

This is an electronic copy. Attachments may not appear.
BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

AR 406

In the Matter of a Rulemaking)
Proceeding to Make Housekeeping)
Changes to Oregon Administrative) ORDER
Rules 860-027-0040, 860-027-0041,)
860-027-0100, and 860-034-0396.)

DISPOSITION: RULES AMENDED

At its March 6, 2001, public meeting, the Public Utility Commission opened docket AR 406, a rulemaking proceeding to make housekeeping revisions to the affiliated interest rules to clearly differentiate between energy utilities, large telecommunications utilities, and small telecommunications utilities.

On March 8, 2001, the Commission filed a Notice of the Proposed Rulemaking with the Secretary of State, 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 April 1, 2001, *Oregon Bulletin*.

No written comments were filed and no request was made for a public hearing as a result of the notice.

At its June 15, 2001, public meeting, 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, 860-027-0041, 860-027-0100, and 860-034-0396, 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 _____.

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 sections (3) and (4) of this rule, the requirements of this rule will apply to ~~all any energy or large telecommunications utility 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 of 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. & cert. ef. 12-28-94 (Order No. 94-1953); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

860-027-0041

Information Required for Utility Goods or Services Provided to Affiliated Interests

(1) Except as provided in section (4) of this rule, this rule applies to ~~all utilities~~ any energy or large telecommunications seeking to provide or contracting to provide, directly or indirectly, to 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), service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal, or other services, or enter revenues or credits therefore on its books. This rule does not apply to transactions subject to ORS 757.490, ORS 757.495, ORS 759.385, or ORS 759.390 and OAR 860-027-0040.

(2) An energy or large telecommunications utility's failure to submit this required information shall not limit the Commission's authority to recognize or impute revenues to the utility pursuant to such contract in any rate valuation or other hearing or proceeding.

(3) For transactions provided in section (1) of this rule, every energy or large telecommunications utility shall submit to the Commission, in the manner and form indicated, the following information:

- (a) Its exact name and the address of its principal business office;
- (b) The name of the person authorized on the energy or large telecommunications utility's behalf to receive notices, inquiries, and communications regarding the information;
- (c) A statement describing the relationship between the energy or large telecommunications utility and the other contracting entity as defined by ORS 757.015, ORS 757.490, ORS 759.010, or ORS 759.385;
- (d) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(e) A description of the goods or services to be provided, the costs incurred in providing those 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;

(f) An estimate of the amount the energy or large telecommunications utility will receive annually for the goods or services and the accounts in which it will record the payments;

(g) The reasons relied upon by the energy or large telecommunications utility for providing the proposed goods or services and the benefits, if any, utility customers and the general public will derive from the provision of goods or services;

(h) A copy of the contract or agreement between the energy or large telecommunications utility and the contracting entity that is the subject of this filing; and

(i) Copies of all resolutions of directors of the energy or large telecommunications utility authorizing the proposed transactions and, if approval of the utility's stockholders was obtained, copies of the resolutions approved by the stockholders.

(4) This rule shall not apply to energy or large telecommunications utilities seeking to provide or contracting to provide, directly or indirectly, to 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 of rates which:

(A) Has been filed with an agency charged with the regulation of energy or large telecommunications 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.

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

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

Hist.: PUC 21-1990, f. & cert. ef. 12-31-90 (Order No. 90-1904); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169)

860-027-0100

Reporting of Affiliated Transactions

(1) 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 large telecommunications utilities shall file with the Commission a report 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, “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~~ & 759

Stats. Implemented: ORS 756.040, 757.005, 757.015, 757.490, 757.495, 759.005, 759.010, 759.385 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 Small Telecommunications Utilities

(1) By April 1, on forms approved and provided by the Commission, all **small 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, “affiliated interest transactions” mean transactions between affiliated interests as defined by ORS 757.015 and 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)