, and intracompany transactions which occurred during the period of January 1 through December 31 of the immediately proceeding year. On forms approved and provided by the Commission:~~

(a) By June 1, all energy utilities shall file with the Commission a report of all affiliated interest, intercompany, and intracompany transactions which occurred during the period from January 1 through December 31 of the immediately preceding year.

(b) By April 1, all telecommunications utilities shall file with the Commission a list of all affiliated interest contracts executed during the period from January 1 through December 31 of the immediately preceding year. The list shall consist of the names of the parties to the contracts, the dollar amounts of the contracts, and the dates of execution of the contracts.

(2) As used in this rule.

~~(a) "Intracompany transactions" mean transactions between regulated and unregulated operating divisions within a utility.~~

~~(b) "Intercompany transactions" means transactions between a utility and another company when the utility owns a majority of or controls directly or indirectly the voting stock of the other contracting company.~~

~~(c) "A-affiliated interest transactions" mean transactions between affiliated interests as defined by ORS 757.015 and ORS 759.010.~~

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

Stats. Implemented: ORS 756.040, 757.005, 757.015, 757.490, 757.495, 759.005, 759.010, 759.385 & ~~759.390 through 759.393~~

Hist.: PUC 10-1987, f. & ef. 10-8-87 (Order No. 87-898); PUC 12-1997, f. & ef. 10-30-97 (Order No. 97-413); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

860-034-0396

Reporting of Affiliated Transactions by Utilities

(1) By April 1, on forms approved and provided by the Commission, all utilities shall file with the Commission ~~a report of all affiliated interest, intercompany, and intracompany transactions which occurred~~ list of all affiliated interest contracts executed during the period from January 1 through December 31 of the immediately preceding year. The list shall consist of the names of the parties to the contracts, the dollar amounts of the contracts, and the dates of execution of the contracts.

(2) As used in this rule:

(a) ~~"Intracompany transactions" means transactions between regulated and unregulated operating divisions within a utility.~~

(b) ~~"Intercompany transactions" means transactions between a utility and another company when the utility owns a majority of or controls directly or indirectly the voting stock of the other contracting company.~~

(c) ~~A~~ affiliated interest transactions mean transactions between affiliated interests as defined by ORS 759.010.

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

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & ef. 5-7-98 (Order No. 98-188); Renumbered from 860-034-0550 by PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468)

860-036-0815

Annual Reports

All water utilities shall submit annual reports to the Commission in the following manner:

~~(1)(a)~~ Fully regulated water utilities shall submit a financial Result of Operations annual report using the most current form approved by the Commission and shall submit such report on or before April 1.

~~(2)(b)~~ All other water utilities shall submit a Records and Accounts annual report using the most current form approved by the Commission and shall submit such report on or before April 1.

(3) By June 1, fully regulated water utilities shall submit on forms approved and provided by the Commission, a report of all affiliated interest, intercompany, and intracompany transactions which occurred during the period from January 1 through December 31 of the immediately preceding year.

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

Stats. Implemented: ORS 756.040, 756.105, 757.120, 757.125 & 757.135

Hist: PUC 13-1997, f. & ef. 11-12-97 (Order No. 97-434)

860-037-0625

Annual Reports

~~All water/wastewater utilities shall submit a *financial Result of Operations* annual report using the most current form approved by the Commission and shall submit such report on or before April 1.~~

On forms approved and provided by the Commission, all water/wastewater utilities shall submit:

(1) A financial Result of Operations annual report for the immediately preceding Year, by April 1.

(2) A report of all affiliated interest, intercompany, and intracompany transactions which occurred during the period from January 1 through December 31 of the immediately preceding year, by June 1.

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

Stats. Implemented: ORS 756.040, 756.105,..757.005, 757.061, 757.120, 757.125 & 757.135

Hist.: PUC 9-1999 (Temp), f. 10-22-99 & ef. 10-23-99 (Order No. 99-650); PUC 6-2000, f. 4-18-00 & ef. 4-20-00 (Order No. 00-194)